IN FACT AND IN LAW

With the judgment on file, the Presiding Judge ordered the indictment of the fugitive from justice, Vito Roberto Palazzolo, who was called to respond to the crime of participation in a criminal Mafia type association, to be heard before this Court in a joint sitting.

At the hearing on the 15.10.2002, a number of preliminary questions were raised, and the Prosecution asked for time to respond.

At the subsequent hearing set down for the 13.11.2002, the Court handed down the order on file in relation to the above preliminary questions, and the parties respectively requested evidence to be presented.

After having clarified the concept of *tempus commissi* deliciti, the Prosecution specifically asked to examine 65 witnesses, 11 state witnesses and 3 expert witnesses, and the accused, as well as the transcriptions of telephone calls that had been transcribed by technical experts, and statements from other proceedings, while the defence asked to call its own witnesses and expert witnesses.

At the hearing on the 4.12.2002, the Court admitted the evidence presented by both parties, and during the course of subsequent hearings, resolved the question of admissibility regarding certain telephone interceptions, which related to overseas subscribers (see judgment on file).

The hearing therefore got underway, with the examination of witnesses and state witnesses listed by the Public Prosecutor, and the Court ordering the transcription of the telephone interceptions that had been admitted, on presentation of the relative authorisations.

As both parties formally agreed that a number of witnesses on their lists who were resident overseas, should be heard through an international rogatory commission, the Court made the relevant request through the relevant Ministerial and diplomatic channels, so that the rogatory commission could be finalised with South Africa.

The request for the rogatory commission was accepted by the Republic of South Africa, and the relevant government departments requested an official meeting with representatives of the Court applying for the commission.

The meeting took place on the 15.10.2003 in Palermo, in the presence of both parties and their respective interpreters, as can be ascertained by the abridged report drawn up on this occasion by the Court Registrar.

Subsequent to this meeting, and through the relevant authorities, the South African Authorities formally communicated their acceptance of the rogatory commission, which

had as its objective the examination of the witnesses listed by the parties, with the exception of three witnesses listed by the Prosecution.

The Rogatory Commission was held in South Africa during 2004, and was heard over two sittings for reasons better set out in the records on file.

In accordance with article 507 of the Criminal Procedure Code, the Prosecution subsequently requested the transcription of other interceptions, the examination of other witnesses and the state witness Antonino Giuffrè, who had turned state evidence after the commencement of the current hearing.

At the conclusion of a long, complex and drawn-out hearing, the parties concluded their presentations as per the records on file.

******

Before moving on to a critical overview of what emerged during the proceedings in respect of the accused, the Court considers it necessary to briefly premise the principles of law that surround the judgment and to identify which evaluation methods the Court used in relation to evidence in hearing these proceedings.

As specified by the Prosecution in the hearing of the 13.11.2002, Vito Roberto Palazzolo is called today to respond to the charge of participation in a Mafia association, called "Cosa Nostra" as from the 29 March 1992.

The reason for identifying this *tempus commissi deliciti* is obviously connected to the undisputed situation where Palazzolo had already been acquitted on this charge, with judgment handed down by the Court of Rome on 28.3.92, and which subsequently became an irrevocable judgment (on file).

This in truth, was not so much an acquittal judgment, but in all likelihood a release (absolution) judgement, in accordance with article 129 of the Criminal Procedure Code, and was motivated in the following terms: "*taking into consideration that the case under article 129 of the Criminal Procedure Code applies, since no elements of proof whatsoever emerge from the records relating to the crime under article 416bis of the Criminal Code"*.

We need to point out this judgement does not allow for a critical review of the probatory evidence, nor of the assessment criteria adopted by the Court to arrive at this absolution judgement, as this decision was completely lacking in any motivation and was based on a single sentence, handwritten on a pre-printed form supplied by the Ministry of Justice

as the wording of judgement in applying sentence ex art. 444 of the Criminal Procedure Code.

From direct scrutiny of the document, it is apparent that the entire motivational listing is in fact limited to this one laconic formula contained in a single line.

This so-called "motivation" ("*no elements of proof whatsoever emerge from the records relating to the crime under article 416bis of the Criminal Code"*.) is however clearly contradictory, since under the same judgment Palazzolo was sentenced to two years imprisonment and a fine of 40 million Lire for the crime in terms of article75 of Law 685/75, committed together with a number of people belonging to the Mafia organisation, called "Cosa Nostra".

The absolute absence of any proof of the accused's participation in a criminal Mafia organisation is therefore disproved at the very least, by the existence of precise evidence contained in the same judgment in question.

All the same, faced with this lack of motivational support, there is nothing useful that assists us in understanding whether we are dealing with a plea bargain (article 75 Law 685/75) where release was granted ahead of time ex article 129, section 1 of the Criminal Procedure Code for the concurrent crime (article 416 bis Criminal Code): as would seem the case from the use of the pre-printed form, the citing of article 129 of the Criminal Procedure Code, and the absence of any reference to a hearing– or whether we are dealing with an actual acquittal judgment ex article 530 of the Criminal Procedure Code: that could be surmised from the purview of the judgement itself ("*acquit*").

Notwithstanding the patent strangeness of this judgement – we repeat, absolutely lacking in any motivation for the release granted in relation to such a serious charge – this Court can obviously do nothing other than take note of the final judgement and respect its meaning and significance, especially with regard to its repercussions on today's judgement.

And in fact, the existence of a previous acquittal (or release) judgement with regard to Palazzolo relating to the same charge under consideration by the Court, means that the Court must adopt a series of principles that legitimate case-law has consistently and firmly established in relation to the preclusion of judgment and the exclusion of the so-called *ne bis in idem* principle. Besides the legitimate judgments that will be referred to, we must then also take into consideration the judgment *de libertate* handed down by the First Criminal Section of the Appeal Court on the 9 January 2004 (on file), which actually falls within the ambit of these proceedings.

Even though this judgment was handed down in relation to an appeal made against an order of the Court, it establishes certain points of law and defines the correct evaluation procedures which pertain to the current proceedings, and so acquires the value of a reliable and authoritative point of reference for this Court sitting.

On this premise, and taking our cue from the principles established by the Appeal Court, both in general terms and with particular reference to today's proceedings, we can affirm 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, the event and the 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 416bis 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).

This subject was then further elaborated on by case-law, which went on to introduce certain distinctions on the type of decision (carrying a conviction or acquittal) that had been handed down in the past on final judgments.

In this regard: "*in associative crimes, the interruptive effect on the permanence of the crime must be connected to the judgment, even if judgment is not irrevocable, and this is what establishes the accused's responsibility, and from this it then follows that the portion of illegal conduct subsequent to this sentence, even though it cannot essentially be distinguished from the previous conduct, can still be prosecuted as an independent crime. When, vice versa, an acquittal judgment is handed down, no interruptive effect on the permanence of the criminal conduct can be considered operational because in fact the crime itself has not been proven, and from this follows the preclusion of sentence provided for under article 649 of the Criminal Procedure Code; in this instance therefore, the second judgment is only forbidden for the facts that occurred up until the date indicated in the dispute, independently of the date on which the acquittal judgment was handed down".* (Appeal, section II 14.3.97 no.1949).

And in slightly different terms: "*in the case of permanent crime, in order to ascertain the operational requirements that forbid a second judgment (article 649 of the Criminal Procedure Code), should the dispute of the fact that forms the subject of the judgment only carry the date on which the crime began, the end of the criminal conduct must be*

identified with reference to the date on which judgment was handed down by a Court of the First Order, irrespective of whether the outcome is one of acquittal or conviction, seeing that this decision always contains an evaluation of the facts, that by the very nature of the crime that constitutes the subject of judgment, cannot refer to one single initial moment, but must necessarily take into account its duration in time". (Appeal, Section IV 4/10-29/11/2000 no. 12302).

On the basis of these principles then, the portion of conduct taking place subsequently to the date of the First Grade Court judgement (which then becomes irrevocable) can be prosecuted as an independent crime, notwithstanding that we are dealing with a conviction, where the facts have been ascertained, or whether the accused has been acquitted.

This subsequent prosecution does not constitute a violation under our law of the prohibited so-called *ne bis in idem* general principle, taking into consideration the permanent nature of the crime and the fact that the conduct falls into a time period subsequent to the judgment.

This Court sitting believes that it should firmly adhere to these principles of law, without having to underline (in the spirit of defending civil rights) – any distinction in the above evaluation criteria due to the acquittal nature of the judgment dated 28.3.92.

For the rest, we need to underline how the Prosecution decided the time period during the hearing on the 13.11.2002, by adding the phrase "as from the date of 28.3.1992" to define the time period relating to the conduct in the case.

As we have already pointed out, the Appeal Court has also contributed to this point, even though this was in respect of a ruling on precautionary measures.

In judgment dated 9.1.2004, the Supreme Court was extremely clear in handing down judgment, and it is worthwhile recalling what was said by the Judges on that occasion: *"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, therefore takes its cue from the handing down of the acquittal (or release) judgment to establish that any conduct of persistent participation in the "Cosa Nostra" organisation must be linked to facts and/or conduct subsequent to the 28.3.92.

The Court, however, does not limit its examination of today's case to the time fixing of this principle, but immediately clarifies 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".*

The Appeal Court therefore admits 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 Court therefore concluded its reasoning, by clarifying that these "prior elements of proof" that "already formed the basis of previous evaluation", are limited in their value as a "point of reference" relating to conduct and events that occurred subsequently to the acquittal judgment.

This Court believes that these principles should be strictly adhered to, and at the same time highlights two extremely important aspects.

The Supreme Court, firstly makes reference to prior elements of proof "***that have already formed the basis of previous evaluation"*** and consequently seems to exclude any elements of proof that were categorically not taken under review by the Court in Rome and that did not form the basis of 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, we can state with absolute certainty for example, that it had no way of evaluating the statements made by the many state witnesses listed in these proceedings.

And this is not pure conjecture, but a documented and logical reality connected to the fact that all these witnesses most certainly 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, we can therefore deduce 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 basing ourselves on the Supreme Court's ruling, these facts centred on new sources of evidence that have never been previously examined, and can most certainly be used as a "frame of reference" for subsequent behaviour and conduct.

Again in this respect the Court intends clarifying its position, while at the same time fully safeguarding the accused's position.

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.

The principles established by the Appeal Court in its judgment of 9.1.04 can still be strictly adhered to while these elements of proof are 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, this Court sitting will not be using these elements of proof as direct evidence against the accused, but will be following the principles established by the Supreme Court, using them as a frame of reference in which facts subsequent to the 1992 judgment can be contextualised and evaluated.

There is no doubt in fact, that the Court of Appeal recognised the probatory value of these elements of proof, since it considered them suitable to demarcate a frame of reference, which was taken into consideration in evaluating the overall (and subsequent) results.

As was the case in the abovementioned judgment (see page 7), a concrete example can further clarify this Court's approach to probatory material.

On the basis of the numerous and converging statements made by several state witnesses – all of which were made subsequently to the acquittal judgment and therefore certainly never examined by the Court of Rome, as they are only been submitted today for the first time for a First Grade Court's consideration –Palazzolo is identified as a "man of honour" formally affiliated to the "Cosa Nostra" organisation.

This "fact" certainly refers to a time period prior to March 1992, and on the basis of the evaluation criteria for statements made by state witnesses: these being the so-called convergence of manifold accounts, an analysis of the personalised counter matches and the further elements of proof, in the absence of any prior judgement, this could potentially be appropriate to constitute sufficient probatory material to lead to a conviction for participation in a Mafia type association.

In the case in question however, and adhering closely to the principles of law previously examined, these facts are evaluated as significant and relevant elements within the frame of reference, where Palazzolo's actions subsequent to March 1992 will be assessed.

We are therefore not dealing with an element of proof directed at summarily ascertaining the criminal responsibility of the accused, but neither is it an insignificant and irrelevant fact that has no further use in our judicial proceedings.

Besides which, it would be inadmissible and contrary to the principle of free convincement of the judge, for any new proof that had never been examined previously in any prior proceedings and that had been legitimately acquired, not to have any consideration on the new judgement.

This element, vice versa, contributes to the same standards that will be taken under review in due course, and by admission of the Supreme Court, will be used to reconstruct and define a frame of reference in which the elements of proof acquired subsequently to March 1992 will be inserted and critically evaluated.

There is no doubt, that if the facts and conduct subsequent to this time period were evaluated *ex se* and without any consistent frame of reference, they could lead to very

different conclusions relating to the matter under investigation, where a context of highly significant relationships and operations has been ascertained.

If staying with the same example, then the fact of formal affiliation to the “Cosa Nostra” organisation cannot simply lead to the conclusion of Palazzolo’s proven participation in the above Mafia association (because the “fact” occurred in a time period prior to the judgment), then the existence of recurring, frequent and significant relationships with highly regarded “men of honour” constitutes an element of proof that the Judge, in exercising his legitimate discretionary powers, must evaluate in order to demarcate the frame of reference and the role of the accused.

So that, beyond this specific example, and with the methodology and structure set out above, this Court sitting believes that it has established very strict and secure parameters in line with legitimate jurisprudence, both in relation to examining other cases and this case under review.

The critical recognition of the probatory material therefore is mainly concentrated on what emerged subsequent to March 1992, but this cannot be correctly evaluated without taking into account the timing and context of the frame of reference presented by events prior to this date.

This is all the more important in the case of emerging material, like the numerous statements made by state witnesses, which has never been examined before by any other judicial authorities.

In reconstructing this frame of reference, we also need to take into account the results of the actual judgment passed by the Court in Rome on 28.3.1992.

The Appeal Court in handing down judgement on the 9.1.2004, correctly made reference to the acquittal judgement in relation to article 416bis of the Criminal Code, but overlooked the fact that the Court of Rome, in its very same decision, did impose sentence on Palazzolo with regard to the crime detailed under article 75 of Law 687/75, which is a crime typical of a Mafia association.

As was the case with the acquittal judgement, there is no doubt therefore that we must also take this information into consideration in determining the position of today’s accused, since this was also a definitive judgement, and can contribute to further demarcating our frame of reference.

The charge against Mr Palazzolo in that judgement related to a sensational episode of international drug trafficking, committed together with several high profile members of the Sicilian “Cosa Nostra” organisation, 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 famous case was called the “Pizza Connection”, and to date is probably the largest most celebrated case of international drug trafficking in Italy, involving enormous amounts of narcotics.

It is a known fact and was confirmed by the witness General Pitino, that the traffic was directly administered 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 them 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 then recycled through Switzerland, and through the significant contribution made by Vito Roberto Palazzolo.

Palazzolo was resident in both Switzerland and Germany and involved in financing, and thanks to his knowledge and connections, was able to recycle 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.

Palazzolo’s involvement in the Pizza Connection proceedings – or rather a section of the case which landed up in the Court of Rome due to complications regarding territorial jurisdiction – constitutes another significant element of proof in drawing up our frame of reference.

Without labouring the point, there is evidence from the proceedings and the final sentence handed down against Mr Palazzolo, that deep and well-established criminal relations existed between the accused and the heads of “Cosa Nostra” from the eighties.

These relations are particularly significant, both because of the high office held by Palazzolo’s contacts inside “Cosa Nostra”, and the specific skills of the accused, regarding the delicate function of international recycling of enormous amounts of money originating from drug trafficking.

As we will see shortly, these relations are distinctly confirmed by the numerous converging statements made by the state witnesses for the first time in these hearings.

There is no doubt in fact, that the specific skills that Mr Palazzolo has in the field of international finance (and which we see from multiple converging states evidence in these proceedings) already made him an extremely valuable asset for the heads of the "Cosa Nostra" from the eighties.

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 recycle 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, was able, and as we shall see, is still able to afford a secure and almost irreplaceable point of reference for the entire "Cosa Nostra" organisation.

The complex proceedings relating to drug trafficking in the Pizza Connection had also resulted in a further conviction against Mr Palazzolo in Switzerland for related matters.

To be precise, 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, under 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.

These prior events, which are indisputably evidenced by the collection of judgments on file and relate to proceedings against Mr Palazzolo in the past, are most certainly a significant addition to the structure of our much referred to frame of reference.

They contribute particularly in outlining the role of the accused, his personality, and above all, a network of relations that are especially significant.

But there is no doubt that the most useful and significant element of proof in defining our frame of reference in further detail is made up by 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 allowed us to reconstruct the internal workings of the Mafia organisation called "Cosa Nostra", to arrest various members of the organisation, and to contribute in a significant way to their conviction, with most judgments becoming irrevocable.

These irrevocable judgements have in fact reinforced the reliability of these state witnesses, whose statements were considered appropriate in supporting various convictions for very serious offences connected to “Cosa Nostra” operations.

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

Antonino Giuffrè is a recent addition to this list, and although his highly valuable and qualified assistance was rendered in recent times, it certainly referred to events prior to 1992.

We will therefore deal with a critical evaluation of his testimony separately, because of the different probatory value that Giuffrè’s statement has in these proceedings.

We will being reviewing the various statements made by the state witnesses examined during the court hearing, with Francesco Di Carlo, an historical “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 offer logistical assistance and refuge to Antonino Marchese, a man within the organisation who required surgical treatment in Switzerland.

Marchese had recently been involved in an important murder, and so 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 there 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.

Di Carlo returned the money to Palazzolo, who then deposited it into a Swiss bank account, which Riina himself operated.

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

During their meetings, Riina had confided in Di Carlo that Palazzolo was “at his disposal”, and that he was involved in recycling 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 godfather of one of Nino Madonia’s children (“compare”), who was recycling money derived from cigarette trafficking operations he ran with the Nuvoletta clan in Marano, through Palazzolo.

Riina finally suggested that Di Carlo go into business with him, and work with Palazzolo in recycling dirty money through Switzerland.

For obvious reasons, to ensure continuity in our argument, we will examine 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, traditionally one of the most qualified within this region, and he is 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 ago.

Francesco Di Carlo personally saw to all the arrangements for the operation, and gave Filippo Marchese, the head of the Corso dei Mille Mafia family of the time, a place to stay while he was in Switzerland to accompany 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 recycling 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 in recycling 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, that had a hidden base in which 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.

Accordingly 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 learnt from his father Raffaele, that Palazzolo moved to South Africa in about 1993, and that he 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 makes 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 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 also continued with the illegal trafficking of diamonds after he moved to South Africa.

Another state witness also made reference to the fact of international trading in diamonds, set up by Palazzolo together with other members of “Cosa Nostra”.

This witness, Giovanni Mazzola, was a member of the Montelepre family from 1980, and therefore belonged to the same geographical region as Palazzolo. The Montelepre family fell under the Partinico district, which for many years was headed up by Nenè Geraci, an historical boss of the area, and who as we will see, 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 relates to more recent times to 1996, since 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 see, becomes important regarding the specific episode (subsequent to the 1992 judgment) of hospitality offered to Giovanni Bonomo and Giuseppe Gelardi.

Shortly before he turned state witness, Mazzolo learnt from Ciccio Di Piazza (a counsellor of the Partinico family) at the beginning of 1996, 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, 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 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 also became 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 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 on a second occasion, Sinacori learnt from Francesco Messina (or Mastro Ciccio, an historical 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 disappeared so that he would not pass on information to investigators when he was consequently identified after his gun was found at the scene of the first murder.

In this regard, it is worth noting that Palazzolo was investigated for the murder of Agostino Badalamenti, which took place 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 emerge 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 have 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 important 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 for recycling.

What strikes us again 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 role within the organisation, and the different time period 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 Trapani clan.

This element takes on special significance because Sinacori heard this directly from Mangiaracina himself, and from convergence of a number of counter checks 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 form E-6 containing the affidavit made by the South African Commissioner of Police, Jacob Venter on the 24.3.97, we see 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 we read 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 we will see, provided Palazzolo with a false passport, and remained in Switzerland to look after his affairs.

Notwithstanding that the business negotiations fell through, 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, we can 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 states that he met Palazzolo in Switzerland during 1983/84, while with Nino Rotolo an important figure in the Palermo "Cosa Nostra" of the time, and still highly regarded today.

Cancemi and Rotolo were in Switzerland at the time as the money they were making from drug trafficking, was being recycled 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. 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, that 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*".

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 also 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 Particino 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 recycle 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.

In 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. The organisation feared that Palazzolo would feel isolated and 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 Vito Palazzolo's "boss".

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 discussions were however interrupted, because Brusca was being hounded by the police, and was eventually arrested in May 1996.

Giovanni Brusca 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 was in fact the case). 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 telephone interception) that we will examine.

Even though Cannella was never a "man of honour" within the organisation, he 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 makes particular reference 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 recycling of dirty money overseas on behalf of "Cosa Nostra", and various other illegal business such as diamond trading.

Year later, and specifically in 1993, Leoluca Bagarella – a high level man within the Corleone family and perpetrator of several brutal crimes - confirmed Palazzolo's role in much the same terms.

He also added however, that Bernardo Provenzano himself (the undisputed head of "Cosa Nostra" 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 lived in

Turin, where he was at Bastone's "disposal". He 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 prison for some time.

He finally returned to Sicily in 1993 and made contact with Antonino Giuffrè, who in the meantime had became 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 lack of men. 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 recycled.

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

Bastone also confided in Facella that there was another business that he intended working on with Palazzolo 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. 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 starts in 2003. However, given the nature and time reference of statements, we will delay their review because they involve not only events that reconstruct our frame of reference, but also actual evidence regarding Palazzolo.

What we will deal with at this point, are the statements made by witness Franco Oliveri, which as we will see, 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 was able to receive 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 an 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 attempts to downplay the importance of what he learnt from Palazzolo (and also given that it was some time ago), he then fully confirmed his previous statements.

We would like to underline therefore that we are not dealing with 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 Olivieri'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 doubts that the deponent has no intention of pursuing the accused, nor that he had any interest in rendering false testimony.

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, 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 while Palazzolo was definitely a "man of honour" and recycler of dirty money through a myriad of activities overseas (as Palazzolo himself told him), that 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" in 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 within the "Cosa Nostra" he had dealings with several "men of honour" who were also high ranking members of the organisation, among them 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 men 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 gave 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 recycling of vast amounts of money belonging to “Cosa Nostra”, originating in the crimes of drug trafficking and contraband cigarettes. He was especially involved in the trafficking of cigarettes in the Naples area (with the involvement of the Zaza and Nuvoletta clans), and the drug trafficking covered under the Pizza Connection.

Palazzolo confessed to his friend Oliveri that he had recycled million of US dollars in Switzerland, that 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 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 descriptions.

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 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 ensure that he did not talk.

As we 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 refers and 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 our 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 recycled vast amounts of money from the international trafficking of drugs (Pizza Connection) and contraband cigarettes; that he gave 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 our frame of reference.

With the review of Franco Oliveri's statement, we conclude the reconstruction of the contributions made by the state witnesses and Oliveri as witness, in order to reconstruct 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, we must reiterate that they involve evidence that was completely unknown to the judges in 1992 and even

to the Appeal Court that looked at the matter under the precautionary detention measures (but whose principles this Court has adopted). If these sources were appropriately verified, they 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 there 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.

If we consider that seven state witnesses coming from different geographical areas and different experiences within “Cosa Nostra”, and having followed different paths at different times to become state witnesses, all identified Palazzolo as a “man of honour”, formally belonging to the organisation.

They almost all also made reference to his role as financier and skilled businessman abroad (a fact that was objectively verified during the entire proceedings), who was involved on an ongoing basis in the recycling of large amounts of money from the trafficking of drugs and cigarettes.

In this capacity, Palazzolo operated together with several high ranking members of the organisation (Madonia, Geraci, Provenzano), establishing a number of business abroad, and among them certainly, international trading in precious stones.

In this regard, it is noted how six state witnesses (Di Carlo, Anzelmo, Cancemi, Facella, Brusca and Ciulla) all reported on business relations with Madonia, and how five (Ganci, Di Carlo, Anzelmo, Mazzola and Cannella) referred to the reinvestment of illegal funds in diamond and precious stones’ trading.

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 under the Pizza Connection.

This is further confirmed by depositions made by General Stefano Pitino of the Revenue Police, who led the investigations that resulted in Palazzolo’s conviction for the crime,

that as we have said 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 recycling that occurred with the main, if not only, accessory being Palazzolo.

General Pitino also 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 Youssu N’Duru.

The morphine base was then processed into heroin in secret laboratories operating in Sicily (some were discovered and sequestrated), 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 recycling of these large sums of money, and those earmarked to pay the supplier N’Duru.

From investigations conducted at the time, there was 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 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, that had personal contact with Palazzolo).

In this context, we have already shown 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 two occasions for business related matters.

We also find 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 we will see was 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.

We refer specifically to the murder of Agostino Badalamenti, and the connection to Antonio Ventimiglia, where Palazzolo was investigated and then released. We obviously do not intend putting an event which objectively plays out in Palazzolo's favour (his release) in a negative light, but only wish 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, we underline the incredible convergence in their statement with regard to the context of the relations and contacts that Palazzolo had within the "Cosa Nostra", his involvement in the recycling of dirty money from the trafficking of cigarettes and drugs (including the Pizza Connection), his business ties (especially the trade in precious stones) with 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 are also confirmed in documentation (the *affidavit* deposed by Venter), in investigations conducted at the time (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 we have 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, we will examine them at a later stage.

This is also so that we can 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 that we have spoken about at length, and the totally different statements made by Giuffrè that take on a very different probatory value.

In order to reconstruct the complex frame of reference with regard to the accused, it is worth going over the background of what happened from his imprisonment in Switzerland, and then look at his complicated move to South Africa.

These records emerge both from testimony given during these proceedings by various Italian Police officials (eg. Grassi, Zampolini, Pitino), as well as those gathered during the international rogatory proceedings held in South Africa, by mutual request of both parties.

In this regard, we note again that both sides requested ad agreed upon the rogatory commission, in that both the Public Prosecutor and Palazzolo's Defence requested the hearing of the South African witnesses on their respective lists, and formalised the request for the rogatory proceedings during the course of their hearing. The request was then forwarded by the Italian Court to the South African Authorities, through the Ministry of Justice and appropriate diplomatic channels.

As we have already mentioned before, representatives of the South African Department of Justice asked on behalf of the South African Minister of Justice to hold a preliminary meeting in Italy in order to define the procedures and regulations applicable for the commission and set times for the same to take place, since this was the first request of its kind between Italy and South Africa, and no treaties in this respect existed between the two countries.

The meeting was held in the presence of all parties (even though this is not necessary or required as it was only a preparatory meeting and not a hearing), and a summarised report was drawn up.

At the conclusion of this meeting, the South African Department of Justice communicated via the official channels, that the rogatory commission had been accepted for all, except three of the witnesses requested by the Prosecution.

In this regard, it should be noted that the (Italian) Court had no jurisdiction in the matter of the exclusion of witnesses, as the country hosting the rogatory commission made a free and independent decision to allow the rogatory commission to proceed in relation to certain witnesses, and deny it for others. There is no doubt in fact, that this decision is within the jurisdiction and control of the hosting country and that the country requesting the rogatory proceedings had no judicial jurisdiction to interfere with this decision.

It is further noted that the witnesses excluded by the South African Department of Justice had all been requested by the Prosecution, which hypothetically, could have given cause for complaint.

Palazzolo's Defence on the other hand did complain about this fact, even though these witnesses had not been included on their own lists, and during the course of the rogatory hearings stressed the alleged irregularity of the procedures adopted by the South African government.

This Court can only repeat that based on the regulations governing procedure in international rogatory commissions, any decision relating to the total or partial acceptance of a request received for a rogatory hearing falls to the independent and complete authority of the hosting country, with the requesting nation having no influence in this regard.

During the rather tumultuous 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 fully used with regard to this decision.

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

With regard to the deposition of Viljoen, it is noted that Viljoen did appear at the hearings held in Cape Town, but was unable to testify at the time, as he was suffering from post-traumatic stress. This was confirmed by his doctor who also appeared at the hearing. The Prosecution insisted on hearing Smith's testimony, and Smith let the Court know that he was prepared to come to Italy in order to testify. This decision was fully motivated by Smith, who stated that his condition of psychological stress was directly connected to the investigations conducted into Palazzolo, and that the different location and conditions under which he would testify in Italy, would allow him to testify freely and calmly.

It should also be added that at the conclusion of the rogatory hearings, another collection of probatory documents was added, in the form of the so-called "bundle of documents" submitted by Palazzolo's Defence and admitted by the Court with the agreement of the Prosecution.

In this regard, we note that during the hearings of 1 November 2004 in Cape Town, Palazzolo's Defence also asked for a file of documents to be admitted in the interests of the accused. The Defence's request was motivated by the need to present these documents to the witnesses, and according to the Defence, related to the presentation of documents and their full usage (page 96 of Italian transcription: "*my request in this regard is that these documents be admitted*").

The Prosecution gave his consent for all these documents to be presented and used, when so asked by the South African Judge and the Italian Court representatives.

We are therefore dealing with documents requested by the Defence, and agreed upon by the Prosecution. The file was admitted into the hearing, and therefore completely useable for the purposes of reaching any decision.

Besides which it would absolutely incomprehensible in terms of logic and judicial procedure, for one party to ask to produce documents that the other has made available, in fact insisting on their admission and use, and then once agreement had been obtained from the other side, to then ask that the same documents be declared unusable.

On this premise then, the collection of testimonies resulting from the international rogatory commission (requested and conducted in the presence of both parties), 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 (and that he refers to during the hearing), and a series of official documents, such as for example, the attached to the registration of convictions in the Court for the district of the Cape (document no. 24 in Defence's bundle).

On the basis of this body of emerging elements, we can therefore reconstruct Palazzolo's entry into South Africa, the context of his connections and the episode of hospitality that was given to Bonomo and Gelardi.

Vito Roberto Palazzolo was arrested in Switzerland on 20.4.84 on an international warrant for arrest issued by the Italian authorities, on the charge of criminal association with the purpose of drug trafficking. With no intention of being extradited to Italy, Palazzolo issued a statement to the Swiss Public Prosecutor on the 10.10.84, confessing to a crime committed in that country, thus avoiding being handed over and judgment in an Italian Court (see document no.24 in the bundle, and confirmation from witness Carla Del Ponte, Swiss Federal Prosecution).

During his imprisonment in Switzerland, Palazzolo was given 36 hours leave for the Christmas holidays, and taking advantage of this he escaped from prison on 24.12.1986. He arrived in South Africa on 26.12.1986 on a flight from Frankfurt- Johannesburg, and presented a Swiss passport to customs official in the name of one Stelio Domenico Frappoli.

This false passport bearing Palazzolo's photo was obtained from the same Frappoli, who was a well-known professional counterfeiter, and friend and prison companion of Palazzolo.

On presenting this false passport to passport control, Palazzolo also made a false declaration when filling out the B1 55 arrival's form, stating that he was in the country on holiday, and thus obtained a tourist visa valid until the 21.1.1987.

Once he had made his illegal entry into South Africa, the accused met up with a local politician, Peet De Pontes, an influential member of the South African National Party that was in power at the time and who acted as his contact and cover.

Palazzolo and his brother Pietro Efisio were however denied subsequent visas for South Africa, because they had made false declarations and had not come through on promises to bring certain goods into the country within a year. It had also been ascertained that Palazzolo had been imprisoned the year before in Switzerland, and his visa application was denied pending verification of his position with the Swiss authorities. His visa application was denied on the 23.7.1986 when he was declared an "undesirable person" due to his conviction and sentence to be served in Switzerland (document no.24 in bundle, point 7.1). Once again showing his unquestionable qualities of astuteness and shrewdness, Palazzolo circumvented the problem and gained entry very simply into the small independent state of Ciskei, which was found within the borders of South Africa.

On admission of the President of Ciskei, Sebe, Palazzolo obtained permanent residence in the country by making a donation of Rand 20.000 in the form of a "personal contribution to charitable purposes".

In the meantime, the accused also changed his identity, in the sense that alongside his true identity, he also became known under the false identity of Robert Von Palace Kolbatschenko, by which he is still identified in South Africa today.

During 1987, Palazzolo acquired a number of properties in various areas of South Africa, representing an investment of a few million Rand. He specifically also bought a farm, "La Terre de Luc", consisting of substantial agricultural lands and luxurious buildings in the Franschoek area close to Cape Town, as well as other properties for ostrich, horse and cattle farming.

In the meantime, the Swiss authorities issued an international warrant for his arrest, and during the month of January 1988, it seemed that the South African authorities had accepted their request.

Two days before the Swiss Police arrived in South Africa to carry out the warrant of arrest, the South African Police (Narcotics Division, under Charles Fouche, and under which Gert Nel served, that we will refer to later) raided Palazzolo's business and arrested him. During the search, 10 firearms were confiscated, as well as diamonds to the value of about R 500.000 that were in the accused's home.

On the 6 February 1988, Palazzolo was escorted back to Switzerland to serve out the remainder of his sentence. On completion of his sentence, he left of his own free will, leaving on Christmas Day 1986.

From the episode of his illegal entry into South Africa, Palazzolo had been formally under investigation by the local Police and government authorities, and their findings were in truth, always disconcerting.

The general context of the presumed investigations can be understood in the light of statements made by witnesses Viljoen and Smith, as well as the documents that are on file. On the basis of these elements, it is evident that Palazzolo enjoyed significant political backing, since he was initially in close contact with the Nationalist Party and then supported the African National Congress (ie party of Mandela, and current president Mbeki) in whatever way he could (including alleged arms trafficking) once they came to power about ten years ago.

Furthermore, Palazzolo has for years appeared as one of the most influential businessmen in South Africa, as the owner of several diamond mines, agricultural farms, a company that bottles water (with significant clients, like the South African national carrier), ostrich and race horse farms, various concessions for the extraction of precious stones, as well as substantial financial and property holdings.

His role and influence within the South African establishment is well proven, with political contacts with government ministers of the previous and current governments, and high ranking government representatives and institutions within the country.

Side by side with the political contacts and friendships, and according to 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 a plethora of public officials and politicians to look after his interests regarding the investigations against him.

The statements made by witnesses – the only ones that the Court can ascertain who conducted various investigations into Palazzolo – are corroborated by a series of proceedings that are shelved or rigged investigations that failed.

We can also consider (as we will see), how the head of the special unit tasked with investigating Palazzolo (Presidential Investigation Unit) under General Lincoln, was investigated and convicted in South Africa for having received bribes and conspiring with Palazzolo in his favour.

We can also look at the position of General Venter, who after having formally conducted an investigation into Palazzolo without reaching any results, issued an affidavit that almost seems a litany of praises, while his daughter and son-in-law became managers on a farm in the Ensuru district of Namibia belonging to the accused.

And despite this, Venter testified in favour of Palazzolo during the rogatory commission held in South Africa, repeating his praises and confirming the negative outcome of the investigations into Palazzolo, while his family members were in business with the accused (who at the time was a fugitive from justice and sought by the Italian and American judicial authorities).

It is worth noting in this regard, that the affidavit issued by Venter (see documents on file) had been requested by one of Palazzolo's lawyers (Attorney Angelucci in Rome), who sent the text of the affidavit to the police official to sign as if he himself had drawn it up.

It is also worth pointing out how various members of the South African Police who at the time had been charged with investigations into Palazzolo, landed up becoming his employees, and issuing affidavits at various times to support the complete integrity of the accused.

Going back to the episode of Palazzolo's entry in South Africa, it should be said that the South African Authorities did conduct an investigation into the event. The outcome of this was the establishment a judicial commission on the so-called Palazzolo/ De Pontes case. Palazzolo was in fact called to testify in the criminal proceedings against De Pontes during October 1989, and obtained an entry visa to be able to appear at these proceedings and others that were interrelated.

Apart from this period however, that is from the 26.12.86 until the 21.12.87 and the 31.10.91 until the 31.3.93, Palazzolo had no other temporary or permanent permit into the Republic of South Africa. He formally remained a citizen of the Ciskei, only obtaining his South African citizenship on 10.8.1994, "*on the basis of false and/or untrue*

certifications, and/or false declarations relating to information and/or the omission of relevant information in the application" (see point 20.2 in documents on file above).

Notwithstanding the imposing and irrefutable documentary evidence against Palazzolo, he was acquitted from these charges, due to his testimony given against De Pontes, that granted him some type of immunity with regard to all the charges against him (see the documents on file, and Viljoen's affidavit on pg.27 of hearing on 5.11.2004).

In the case in question, Palazzolo in fact testified against De Pontes, who had been incriminated under nine charges of fraud, theft and corruption, which we must note were all committed together with and on behalf of Palazzolo, and for the purpose of facilitating his illegal entry into South Africa.

De Pontes was convicted on various charges, including the corruption of an official in the South African Department of the Interior, the theft of documents, the falsification of files within the Prosecutor's office, and the fraudulent transfer of shares in the company, Papillon International – all of these committed in the sole interest of Palazzolo, and in order to facilitate his illegal entry into the country (see statement by witness Fouchè, and documents attached from Annexure A-1 and following).

For his part, instead of answering the charge of moral complicity and instigator in this conduct, Palazzolo is indicated as witness for the prosecution against De Pontes, and is granted immunity on almost all the main charges. He was then obviously acquitted on the remaining charges, according to another judgment on file.

Even the "Commission investigating crimes outside the country's borders" (see document no. 3 in bundle), commented as follows regarding Palazzolo's conduct in relation to the Swiss Court conviction: "*it should be noted that the Court established that Palazzolo was in financial difficulty at the time of the proceedings, and was ordered to pay a small fine for this reason. If we consider that Palazzolo bought about ten million Rand into the country two years after the Court's decision, and if we consider that he remained in prison for the whole duration of his time in Switzerland, it would clearly appear that Palazzolo knew how to deceive the Court with some skill".*

The direct experience that the Court had in South Africa, the examination of the documentation on file, the testimony heard in South Africa from certain witnesses during the rogatory commission that was often improbable and bordering on the outrageous, contribute in demarcating a frame of reference muddied by widespread bribery and corruption, as well as connivance with the accused.

And this is not practised by common and innocuous citizens, but rather by representatives of local institutions, high ranking police and government officials, and even a Judge in the South African Supreme Court. Von Lieres und Wilkau in his testimony paid tribute to Palazzolo's virtue and noble spirit (and even birth), but this was not based on personal knowledge, but rather by autobiographical notes that Palazzolo himself had written for him.

Judge Von Lieres und Wilkau gave testimony on the basis of the information, he had never even ascertained the truth of, managing only to reduce a high level Judge of the South African Supreme Court into a mere mouthpiece of Palazzolo, standing testimony to repeat an autobiographical note compiled by the accused.

There is more besides: various other South African defence witnesses far from conducting a similar role, were in contact with the accused, or have been investigated or convicted for conspiring with him.

We intend referring also to General Venter, Gert Nel and Director Lincoln, who as we will see, had well-formulated roles in side-tracking the proceedings in favour of Palazzolo.

Besides repeating the contents of the affidavit that was released on the request of Palazzolo's lawyer, General Venter limited himself to stating the no elements of proof whatsoever emerged in relation to the recycling of dirty money by Palazzolo.

And this, even though the same affidavit (see Annexure E-3) contains certain facts that arouse suspicion regarding the possibility that Palazzolo had bought considerable amounts of money into South Africa, even though he had told the Swiss Authorities that he was in dire financial straits (also evidenced by the Investigating Commission for crimes committed outside the borders, see above).

In fact, from the information going back to 1988, it emerges that Palazzolo was the holder of an account called "Lorenz" at the Sogenal Bank in Lugano, where an amount of five million Swiss Francs was deposited. Palazzolo's agent in Switzerland authorised to operate this significant current account was the same Stelio Frappoli, mentioned earlier.

The account included amounts belonging to an unidentified Australian client, who was reimbursed his funds in Singapore, through Frappoli and the accused's brother who was living in Lesotho at the time.

Venter had no explanation for the origins of this amount of five million Swiss francs, nor for the unusual and seemingly unexplained manner that this amount was transferred.

Added to this was the fact that Palazzolo seems to have established a company in South Africa with De Pontes, called “Papillon International”, which was charged with the illegal transfer of company shares. At the time, Papillon International was busy negotiating with the President of Ciskei for a public contract to stockpile toxic waste, but this situation also went unexplained.

Neither Venter, nor the other officials were able to explain what investigations had been conducted in these decidedly unusual events, especially when one considers that Palazzolo remained imprisoned for years in Switzerland and declared that he was almost impoverished, and then on his entry into South Africa was able to acquire valuable property, brought in an amount equal to about ten million Rand, established a company and had a Swiss bank account where five million Swiss francs were deposited.

Despite this, Venter issued the statement indicated above that was written for him by Palazzolo’s lawyer, and in which he states that: “*the official investigations did not present any evidence to support the theory that the funds in the Lorenz account originated from drug trafficking subsequent to his escape from Swiss prison … The official investigations did not reveal any proof that Vito Roberto Palazzolo was trafficking in drugs or recycling dirty money after his entry into South Africa*”.

Apart from the deposition made by Klink, which we will examine at a later stage, the only testimony in this complicated context that appears logical, probable and the result of serious investigative work, conducted in the spirit of service to the South African institutions, was that given by witnesses Smith and Viljoen. As further proof of their correctness and incorruptibility, both these witnesses were subjected to various threats and disturbances aimed at interfering with their work.

One only needs to consider the fact that Smith was essentially taken off the investigation by his direct superior Lincoln (who was then charged with conspiring with Palazzolo, and receiving gifts from him), and in fact forced to leave the Police force because he had been subjected to a well-orchestrated campaign of character assassination and de-legitimisation.

And as if that was not enough, Smith reported having his home damaged, things stolen from work, his guard dog killed, the brakes on his car tampered with, and even a Molotov bomb exploding in his kitchen that understandably led to the condition of post-traumatic stress, diagnosed by his doctor.

If we analyse Smith’s actions and the series of intimidating acts that he incurred, both at work and outside the workplace, we note that this pathology was not an effort on Smith’s

part to escape his duty as witness (so much so, that he volunteered to come to Italy and testify), nor is the fruit of a fragile psychological state, but rather the logical and human consequences of a concentrated attack that made him succumb as an investigator, but did not prevent him from giving evidence.

We can also include the civil action instituted by Palazzolo's lawyers against Viljoen and Smith in this attack, where they were accused of having damaged the good name and reputation of Palazzolo, and ordered to pay substantial amounts of money in damages.

Viljoen, who showed himself to be a rare individual, being a serious and meticulous investigator, unaffected by attempts of corruption, stated that in his investigations he came upon a series of obstacles during the course of his investigations into Palazzolo, deriving in large part from his superiors and high level local politicians, who he was prepared to name in the hearing.

In fact, shortly before the start of a hearing in Cape Town he had an altercation with Gert Nel, who had tried to provoke a reaction from him that would discredit his appearance as a witness. Viljoen did not react in any way, and volunteered no reference to the episode, only answering specific questions put by the accused's defence, who had obviously seen what had happened.

Nel, who was listed in these proceedings as a defence witness, was initially in the South African Police force, conducting investigations into Palazzolo together with Superintendent Fouche, and then immediately after leaving the Police force, accepted a position working as a private investigator for Palazzolo's lawyers. Gert Nel is also one of the people identified by Viljoen in the document listed "R" (annexure no.24 of bundle), as one of Palazzolo's colleagues in the management of his affairs along Mafia lines.

Viljoen also testified that Nel had tried to "convince" his ex-colleague Viljoen of Palazzolo's absolute innocence, when they met once in a bar.

Despite the attacks, the civil action resulting in millions of damages and the attempts to discredit the two witnesses, trying to label Smith as a mad alcoholic, and provoking Viljoen before the hearing, these two have shown themselves to be completely reliable, serious and meticulous investigators.

This opinion of reliability is further confirmed by the fact that both withstood numerous attempts to corrupt them, and refused to give in to Palazzolo's interests, or the pressure from his political allies and their superior offices that tried to reduce them to silence.

The witness Peter Hans Viljoen, currently deployed in the "provincial task team investigating organised crime", has been in the police service for 23 years. He reported that he had investigated Palazzolo during the course of 1998.

After just two months of preliminary investigations, he realised the level of corruption within the police regarding the investigations into Palazzolo, and prepared a confidential and secret note (attached to document 24), in which he outlined the organisation managed by the accused in Cape Town, and suggesting to his superiors that they begin more detailed and specific investigations into the matter.

Despite the confidential nature of the note, it had already found its way into Palazzolo's hand within a week, which demonstrated the level of infiltration among the high ranking police officials at the time.

Previous investigations into Palazzolo had been conducted by General Venter, who at the time was head of the investigation section into organised crime, but there was in fact, no investigation conducted into the accused. On the request of Palazzolo's lawyers, Venter went on to sign an affidavit stating that there were no irregularities with regard to Palazzolo, even though he was well aware that he was wanted in Italy and USA for drug trafficking and Mafia association.

General Venter was a good personal friend of Palazzolo, and his daughter with his son-in-law managed one of Palazzolo's farms in Namibia.

Viljoen had in fact investigated Venter on charges of corruption together with Palazzolo, and during the course of questioning challenged the untruthfulness of certain assertions Venter had made with regard to the accused, and the existence of documentation in his possession from various investigations that should have drawn very different conclusions.

Viljoen then obtained two warrants of arrests for Venter and Palazzolo following these investigations, but following an operational meeting with the district heads of police and the Cape Town investigation unit, he was ordered not to carry out these warrants because a special investigative unit would conduct an in-depth investigation into organised crime (that still today does not appear to have been done).

The task of investigating Palazzolo was handed to Viljoen by Superintendent Fouche, after the Presidential Investigation Task Unit headed by Lincoln had been disbanded.

In 1998, agent Smith effectively handed in his resignation from the Unit due to differences with General (and later Director) Lincoln, who was subsequently arrested and investigated on several charges connected to his relations with Palazzolo, and

which were going on while he commanded the unit that had been especially established by President Mandela to investigate him.

Fouche also went on to become a good friend of Palazzolo. Working with Fouche was Gert Nel, who through Toni D'Amore, had illegally passed on the note signed by Smith/Lincoln dated 18.6.96 (see document no.7 of bundle), outlining the investigations underway on Palazzolo's account. Gert Nel subsequently went on to do general work for Palazzolo, and earned the name: "the sweeper", in the sense that he was involved in various shady dealings on his account.

During his initial investigations, Viljoen had compiled a chart detailing the people connected to Palazzolo through relations of trust and/or cooperation and employment, believing this to be a complex organisation that operated with the same Mafia systems and methods that were unknown to the South African Police in the Cape area.

As the witness himself clarified, this was a working project based on direct and indirect information that had been collected, from investigations done by Viljoen, but it was not the final analysis of the investigation against Palazzolo, but only the starting point to the investigation proper.

The confidential note containing this information however landed up with the accused, making it extremely difficult to pursue and develop the contents.

Viljoen also clarified that he had not personally ascertained the existence of connections with people operating in Sicily, but was aware of constant telephone contact, some of which had been intercepted by the Italian Police, but not by him.

His point of reference on the Mafia organisation operating in Cape Town was not to ascertain the existence of the Sicilian "Cosa Nostra" in the area, but only to investigate a power and business group headed by Palazzolo, that operated and acted with typical Mafia-known methods, such as intimidation, corruption and a high ranking influential support base.

In answer to a specific question from the Defence, the witness explained that the purpose of his investigation that ran from April 1998 to September 1999, was not to ascertain Palazzolo's links with the Sicilian Mafia (which he believed the Italian Police's investigations had already established), but to verify Palazzolo's operations and any illegal conduct in South Africa.

In this regard, it is worth noting that Viljoen was subjected to intense and at times controversial cross examination by Advocate Heunis, who tried to trip him up with contradictions, and demonstrate the prejudicial position of the witness. Despite this,

Viljoen remained absolutely lucid, logical, coherent and respectful, showing that he harboured no prejudice with regard to the accused, and fulfilling his duty as witness.

Unfortunately, the leaks in information and the high level infiltration of his work made Viljoen drop his investigations of Palazzolo, as he believed that "*nothing would ever happen to Palazzolo in this country*." (page 66 transcription of hearing 3.11.2004).

This was a clear and obvious reference to the people covering for the accused, and the witness limited himself to naming a few of them (he preferred not to name others for security reasons), leaving those that provided political and judicial cover, to name only those operational within the police: General Lincoln, General Venter, Commissioner Grovè and Gert Nel (and perhaps also General Fivaz).

This was not just pure and simple conjecture on Viljoen's part, but based on documents and events against these officials that were the subject of investigations conducted by the witness and/or proceedings conducted against them.

In the same way the unlikely outcome of various proceedings against Palazzolo was not conjecture, even when faced with concrete proof against him, as was the case of his illegal entry into South Africa, that had been investigated by Viljoen himself.

In the same vein, in answer to a question posed by the Defence, Viljoen pointed out that document no.1 in the defence's bundle (note dated 31.1.89 signed by State Advocate Annette De Jager) contained inexact information. This contained a reply given to the Swiss Attorney General's office that stated that "*the investigations into his activities in South Africa have not produced positive results, and there has been no proof found of his involvement in drug trafficking and the recycling of dirty money".*

This statement, according to Viljoen, could not be correct because up until that time no real investigation had been conducted by the South African authorities regarding Palazzolo's involvement in drug trafficking and recycling.

We have concluded the review of Viljoen's testimony, and pass now to the deposition given by witness Abraham Smith, ex police officer in the South African Police. This testimony conforms in every respect to Italian procedural regulations, and was given during the course of the hearing held in Palermo on 26 and 27 October 2005.

We have already made reference to the difficult personal conditions the witness faced before his summons to the hearing in Cape Town on the 1.11.2004, and the decision taken by Judge Winter not to proceed with hearing the witness at the hearing due to his condition of post-traumatic stress, that was also confirmed by the testimony given by the witness' doctor.

Doctor Cloete in fact stated that it was a transitory emotional condition, that did not in any way undermine the witness' mental ability, and that he would be able to dispense his duty as witness under different environmental and temporal conditions.

The accused's defence counsel also recognised the witness' condition at the time, stating that it rendered him "*unable to act as witness for a transitory period of time*", and that in all probability he would be able to testify once his condition improved. (see page 5 of transcription of hearing 9.11.2004).

The same Judge Winter, at the conclusion of the rogatory commission, added that there was no South African and/or Italian regulation in his opinion, preventing the witness from going to Italy to testify.

And in fact, following due summons issued on Smith as a witness of the Prosecution (reissued after the rogatory commission), and Smith's availability to come to Italy to testify, there is nothing to prevent an examination of his deposition.

The witness stated that his emotional condition with respect to the previous year had greatly improved and that the change in venue made him more calm and secure. The Court noted that he was lucid, coherent and free of his previous affliction.

This was despite certain attempts made to convince him not to come to Italy to testify in these proceedings. Smith in fact, stated that shortly before he came to Italy he received several telephone calls from Attorney Snitchers, Palazzolo's South African lawyer who had also been part of the defence team at the rogatory hearings, who strongly advised Smith not to testify in these proceedings, going so far as to remind him that the civil case of damages was still pending against him in South Africa.

The witness considered these telephone calls threatening, because under South Africa law, it is totally forbidden for a lawyer to contact someone that will be testifying against his client.

Despite this, Smith considered it his duty to come to Italy and testify, which makes his testimony all the more reliable and enlightening in the light of this.

The subject of Smith's testimony related both to the context of the investigations conducted into Palazzolo, and the episode relating to the hospitality that Palazzolo gave to the fugitives Bonomo and Gelardi.

We will deal with the second part when we examine this specific episode, and for now will look at certain passages in this deposition regarding the initial investigations conducted.

Smith worked in the South African Police from 1980 until July 2000, that is until his resignation due to the conditions of marginalisation and de-legitimisation that he had been forced to work under.

In September 1995, at the time the witness was working in the organised crime department of the South African Police, he was tasked with an investigation into the brothers Salvatore and Angelo Morettino, two men of Sicilian origin who had settled in South Africa. During May 1996, within the context of this investigation, he was asked to act as liaison officer with the Investigating Unit of the Italian Police that was coming to South Africa to conduct some investigations agreed upon through Interpol. On this occasion he met Inspector Cecilio Pera, and agents Stefano Zampolini and Antonio Borsellino, who came first to Johannesburg, and then went onto Cape Town.

During their first meeting, Smith discussed the investigations into the Morettinos with his Italian colleagues, and the links that existed between them and Palazzolo (both direct, and those through the latter's father-in-law, Grunfeld).

From surveillance conducted directly by Smith, it in fact emerged that two motor cars used by Palazzolo – both imported Mercedes', registered as CJ 81148 and KN 456D respectively, were often seen parked at the Morettino's brother's home at 1315 Quebec Street, Camps Bay, an area close to Cape Town.

From checks done on the registration numbers, it emerged that the cars were registered in the name of Palazzolo (alias Robert Von Palace), in the Franschoek area, where his company "La Terre de Luc" was found.

According to Smith, during the period under surveillance (June – September 1996), the Morettino's house was also visited by the Mafia fugitive Mariano Tullio Troia. This information however was learned through the witness' informant, who was identified but not traceable. For this reason the Court considered that it would not take this part of Smith's deposition into account.

What is certain though, is that Palazzolo and other people coming from Sicily did visit the Morettino's home, including the accused's sister and her husband. It was possible to establish this from Smith's examination of the refuse removed from the house, that revealed the boarding passes of these people arriving in South Africa. These documents were therefore sequestered and delivered directly to the Court in original copy by the witness during his deposition (see documents on file).

Through his contact with the Italian Police, Smith was made aware of the fact that there was reason to suspect that various Mafia fugitives from justice had come to South Africa, and received hospitality from the Morettino's and Palazzolo.

Since another informant (Patrick Le Roux) had confirmed the presence of Troia at the farm "Le Terre de Luc", Smith requested and obtained a search warrant from the Attorney General, which then led to the discovery of Bonomo and Gelardi's presence in Palazzolo's residence.

Following this fruitful search that occurred on 15 June 1996 at Palazzolo's home, (and which will be discussed in greater detail with regard to the Bonomo-Gelardi episode), a special unit was established by President Mandela to investigate Palazzolo, called the Presidential Investigation Task Unit, headed up by General Andre Lincoln.

Very soon thereafter however, Smith had considerable reason to suspect Lincoln's conduct, since during the investigations he was in constant telephone contact with Palazzolo, he often went to see him after working hours or in the evening, and often had dinner at his residence.

Besides this, Lincoln had excellent personal relations with Palazzolo from when he supported the African National Congress, and from whom he had received a motor car (red Golf), and one hundred thousand Rand for intelligence services, that were never better clarified.

Furthermore, during the time of the investigation, Lincoln had accompanied Palazzolo (at the expense of the South African government) to Angola, in order to intercede on his behalf with representatives of local government. Taking advantage of his position as a high ranking police officer, he introduced Palazzolo to the Angolan authorities as an honest and upright South African businessman, so that he could obtain concessions for diamond mining.

These repeated actions of Lincoln, led Smith to ask him to give account of his position, and threatening to leave the unit that Lincoln was heading because of doubts regarding the way he was operating. Lincoln not only made no attempt to justify his actions (even though he did admit to a few episodes), but rather encouraged Smith to leave the unit, and went as far as to personally fill in his transfer papers.

On a more sinister level however, Lincoln had Smith placed under surveillance by a special and secret police division. This illegal conduct would also be disputed by Lincoln during the course of his trial.

As we have already indicated previously, Director Lincoln was arrested for these actions and convicted on a number of serious charges. As can be seen from the deposition made by Deputy Commissioner Knipe at the hearing in Cape Town on 8 November 2004, Lincoln was arrested while he was still heading up the P.I.T.U.

There were 47 charges brought against him, including theft, fraud, intimidation and at the end of the trial he was convicted on 17 counts to 9 years imprisonment.

On the basis of the investigations undertaken, Knipe concluded by stating that the investigation into Palazzolo directed by Lincoln had been a "*joke*", because of the close relations that the accused had with Palazzolo, and that it ended up as a waste of government money without any positive results. (*"Lincoln's investigation into Palazzolo and other influential people was a real disaster, it was a joke and this can be ascribed to the investigations conducted under Mr Lincoln*").

The theory claimed by Lincoln that he was acting under cover, was shown to be without any basis. What had in fact happened was fictitious investigations carried out by an untrustworthy officer, that deliberately set out to cover the main person under investigation, for his own personal gain.

The witness Knipe confirmed the reliability and incorruptibility of Smith, stating that "*any proof that (Smith) collected against Palazzolo was overturned and destroyed by Lincoln… I'm sorry… information"* (see page 39 of his deposition of 8.11.2004). Knipe even went so far as to say that he found it completely contradictory that Lincoln had been convicted for the same episode (the trip to Angola), while Palazzolo – who in theory was the corrupter and instigator, and therefore the main subject, had not even been investigated (*as above*, page 36).

The testimony given by Knipe, who as a witness is completely objective and reliable, is extremely relevant in helping to understand the incredible context of falsehoods, double standards and conniving that Smith was operating under, isolating and exposing him under a superior that was complicit with the person under investigation.

Lincoln then went so far as to place Smith under an illegal counter-investigation with the clear purpose of putting him in a bad light, continuing until the time of the hearing, during which on a number of occasions, there were attempts made to pass Smith off as an alcoholic, delusional and even mentally ill. It should also be added that besides these accusation created by Lincoln, Smith was also identified as a "spy working for the Italian Police".

The witnesses Grassi and Zampoli of the Italian Police, in fact, clarified this by saying that Smith was the only person in that South African unit that showed himself to be serious and professional, and had given them any real assistance in their investigations into the Morettinos and Palazzolo.

It is obvious that under the complicit and cover-up conditions described above, Smith had established a formal but direct contact with his Italian colleagues, and avoided "passing on" every exchange of information through the higher levels of command, which he strongly suspected to be in cohorts with the person being investigated.

Smith's cooperation with the Italian Police continued on their second visit to South Africa. On this occasion, among other operations, Lincoln had organised a blitz to capture Troia in Johannesburg, on the basis of information that he was staying in a flat belonging to Morettino's.

Grassi and agent Zampolini both stated that after an operational briefing, the Italian Police were left under guard at a hotel, as if they were merely onlookers being kept far from the scene of operations, rather than colleagues directly involved in the operation itself. The raid failed as the group under Lincoln's command raided the wrong flat due to an unbelievable mistake being made in the street number.

At this point it is worth briefly reviewing what the Italian Police witnesses stated regarding the cooperation they were afforded by Smith and Lincoln's conduct.

Doctor Andrea Grassi headed up the Central Operational Service (S.C.O) of the Italian Police, tasked with investigating organised crime and the capture of fugitives from justice. On the basis of investigations conducted by the S.C.O, they were convinced that several fugitives from justice for organised crimes were in South Africa: besides Palazzolo and his brother Pietro Efisio, there was also Giovanni Bonomo, Giuseppe Gelardi and Mariano Tullio Troia.

During 1994/1995, a rogatory commission had been held in South Africa, with the purpose of acquiring further elements of proof in the investigation aimed at capturing Palazzolo and other Sicilian fugitives from justice.

In 1996 and 1997, three trips were organised by the Italian Police, together with Interpol and the South African Police, and all departmental cooperation went through the P.I.T.U. headed up by Lincoln.

Very soon however, it became clear that Lincoln was in close contact with the main person under investigation (Palazzolo) and that agent Smith was the only serious point of reference, who offered genuine assistance to his foreign colleagues.

Lincoln, on at least two occasions (a raid at the airport, and the one carried out in Johannesburg that should have led to the capture of Troia) showed that he clearly distrusted his foreign counterparts, and derailed the investigations so that both raids failed for clearly implausible reasons.

Grassi added that during the second raid, he together with other Italian police officials were held against their will in a hotel, under constant armed police guard, so that they almost felt as they were under arrest.

On the other hand, Grassi highlighted the effective cooperation given by Smith, who despite his lower rank to Lincoln, made every effort to assist the Italian Police in what was clearly a difficult climate of distrust and operational difficulties.

Besides confirming what Grassi said, Inspector Zampolini of the S.C.O reported on a series of telephone calls between Palazzolo and Italian subscribers, which confirmed the current status of his contact with members of organised crime in Italy. Specifically, telephone conversations had been intercepted (on 17.4.96 and 6.5.96) between Palazzolo and Carlo Tozzi, a well-known figure in their department, who had suspect business dealings underway in Angola.

During the course of some telephone calls that were intercepted between Tozzi and a certain Bilbao, there was clear reference made to business dealings underway with Palazzolo, and even a murder committed in Angola of a certain “Joao” or “Cheo”, who was never identified further.

These conversations have been admitted by the Court, and translated from the Portuguese using a qualified transcriber, and form part of the probatory material that can be fully used for the purposes of this Court’s decision.

From a review of these conversations, it becomes clear that Palazzolo and Bilbao had a series of business dealings underway in Angola, and international transactions involving substantial amounts of money of suspect origins (this was said by the speakers themselves, who showed concern about the investigations underway by the Italian Police).

In a conversation on the 17.6.96, Tozzi and Bilbao discussed a murder committed in Angola, and Bilbao reported that a certain Luiz and Quinto had been arrested in this matter.

Luiz, specifically, had reported the murder of Cheo after having spoken to “Robert”, who from the multitude of references to Cape Town and the business underway, must be identified as Palazzolo. Again according to Bilbao, Robert already knew about the

"*incident*", and instead of advising the family about the death, Luiz used his motor car arousing suspicion.

In this regard, it is worthwhile quoting the passage of the relative transcription in full:

Bilbao: (faced with pressure from the family, Luiz) "..*said that Cheo did not fall from the river but that they shot him, he was killed".*

Carlo: "*oh, shit, how was it done?"*

Bilbao: "*he was carrying diamonds and… he was carrying "camanga" (phonetic), and the South Africans… there were problems with the South Africans and one of them… had … shot him and that 's how he was killed and the others ran away.."*

Bilbao: "*…only that there was the problem with the money and so it seems that Roberto sent someone from South Africa with the money to deliver to the family.. no? To go there.."*

Bilbao: "*he began making the family suspicious…"*

Carlo: "*clearly"*

Bilbao:"*they reported it to the police and when they got Luiz, Luiz had 1.000 US dollars in his pocket.."*

Carlo: "*yes"*

Bilbao: "***he had Roberto's number, he had the South African number, they said Luiz didn't even want to give Roberto's number in South Africa****, for (…Chanta). Speak to him.."*

Carlo: "*Yes, I think so yes"*

Bilbao: "*very complicated and.. I don't think Robert will be coming here too soon"*

Carlo: "*shit"*

Bilbao: "***I think that.. wanting to or not he has ruined his life here or Luiz has done a lot that will complicate life here"***

Carlo: "*shit"*

Bilbao: "*they're asking a lot of question,* ***they've already discovered that the area they were working in was not authorised*** *or anything, you know, no?*

Carlo: *"yes?"*

Bilbao: "*and then what they don't know…. And especially the police, no?"*

Carlo: "*and lastly whose were they?"*

Bilbao: "*ah,* ***it is Van Palace's***"

Carlo: "*shit"*

The murder therefore seems to have been committed in relation to some diamond business, and the relevant mining area was held by Von Palace (Palazzolo), who was implicated in this matter, so much so that the two speakers decided “not to have anything more to do” with Roberto, in the sense that they were going to keep their distance from him.

It was during this same period of time and with respect to these telephone conversations that the hospitality given by Palazzolo to Bonomo and Gelardi was discovered.

This deals with an event that not only falls subsequently to the 1992 judgment, but also constitutes a specific point that the Prosecution contends in today’s charges.

In order to reconstruct this episode, we will refer to the statements made 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 was heard during the rogatory commission.

Firstly, 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 of the same family that Palazzolo was part of, according to statements by seven other state witnesses.

Bonomo not only held this position within the “Cosa Nostra” organisation, but for many years had been a “man of honour” formally associated with the organisation, and well known as such to Palazzolo, with whom he enjoyed excellent personal relations, both as a friend and business associate.

Brusca had identified Bonomo has the go-between to re-establish his contact with Palazzolo, in order to re-establish business affairs with him shortly before he was arrested in 1996.

Giuseppe Gelardi on the other hand was Bonomo’s son-in-law, and much younger than him, and interacted with 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 Monticciolo (“man of honour” close to Brusca, operating in the San Giuseppe Jato and Partinico districts) was arrested, both Bonomo and Gelardi feared that Monticciolo

would turn state witness (which effectively did happen), and they immediately fled Partinico and went to South Africa, where they were sure of Palazzolo's hospitality.

Their escape from Italy, followed by the rest of their family, was certainly no expression of their wish to have a holiday, but only the fear of being arrested following probable statements that Monticciolo would be making. It would seem that both men knew that Monticciolo was well aware of their role within "Cosa Nostra" and the crimes they had committed, and so decided to flee voluntarily and escape arrest.

Their expectations were confirmed when 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 primary jurisdiction issued by the Attorney General following Monticciolo's statements, and further confirmation of Bonomo and Gelardi's expectations 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 Giovanni Bonomo, revealed 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 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 shown on these arrivals and departures, since the warrant of precautionary arrest had not yet been issued.

Bonomo is recorded as finally leaving South Africa on 21 May 1996 through the Namibian border post (Vioolsdrift), by motor car, using a Mercedes CJ81148, registered in the name of Palazzolo. This last fact was the subject of specific questions put to both Smith and Viljoen, who both confirmed they had conducted checks on who the car was registered to.

It cannot be denied that this fact has significant relevance in demonstrating that both Bonomo and Gelardi were effectively hosted by the accused.

From the same registers, it is recorded 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 using Palazzolo's car through the same Namibian border post.

His wife, Marianna Bonomo, however 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.

As already indicated previously, 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 are recorded 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 and therefore usable.

This Note was written by Smith in the Office of the Investigation Division into Organised Crime dated 18.6.96, and signed by Smith and Director Lincoln. This information was formalised and forwarded to the SCO of the Italian Police, via Interpol.

The search operation was conducted simultaneously on Palazzolo's residence and the Morettino's home (at 13-15 Quebec Street), already referred to previously. Inspector Smith personally coordinated the search at Palazzolo's farm, while other officers carried out the search at the Morettino's home.

It is worth noting that the latter search bore no results as the police officers found the doors closed and no-one at home. The presence of Smith on the other hand meant that the search at Palazzolo's residence bore very different results, as can be seen from the Note on file, that 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 factory 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) was left inside the cupboards, and that a nappy was still in the washing machine, led Smith to believe that the group 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 has 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 believes 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. D'Amore had in fact been on the operational team during the first Italian Police visit to South Africa, and had aroused his foreign colleagues suspicions by asking a lot of questions that related solely to Palazzolo's position.

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", Palazzolo's farm 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, and

specifically 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 couple with a baby were hosted by Palazzolo for 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.

This was 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 sure of the period in which Palazzolo had hosted the Sicilians, and this was based on two time references that are absolutely undisputable and clear 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 utmost certainty that the guests 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. Again through this second time reference, which was very clear in the witness’ memory, the Sicilians therefore 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, who repeated his recollection as being absolutely clear and precise, and did not admit any possibility of uncertainty or doubt.

Continuing with Klink’s testimony, the witness stated that the elderly man did not speak a word of English, but 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 you could "*mix caramelised sugar into red wine*", a statement that horrified the witness who could not make sense of what was being said.

This in effect is a positive element, both as indirect evidence in identifying Bonomo as the elderly guest of Palazzolo, since Bonomo originated from the Partinico district, famous not only for the doctoring of its red wine, but that 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, "*Mr 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."*

Therefore summarising Klink's testimony (which was completely subjective and reliable), we must conclude that:

- 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 known to manage a wine estate 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 which were then confirmed by Viljoen, regarding the fact that the guests were accompanied to the Namibian border by a Mercedes motor vehicle, registered CJ81148 in Franschoek, where the factory is situated – and registered to the Palazzolo alias Robert Von Palace's company "La Terre de Luc".

On the basis of this complex collection of elements of proof, both representative in nature and fully converging, we must conclude that Bonomo and Gelardi were Palazzolo's guests for about 10 – 15 days at his farm "La Terre de Luc", and were then accompanied on the 21 May 1996 to the border post with Namibia (Vioolsdrift) by motor car, a Mercedes CJ 81148 registered and used by Palazzolo himself.

This assertion will be conclusively confirmed by the contents of a telephone call intercepted on the 28 December 2004, which we will refer to shortly. The contents dispel any doubt and confirm that Palazzolo's guests were in fact Bonomo and Gelardi with his family.

Palazzolo was considered a "man of honour" in the Partinico family by almost all the state witnesses, and in close contact with "Cosa Nostra" and the regional districts of Cinisi and Partinico, for him to have hosted the actual head of the Partinico district, would have been completely consistent and straightforward and in line with Mafia thinking.

According to Brusca, Bonomo was the "contact" that could have acted as intermediary in that exact time period (1996) with Palazzolo in South Africa, when he had wanted to re-establish business dealings with the accused.

From this it follows that Bonomo knew the exact location where Palazzolo was spending his time as a fugitive from justice (which at the time was not the well-known fact, it became later), so much so that when faced with the danger of Monticciolo's "confession", and according to both Brusca and Mazzola, he fled directly to South Africa, certain that he would find shelter and assistance from a man that was close to him, and influential enough in the country he was living in.

Again according to Brusca, contact with Palazzolo was managed through his relations who were still resident in Palermo and Terrasini, a fact which is confirmed by the telephone calls intercepted from the accused's sister, who kept in constant contact with her brother, giving him a full account of Sicilian affairs.

Besides being Bonomo's son-in-law, and travelling with him (together with Bonomo's daughter Marianna), Gelardi is also the nephew of Antonino Madonia (called Nino), and

therefore a relation of the same dangerous “man of honour”, with several murders to his name, who was a personal friend, “compare” and business associate of Palazzolo.
The fact that the three family members travelled together is confirmed by logic, and also through the information supplied by the South African border control, that shows the movements of the three Sicilians.
On the basis of these certain elements of proof, we can confidently confirm that the hospitality extended by Palazzolo to Bonomo and Gelardi has been extensively shown, and received further confirmation from the contents of the telephone call on 28.12.2004.
What remains to confirm according to Italian law, is whether these two were officially fugitives from justice or not, at this time.
This detail is not really decisive when one takes into consideration the overall context of events (the flight of two ”men of honour” in the face of probable arrest).
All the same, it must be said that when faced with Hans Klink’s completely reliable, objective, coherent and certain testimony, the official date of exit from South Africa of the two on the 21 May 1996, loses all value as evidence.
Klink in fact stated with absolute certainty and on the basis of a rock-solid number of temporal references, that the Sicilian guests left Palazzolo’s farm on the 14 June 1996, this being two weeks after the two had been formally declared fugitives from justice.
This element of proof from testimony given appears to contradict the documentary proof obtained from the official South African border control registers (according to which Bonomo and Gelardi left South Africa on 21 May 1996).
This fact appears more convincing and reliable than contradictory, in the light of what was confirmed 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 is extended bush country with no border posts, and 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, which matches up with the telephone conversation of the 28.12.2004.
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. It is worth

noting in this respect, that at the time, Palazzolo's farm in Namibia ("Ensuru"), (and where Smith suspects the Sicilians were taken), also had a basic landing strip on the property.

From this we can easily deduce that the information regarding Bonomo and Gelardi's last official exit from South Africa does not hold any controversial value.

On the contrary, it seems quite plausible that after the precautionary arrest warrant against Bonomo and Gelardi was issued (29 May), their host took extra precautions, and avoided border control points, by easily crossing over from South Africa to Namibia using natural entry points.

This finds further confirmation in the contents of a telephone call that took place on the 28.12.2004, and during which as we will shortly see, the speakers refer to the possibility of "crossing the river" at the border with Namibia.

What is certain, according to the positive and reliable testimony given by Klink, is that the two fugitives were guests of Palazzolo at least up until the 14 June 1996. The fact is also confirmed by the way in which they left their clothes at Palazzolo's house, showing that their departure was not scheduled, but rather that they left in a hurry.

Ensuing events in the two fugitives' lives, including arrest in other African countries in subsequent years, confirm that they left the west coast of Africa, to settle in the Ivory Coast and Senegal respectively.

Here again, we refer to the contents of the telephone conversation that took place between Palazzolo and his sister Sara on 28.12.2004.

Examining the text of the transcription, we note that a short time before his conversation with his sister, Palazzolo had received a telephone call from Giuseppe Gelardi, whose status at the time was still that of a fugitive.

Gelardi sympathised with Palazzolo for the judicial investigation linked to the hospitality he had given Gelardi and his father-in-law, confirming that they were his guests and that they had discussed the possibility of marketing South African wine in Italy. He also offered to contact his own lawyer (Attorney Marasà) for further information and clarification in his defence.

The conversation took place a while after the rogatory commission were conducted in South Africa, and the speakers made reference to this during the course of their conversation.

During the course of his telephone conversation with his sister, Palazzolo spoke about this as follows:

Palazzolo: "*so this is the lawyer defending those incompetents that came to South Africa..*"

Well, ***toady I received a call from that Mr Gelardi****.. he said that he phoned because he had heard all these stories and seen the newspapers, and he said that I want you to defend… that you defend that I came there and had my passport". He said why don't those idiots come to South Africa and see whether I jumped over the river.*

No, what can we do… what they are saying, that they came here for the rogatory hearing, they were saying: ***maybe he jumped over the river again, because there are no border controls,*** *he came to South African another time, where he was a guest, etc. No these people are totally unreliable, the lawyers need to know about this…"*

It is worth noting how Palazzolo himself, in reporting the contents of the telephone call he received from Gelardi, made reference twice to the fact that the borders were not properly controlled and that the investigators were convinced that he had jumped over the river to cross the border.

This information corresponds perfectly with the testimony given by Viljoen, who reported that he had crossed a small river to secretly cross over the border into Namibia.

Then after criticising the investigators and judges, Gelardi complained that the Italian authorities should actually have known where he was currently staying as a fugitive (Ivory Coast), for reasons linked to the issuing of his wife's passport.

Gelardi could not understand why the authorities were not looking for him there or seeking his extradition, and instead continued to harass and persecute Palazzolo for having hosted them in South Africa:

"*He said: I did not commit any crime, I know… I was a worker, I had a clean record, until I arrived in South Africa, I didn't know you, you were introduced to me for this business with the wine, I didn't even know you were in South Africa..?*

Palazzolo was also very concerned about how Gelardi came to get his cellphone number, adding that this was not the first time that it had happened.

His sister, Sara, suggested to her brother that Gelardi could have been acting on behalf of the secret police in trying to trap him, and Palazzolo added that he wouldn't pass the information on to the Italian authorities, but only to his lawyer to safeguard himself.

The intercepted call certainly provides proof from Gelardi himself about the hospitality he received (obviously with his father-in law) from Palazzolo in South Africa in 1996.

It is also worth noting that Palazzolo had not brought the episode of the telephone call to the Authorities attention, which he could have done through his lawyer, showing that he had justified fears in this regard.

Not that there was any judicial obligation on Palazzolo's part to report the episode or to facilitate Gelardi's capture, but what is certain from the tone of his conversation with his sister is that he was clearly concerned and worried that he could have further problems because of Gelardi.

What is definite is that Palazzolo never assisted in facilitating Gelardi's arrest which occurred quite independently in Abidjan (Ivory Coast) on 26.3.2005, and neither did Gelardi act on behalf of any Italian Authorities.

Beyond the misplaced comments regarding the investigator's operations and the "tragedy" of their reciprocal innocence, the telephone call between Gelardi and Palazzolo on 28.12.2004, does fix several significant parameters:

- Gelardi admits to being Palazzolo's guest in South Africa in 1996, and to have discussed the possibility of wine trading between South Africa and Italy;
- While making negative comments about the investigator's operating strategies, both make reference to the possibility of "crossing the river" (the same system referred to by Viljoen), in other words secretly crossing the border into Namibia, while Palazzolo refers to "jumping over the river again", as if this had already been done in the past;
- Gelardi expresses his regret for the trouble that the hospitality he received from Palazzolo has caused him, but bemoans the fact that the investigators are still looking for him in South Africa (which in fact was not the case in 2004), while he was in another country that the Italian embassies were well aware of;
- Palazzolo, on the other hand, shows clear signs of concern and nervousness due to the telephone call he received, demonstrating that he had something to hide, and anxious that Gelardi could cause further problems for him, besides those already caused in 1996.

Apart from this important conversation on the 28.12.04, there were several other telephone calls intercepted during that period that are of definite investigative interest.

These again refer to telephone calls between Palazzolo and his sister Sara, who over time has always shown herself to be the main link between the accused and what was happening in Sicily and Italy.

On the 7 January 2005 specifically, that is a few days after Gelardi's phone call, Palazzolo tells his sister that he had met someone and was more relaxed after the meeting.

Again according to what Palazzolo said, an unknown doctor had sent him a letter asking for help and assistance. It would seem that this was a Sicilian doctor, and that the accused warned his sister to look after the matter, and use Baroness Canalotto in Palermo.

In a subsequent call on the 10 January, Palazzolo speaks to his sister about matters and happenings that originate in Sicily, and end up having a direct impact on him in South Africa.

Palazzolo takes up the thread of the Sicilian doctor again with his sister, and added that the letter arrived via another person, identified as "*that one there"*, that could well link up with Gelardi, that the two had been speaking about at length in their previous conversation.

The doctor's letter contained a request for financial assistance ("*there's something asking me for financial help, etc., he wants to start business and he sends me this letter"*) obviously connected to "someone" who needed to start a business.

Palazzolo remains cagey, an attitude that was so ingrained he used it even with his own sister, shielding himself by saying that people considered him to be a millionaire because they read news about diamond mines and things in the newspaper.

His sister agreed with this state of near bankruptcy of her brothers ("*we're all out on the street"*), while investigations confirmed a flourishing financial position and full financial operating power (and this only in terms of the legal and known businesses).

The existence of these intercepted telephone conversations confirms that Palazzolo had always and regularly maintained contact with Sicily and its inhabitants through his sister, and was even involved in some property business in the Terrasini area (see other transcribed calls).

As will appear clearer still, over the years Palazzolo had maintained contact with several Italian businessmen, professionals and politicians, and proved himself a point of reference in South Africa not only for Sicilians, but for others that were apparently removed from the Sicilian reality.

From records on files, there is frequent contact, both of friendship and business affairs with Riccardo Agusta, who had lived in Palazzolo's house in Franschoek for a long time, and even bought a section of the property.

Perhaps through this channel, Palazzolo also hosted Rosilde Craxi, the sister of the Honourable Bettino Craxi, and her husband, the ex Mayor of Milan Paolo Pillitteri, the Honourable Marcello Dell'Utri, and a series of professionals and consultants.

Besides being good friends of Palazzolo, they also all showed interest in doing business at some level either in South Africa or Angola, both countries in which Palazzolo has enormous financial clout and political support at the highest level.

All of the above only serves to show and describe a context of continued and important business contacts with Italians that had little to with the Sicilian context. At the same time, it belies the picture that Palazzolo would prefer to present of himself, of being completely estranged from Italian events, as he has lived far away for so many years, without any contacts with Italy and especially less so with Sicily.

On the contrary, a critical review of the files shows that Palazzolo not only maintained daily contact with his sister, but also with numerous members of the Italian business and political world.

In the diversified and complex situation of sub-Saharan African, Palazzolo offers one of the few – if not only – points of reference for people working and operating out of Milan or Sicily, who turn to him to speculate on doing business in these countries. And as we will see, he played this role for some important members of the Sicilian "Cosa Nostra", and not only for the people mentioned specifically in the above telephone conversations.

In fact, several state witnesses whose reliability has been validated through the passing of sentence, such as Giovanni Brusca, Giovanni Mazzola, Tullio Cannella and Calogero Ganci, all reported in converging statements that Palazzolo continued to maintain his friendship ties and business contacts with certain members of the "Cosa Nostra" even after he left for South Africa, and well into more recent times.

The contacts were maintained specifically with Nenè Geraci, and especially Bernardo Provenzano, who at the time had acted as "godfather" to Palazzolo on his entry into the association, and considered him a gifted pupil with exceptional abilities in the world of finance and business.

The testimony given by Antonino Giuffrè fits into this context. He was the head of the Caccamo district, and above all a personal friend and the alter ego of Bernardo Provenzano, until his arrest in 2003.

Before moving on to a critical analysis of Giuffrè's testimony, we need to make a short detour in order to understand the so-called accomplice's call to testify, in the light of the way jurisprudence has evolved over the past few years. This subject is regulated by

article 192 of the Criminal Procedure Code, where under section 3 relating to the evaluation of proof, we read: "*Statements made by the co-accused of the same crime or by a person charged in proceedings relating to article 12, are evaluated together with other elements of proof that confirm their reliability*".

Among the general regulations governing proof, the accomplice's statement has been recognised as representative legal proof, sufficient in its nature to support a conviction, even though it should still be supported by other convergent elements of proof (See Appeal S.U. 6.12.1991, Scala, Criminal Appeal 1992, 757 and a number of others).

A complete evaluation of the accomplice's statement however also needs to establish the objective credibility of the deponent with regard to the events he describes as having being committed together with the accused, or that were only committed by the accused, or possibly together with other people. In other words, we need to analyse his personality, his socio-economic and family situation, his relationship with the accused, and his reasons for deciding to confess and accuse others.

In this context, we need to refer to aspects that are as sensitive as they are significant in the context of accomplice's statements, including their accuracy, coherence, consistency and spontaneity (see Joint Sections of Appeal Court, 21 October 1992, Marino).

Given the serious resulting consequences, not only in the criminal sense (one considers the involvement of family members in so called lateral vendettas), confessions made by accomplices represent sincerely and genuinely furnished elements of proof, especially when connected to the role played in executing illegal acts.

They must also be given without any interest in the outcome of the case, that could be interpreted as satisfying any desire for vengeance in relation to the accused, or fit in with well thought out personal gains.

One could well argue that any state witness has an obvious "interest" in this regard, because in accusing someone else, they are relieved in escaping the dire criminal consequences relating to their previous illegal activities, which often had extremely serious results, not to mention blood letting. For this reason, one could say that their statements are connected with deriving significant gains, and should therefore be disregarded.

This argument is not only leading, but is certainly not shared by the Court.

The Court is well aware that recent legislation has provided a series of significant advantages for those cooperating, that go from protection measures and assistance to the witness and his family (art.9 and 10 of Law 15.1.1991, converted into Law no.82 of

15.3.1991), to being held in custody or serving sentences in alternative locations to prisons (art. 13 and 13 bis of above law, and Law 306/1992), to alternative measures to prisons (art. 13 above), to the reduction of sentence (art. 630, Section V Criminal Code; art.74 section VII Law 309/1990; art. 3,6,7,8 Law 304 dated 29.5.1982).

We are dealing with an interest that has been institutionalised, and as such cannot be an element of falsehood, that creates a presumption of non credibility.

Disinterest in this sense should not be taken to mean a general lack of purpose, but rather as indifference to the judicial position of the accused.

Further and indirect confirmation of this is found under the conditions cited in section 3 of article 192 of the Criminal Procedure Code ("other elements of proof"), where the legislator has recognised that statements by made accomplices have a different or lesser level of intrinsic reliability to those given as simple testimony, and this because people are all the more credible when they have less direct interests.

Any doubts that may therefore arise regarding the accomplice's statement as opposed to simple testimony, are justified by case-law in this area and the fact that this type of statement cannot in itself support a serious charge of guilt, unless it is corroborated by appropriate extraneous elements that would support its dependability.

In this regard, we need to remember that the case-law referred to [already explained by Supreme Court rulings enforcing the repealed law – see Appeal, Section 1 22.12.1986 no. 4221 accused Alfano), does not only have a rational basis, but finds indirect and accurate confirmation in articles 351 and 363 of the current Criminal Procedure Code, relating to the stage of preliminary investigations.

These articles specify that any person being investigated for the same crime, or for connected crimes or those only linked under a probatory aspect with the current proceedings, can only be examined with defence counsel present.

It also recognises the special position that these people find themselves in and which distinguishes them from other witnesses. On the one hand, their adverse statements expose them to risk and could count against them, even with the assistance of appropriate defence counsel present, and on the other, they could implicate other people and in so doing conceal or reduce their effective responsibilities, and so render their statements in a suspicious light.

Legislation in this regard does not require the deponent to show any remorse, it only requires a concrete contribution to the investigations under way, supplied with the intent

of telling the truth (see Appeal, Section II 27.4.1989 Capitaneo, in Criminal Appeal 1990/1734).

So that "*in the matter of statements made by state witnesses, the so-called "remorse" linked in many cases to utilitarian reasons and with the purpose of gaining various types of advantages, cannot be assumed to show the moral metamorphosis of the person that was dedicated to crime in the past, nor render an intrinsic sense of dependability to his statements. It follows then that the Judge must carry out his investigation into the credibility of the so-called "repentant" based not so much on the moral qualities of the person – and therefore the genuine nature of his remorse – but rather on the reasons that could have led him to cooperate, and an evaluation of his relationships with those identified in his statements, as well as the accuracy, coherence, consistency and spontaneity of the statements.* (Criminal Appeal Court Section 1, judgment 06954 dated 17/3/1997, accused Cipoletta and others).

Alongside the indifference indicated above, case-law has therefore identified other elements to base an evaluation on the intrinsic dependability of the statement. Among these: spontaneity and consistency (Appeal, section 1 25.6.1990, Barbato, Criminal Appeal 1991 II, 314), repetition without contradiction (Appeal, Section II, 15.4.1985 in Mass. Criminal Appeal 1985/170287), logic (Appeal, section 1 29.10.1990 Di Giuseppe), the articulation of the facts described (Appeal section 1, 30.1.1992, no.80 Abbate), as well as the personality of the deponent, his past and his relationship with the accused (Appeal, Section 1, 22.1.1996, no.683), even if "*a negative appreciation of the repentant's personality does not in itself exclude intrinsic credibility"* (Appeal, section 6, 19.4.1996, no.4108).

According to the Supreme Court, an evaluation regarding the intrinsic dependability of a state witness, whose testimony was validated during another proceedings that concluded with an irrevocable conviction judgement, cannot set aside the elements of proof that were already used in the previous judgement. (Appeal, Section 5 11.11.1995, no. 11084).

With regard to any "desire for vengeance" against other accomplices or people that may belong to government offices, the Supreme Court underlined that "*the presiding Judge has the power-duty to verify the existence and seriousness of any motives for conflict between the accuser and the accused, while at the same time taking into account that the positive outcome of this evaluation does not automatically mean nor necessarily imply the untrustworthiness of the accusations, but should make the Judge more careful*

in establishing whether these reasons for conflict are such that they could lead to the above consequences". (Appeal, Section 1, 31.5.1995 no. 2328).

In conclusion as stated by the Appeal Court in a current but not very recent judgment (Section 1, 25.6.1984 in Criminal Appeal 1986, 1149), the overall subjective credibility of the deponent can be deduced by the way he came to "repent", how this developed, the content and structure, and the consequences that this would have on the repentant's judicial position.

Statements made by accomplices must also be evaluated in looking for convergent elements of proof.

Article 192 of the Criminal Code in fact, stipulates that the accomplice's statement be supported by appropriate external elements of proof that confirm the dependability of the historical facts, which on their own would not have sufficient value to independently prove the accomplice's responsibility (otherwise they would be sufficient in themselves to prove his guilt), but when considered and evaluated as a whole, correspond with the accomplice's statements and the supporting statements (Criminal Appeal, Section VI, 19.1.1996, no. 661, Agresta and others).

According to case-law, these counter checks can be of any type or kind (Appeal Section 1, 26.3.1996, no. 3070; Appeal SU 6.12.1991, Scala).

The rule therefore compels the Judge to discard information supplied by the accomplice's statements, even if it seems intrinsically dependable, if there is no other integrative element of proof acquired against the accused (cfr. Criminal Appeal section VI, 24.8.1990, no. 11769, Piacenti).

With regards to the nature of this counter check, it should obviously not just be probatory evidence that sufficiently represents the fact or proof that is distinct from the charge, but rather constitute a certain and suitable element of proof that offers serious guarantees regarding the dependability of the accomplice.

There is no set category of checks that can be used in this sense, confirming the principle of free checking, where the "other elements of proof" can refer to oral or real elements, and also to circumstantial evidence.

The second section of the article in fact considers this appropriate in indicating the existence of a fact, provided that it is serious (consistent, resists objections and therefore reliable and convincing), accurate (i.e. non generalised and not open to other interpretations, and therefore misunderstandings), and convergent (the elements

correspond among themselves or with other definite elements of proof – see Appeal Section 1 3.2.1990 Belli, Section 1 27.3.1991 C.E.D. RV. 187113).

The Supreme Court confirmed this, adding that "*if it is true that the accomplice's statement alone is not sufficient to reach a guilty verdict, it is also true that the extrinsic probatory check should not form the basis for guilt, as one needs to have the accomplice's statement and the extrinsic counter check fully integrated among themselves, and together constitute the motive for the overall judgment".* (Appeal Section 6, 13.2.1995 no. 1493), as well as more recently, stating: "*The accomplice's statement, which must meet the requirements of intrinsic credibility and dependability, can be used as evidence and not merely circumstantial evidence, as long as it's reliability is confirmed by "other elements of proof" (that need to be that much more consistent, than the assessment of intrinsic credibility and dependability are less radical, and vice versa); and the other elements of proof can be of any kind or nature, provided that they are logically appropriate to confirm the dependability. Confirmation that should encompass the overall statement made by the co-accused relating to the criminal episodes in their objective and subjective parts, and not to each point referred to by the deponent"* (Appeal Section 1, no. 1801 dated 25.2.1997, Bompressi and others).

The external counter check regarding the reliability of the accomplice's statement can also come from different elements of proof relating to facts that differ to the ones specifically confirmed, as long as a connection can be established between them (Appeal Section 5, 14.7.1995, no. 1798).

There is no question that statements must be included together with the oral elements of proof, statements that were issued by other co-accused in the same crime or by the accused in connected proceedings. In the case of the statements concurring with regard to the commission of the crime, they can well demonstrate that the crime is attributable to a specific person (Appeal, Section 1 30.1.1992 Altadonna CED RV. No. 190647).

The accomplice obviously has knowledge and insight into the crime, because he has been a direct participant, so that the extrinsic counter checking required is not that rigorous as with the so-called informant's statements that are characterised by the deponent's distance from the fact-crime attributable to someone else. (See Appeal 27.2.1993, Cusimano, Appeal Section V, judgment no.4144 dated 17.12.1996, Mannolo), and in fact: "*the procedures used to judge the reliability of statements varies according to whether the informant is reporting on events that only refer to third persons accused of commissioning the crime, thereby limiting the statement to an "informant's*

statement", or whether the informant is admitting his own participation in these facts. The absence of any confessionary element on the part of the informant in fact necessitates a much deeper evaluation, which covers every aspect of the statement from the reasons for the statement to the effective representation of the statement itself." (Appeal Section VI, judgment no. 7627 dated 30.7.1996, Alleruzzo and others).

The extrinsic elements for counter checking has also been established in the recognition of things, the recognition in a photograph, the checks done by the judicial police, in the links between the accused and other members who form part of the same organisation, in the detailed description of places that were crime scenes, on condition obviously that these elements are not only certain, but they can "*also be unambiguously interpreted as confirmation of the charge"* (See Criminal Appeal, Section 1, 31.10.1980, Guarneri; Criminal Appeal 14.12.1990 no. 16464).

We move now to the problem of verifying the accomplice's statement when this refers to more than one criminal episode attributable to the same or more than one accused.

In this regard, there is no doubt that the confirmed validity of one or more statements made in convictions, cannot apply to other untested statements made by the same person, since it cannot be excluded that somewhere among the truthful statements, he has also voluntarily or involuntarily, included one that is false.

We essentially need to evaluate each accomplice's statement analytically, with reference to each individual fact and attribution of responsibility. This was duly confirmed in the eminent judgment passed by the Appeal Court no.80/1992 (Section 1, Abbate), where it was stated that one cannot infer from the proven reliability of one single element that this applies to the entire story.. "*as the probatory inefficiency of the parts not yet proven, or worse, the parts lied about remain, and exclude reciprocal totalising interferences"*

Further confirmation of this view is indirectly given through judgment handed down by the Joint Sections of the Appeal Court, who excluded the applicability of article 192 sections III and IV of the Criminal Procedure Code with regard to precautionary arrest measures (Appeal Joint Sections 1.9.1995 no. 11, accused Costantino and others), because a review of this article and the specific provisions of the above two sections, shows that this regulation is not applicable during the preliminary investigation stage.

In this stage, where it is not necessary to establish proof for the full guilt of the accused, but only the "*fumus*", the accomplice's statement in the opinion of the Supreme Court, is only evaluated according to article 273 of the Criminal Procedure Code, where it establishes an evaluation regarding the existence of serious evidence of guilt.

As the Supreme Court notes, this evidence can be logical or representative in nature, and consists of those elements that in themselves do not stand to prove the accused's guilt beyond reasonable doubt, but in their make up, and with the future acquisition of further elements of proof, will be appropriate to prove responsibility, and in the meantime lay the foundation for qualified probability of guilt.

As a result, it is necessary to evaluate the reliability of the charge intrinsically, under the aspects of accuracy, internal coherence and reasonableness, so that the level of intrinsic reliability in the accomplice's statement is influenced by the type of knowledge that the accomplice has in relation to his participation or the events that he refers to.

As far as the extrinsic dependability of the accomplice's statement goes, the Joint Sections of the Appeal Court note that the judge must ascertain whether any subjective elements exist that could disprove it, and whether the statement is confirmed by external counter checks, be they logical or representative of any kind, that are consistent enough to withstand any contradictory signs that could be deduced from the charge.

The Joint Sections conclude with the above decision, that ."*in this perspective, an extrinsic confirmation of the accomplice's credibility is sufficient, when considered as a whole, through a series of counter checks in terms of numbers, accuracy and coherence, that are appropriate to confirm the subjective formalities of the fact described by the accomplice, so as to dispel any suspicion that he could have lied."*

It follows then that it is not absolutely necessary for the counter checks to relate to the subjective position of the accomplice himself, since the lack of the further requirements (in the case that there are no contradictory elements in his involvement), does not in itself exclude the overall reliability of the accomplice given the incomplete stage that the investigations are at, and once the intrinsic and extrinsic aspects have been confirmed.

This argument stands in the stage of preliminary investigations and when precautionary arrest measures are adopted, but it certainly does not apply in the case of evaluating an accomplice's statement when establishing responsibility during the course of a trial.

In the case of a trial, the provisions set down by sections III and IV of article 192 of the Criminal Procedure Code apply, which impose an evaluation of the statements made by the co-accused of the same crime or by a person accused in a connected crime, "*together with other elements of proof that confirm its reliability"*.

Finally, it should also be noted that in terms of current case-law, converging statements made by subsequent accomplice's statements (so-called multiple statements) are recognised as being valid in corroborating each other. The Supreme Court has

confirmed this principle, so that when there are several accomplice's statements "*each one of these maintains its own evidentiary character, and in the case where these converge towards to same probatory meaning, the one does contribute to the others external probatory synergy, and adds to the extrinsic reliability of the source of proof*" (cfr. Appeal Section 1, 1.8.1991, no. 8471, Criminal Appeal Section VI, 16.3.1995, no. 2775 Grippi).

Another principle established in case-law, is when the counter check consists of another accomplice's statement, it is not necessary that this in turn is validated by further external elements, as the required proof will have been established and further comparison and verification would not be necessary (cfr. Appeal no.80/92); to allege the probatory self-sufficiency of the counter check would in fact compare with making the accomplice's statement spontaneous. The conclusion therefore is that "*the counter check can be made up by another accomplice's statement since each statement has its own independent probatory efficiency and synergy capabilities in converging with another. From this it follows, that confirmation of responsibility can well be founded on the sole evaluation of a collection of declarations made by co-accused, that all converge in relation to the commissioning of the fact by one person"* (Appeal Section 4, 6.3.1996 no. 4108; Appeal Section 6, 16.3.1995 no. 2775; Appeal Section 2, 5.4.1995 no. 4941).

In relation to the parameters and evaluation criteria for reciprocal dependability, in the case that informant sources coexist and converge, case-law has established that one should identify the concomitance, independence, reciprocal disavowal, and the essential convergence, especially in cases where the stories are rich in descriptive detail, and in general, all those elements that would exclude fraudulent plotting and confer on each accomplice's statement the reassuring aspects of autonomy, independence and originality.

One also needs to recognise that certain discrepancies on some points can actually verify the independence of the various statements because: "*they are physiologically absorbed in that divergence margin that is normally present in connecting several representative elements*". (Cfr. Appeal Section 1, 30.1.1992 no. 80).

Basically therefore, "*in the area of accomplice's statements, so-called "divisibility" is quite admissible, in the sense that even when the reliability of one part of an accused's statement is maligned, it does not necessarily involve all the others that stand up to judicial counter checking; as on the other hand, the credibility admitted for one part of*

the statement, does not automatically imply reliability for the whole text" (Appeal Section 6, 10.3.1995 no. 4162; Appeal Section 6, 25.8.1995 no. 9090).

It is also the opinion of the Court that :"*in order for them to constitute a counter check of each other, the requirement that these statements converge, does not imply that there should be total and perfect convergence among them (which could in fact constitute grounds for suspicion), but rather that they should only converge on the essential elements of the "thema probandum", provided that the judge exercises his power-duty to critically examine any inconsistent elements and check whether they indicate fraudulent intent, or at the least, conditioning or influences of any kind that would invalidate the value of the convergence indicated above"* (Appeal Section 1, 26.3.1996, no. 3070, cit; Appeal Section 1 7.2.1996 no. 1428; Appeal Section 1 31.5.1995 no. 2328).

Now in the evaluation of the trial records, and especially the testimony given by Giuffrè, the Court has observed the above stated principles, conducting a joint evaluation, both of the subjective characteristics and intrinsic reliability of the witness, and then looking to find the extrinsic counter check elements both in relation to the facts and the subjective position of the witness.

On this premise, it is 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, and therefore represents the most recent state witness over time, and certainly one of the most important in terms of its significance, and the position previously held by the witness within the "Cosa Nostra" organisation.

Before discussing the merits of Giuffre's statements, it is also noted that this probatory element was obviously unknown to the Court of Rome, but that the Appeal Court also did not take this into account in its judgement on precautionary arrest measures on the 9.1.2004 (and referred to a number of times).

This was also the case for the Court reviewing the restrictive measures relating to personal liberty in Palermo, called upon to rule following the indictment handed down by the Supreme Court of Appeal.

We are therefore dealing with a totally new element of proof, that has been brought to the Prosecution's attention for the first time, within the context of these criminal proceedings.

Having said this, it is also noteworthy that Giuffrè's state evidence is marked by certain characteristics that in many aspects make it almost unique within the context of ex "men of honour" who have turned state witness.

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 that their status as fugitives presented, 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 closely knit network of supporters, or meeting with each personally, initially on a weekly basis and then every fortnight.

Giuffrè was part of the Corleone clan by adoption, in the sense that he traditionally remained close to Provenzano from the time that the latter had not yet become head of the entire "Cosa Nostra" organisation.

There was a strong sense of friendship and familiarity between the two heads on a personal level and on the 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 him indicating 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.

This background is essential in understanding the high ranking level of Giuffrè's position within the "Cosa Nostra" and the deep-seated friendship and level of intimacy that linked him to Provenzano.

So that when we are reviewing statements made by Giuffrè that he learnt directly from Provenzano, we must take into account the intrinsic depth of the witness and his privileged relationship with Provenzano. If these two factors are considered together, they give the measure of reliability that can be afforded the words of this witness.

We are dealing with high-level secrets exchanged between two historical figure heads of the "Cosa Nostra" organisation, during the course of high-risk meetings given the fact that they were both fugitives from justice.

Or else, the information was exchanged through the “pizzini”, which relied on an intricate and highly complex network of collaborators that only in the case of two arrests, was ever intercepted by the police.

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

On this premise, we can go on to reconstruct the information contained in the statements made by this witness within the context of the current proceedings.

After Giuffrè had reconstructed his relationship with Provenzano, he stated that he always maintained the utmost secrecy regarding the business that he personally managed for the “Cosa Nostra”.

It is a fact that Provenzano spent a great deal of his time in hiding near Bagheria, and made this area his “stronghold”, in the sense that he was personally involved in the affairs in the area, and 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, he also made investments through Oliviero Tognoli.

Tognoli was officially a businessman in the iron industry, by was in fact 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 recycling of dirty money.

In this regard, we note that Tognoli was of the people convicted together with Palazzolo, within the context of the Pizza Connection trial. As we have already indicated previously, Palazzolo was convicted 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).

It is worth noting how Giuffrè underlined Tognoli’s importance in the recycling 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…”*

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"*.

With this background, 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 they had taken place quite recently before his arrest (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.

Palazzolo was also close to Provenzano because he was a distant relation of Provenzano's wife, Saveria Palazzolo, who originally came from Cinisi.

According to Giuffrè: "*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 as far as Totò Riina, and Bernardo Provenzano go*".

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 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 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 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 was living at the time.

In this case, it is again worth recalling the multiple counter checks against these statements made by the witness, found 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 especially the depositions of the other state witnesses and the testimony given by Franco Oliveri, cellmate and friend of the accused, who spent time in prison with him sharing confidences.

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 goes, and as far as the heroin trade goes, Vito Palazzolo, let's say, that was born.. will centralise these .. financial things, as well as, I repeat, what had to do with the selling of heroin"*.

These statements made by the witness obviously are counter checked by 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 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 information he learnt directly from Provenzano, and which related to subsequent years up until his arrest (2002). These are 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, he then went to Switzerland and Germany, and after some legal problems, finally moved to South Africa.

During this time, Giuffrè spoke 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".* During the nineties, Palazzolo had proposed certain businesses that could be established overseas to Provenzano, 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 thanks to 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 showed reluctance in relation 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 knows, did come to fruition, thanks entirely 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 legally compliant companies. Besides which, Palazzolo was an expert in international financial transactions, and also had experience in the meat trade, since the witness states that "*I remember well that he had had experience in the area of farming… but his was with special reference to ostrich farming".*

Giuffrè does not limit himself to reporting 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 other businesses.

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) were planned between Palazzolo and Provenzano "*in the second half of the nineties"*.

With regard to the purchase of vast tracts of land in South America, this involved a business that did come to fruition, in the sense that Provenzano purchased the farms thanks to Palazzolo's assistance, and the finalisation of the sale through the fictitious company that these farms were held under to hide the identity of the real owners, allowing for the recycling of substantial amounts of money from illegal sources.

Around 2000, Palazzolo also proposed the purchase of shares in a German insurance company to Provenzano. Provenzano 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 legal concern.

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

This operation that was planned in quite recent times between Provenzano and Palazzolo, bears out in significant counter checks following the interception of calls, which we will examine shortly.

Giuffrè 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, because he was still close to Provenzano, and following Riina's arrest, Provenzano then became the absolute "boss" of Cosa Nostra.

After 1993, then "*Vito Palazzolo's role had increased, even in the Columbian context, even in the cocaine trafficking, besides his involvement in the heroin story*".

With regard to Palazzolo's role as point of reference for Provenzano's business on an international level, the witness 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..*"

In 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. This business was conducted for his 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, we reiterate what was already shown 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).

Reference is also made to Tullio Cannella's statements, 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 from 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 for people that in turn are close to Provenzano and Riina*".

Giuffrè further 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.

In relation to the contents of the statements made by Giuffrè, we can confirm that they appear completely reliable and unreservedly verified.

Firstly, the role played by the witness within the hierarchy and his relationship as an old friend and confidant of Provenzano, give ample guarantees regarding the truthfulness of his statements.

We are in fact dealing with collaboration at the highest possible level, and a unique case in the context of state witnesses, which allows us insight into the most confidential spheres of the absolute "boss" of the "Cosa Nostra", Bernardo Provenzano.

We can add that Giuffrè's statements correspond with multiple counter checks, 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 recycling of enormous amounts of money also done abroad, all this information ties in perfectly with the statements (that in turn also converge) made by state's evidence.

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 – have all been confirmed either in previous judgments on file, in the rogatory hearings and trial hearings.

Finally, another two passages in Giuffrè's statement find accurate verification in telephone and open-air interceptions transcribed within the context of these proceedings.

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

The first interception is an open-air interception on the 17 November 2001 at 12h38, on the Fiat Punto motor vehicle used by Pietro Landolina, a person 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 passed away recently.

The conversation takes place between Landolina and his uncle Raffaele Spina, who due to his age and high ranking position for many years within the “Cosa Nostra” obviously knew of confidential matters that his nephew was not aware of. At the beginning of the conversation the two are in the car in front of a business found in Piazza Noce and 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, a “boss” in the Porta Nuova district.

The conversation then continues inside the vehicle between Spina and Di Maria, who obviously shows due deference given the hierarchical position that he is dealing with. Di Maria asks 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 supermarket holders in Palermo, and that Spina would be the only one is position to convince them. From the conversation it is clear that the income from the supermarket chains was around 300 billion (lire) and that the Sgroi had takings of about three quarters of a billion lire a day. The Sgroi were in partnership with someone called “Giac”, later identified by the 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, with a floor area of 20 000 square meters.

Di Maria’s request was obviously aimed at going into business with the group and increasing his income, 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, alluding obviously to hidden partners in a more prominent rank than themselves. He then goes on to say who these partners are: “*its 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 appears elusive and agitated in its references, given the speaker's concern that they may be intercepted, it appears that there are two hidden partners above the Sgrois and Giacalones, but they are not specifically named. The one is identified as an "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.

While it is true that the two hidden partners are not openly named by the speakers (for obvious reasons of caution given the rank of the people in question), it is evident that there are many probatory elements that converge to support the Prosecution's theory.

In particular, during the course of the conversation 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.

An in fact, from 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 and not diamond mines does not seem controversial enough to derail the frame of references that unequivocally lead to only one person, 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 after fugitive by the Italian and international police.

We have already pointed out (see Giuffrè's deposition) how significant Provenzano's influence was in the Cinisi and Terrasini areas, places that were specifically referred to during the interception in relation to the Sgrois.

And there can be no doubt that this reference to the area confirms the identity of Palazzolo in the "African" they speak about, since this last details limits the field of Sgroi's other possible hidden partners.

A critical review of this open-air interception in the light of the clarification that was given, seems to have significant value in confirming Giuffrè's statements. This is certainly an external check that does not constitute independent proof of the fact in itself, but which strengthens the statements made by the witness on a logical and representative level.

As we pointed out in the premise, and as current case-law has consolidated on this point, the counter check can be of kind, but 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 open-air interception only constitutes an element of proof that seems to fully confirm the fact that Palazzolo and Provenzano were in business together in various sectors, both in Italy and abroad.

The same evaluation should be made for the meaning and contents of the second group of interceptions, that relate to Bernardo Provenzano's son, Angelo.

These interceptions were transcribed and admitted to the current proceedings, and can be fully 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.

As indicated previously, Giuffrè could not clarify the details of what type of operation would be set up, but did specify that Provenzano was interested in the venture not only because of the usual purpose of recycling dirty money, but especially because it afforded his son Angelo the opportunity of working in apparently legal business.

Interceptions on Angelo Provenzano's telephone allow us to confirm that during the period between September 1998 and June 1999, he worked for the company "Beyerische" based in Germany.

His work involved drawing contracts on life insurance, and according to him, there were excellent opportunities for earning.

Specifically, in reviewing one of the conversations on file (23 September 1998 at 9h40), Angelo Provenzano while speaking to his mother complains about his financial problems and makes 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 stipulating of insurance for "Bayerische" in the province of Palermo. He even makes reference during the conversation to a certain "Roberto" , who was involved with Angelo in this business.

This is not unequivocally significant, in that it does not allow for a definite identification of this “Roberto” with Vito Roberto Palazzolo.

Nonetheless, on examining the conversation, and in the light of the testimony of the Police during the hearing, we can 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 that a simple door-to-door insurance salesman would be making.

A direct examination of the interceptions on file, together with the Police’s testimony, allows us to verify the meaning and corroborative value of this external counter check.

In conclusion therefore, we can consider the statements made by Giuffrè, which come from someone intrinsically reliable, and placed at the highest level in the hierarchy of “Cosa Nostra”, in regular contact and friend of Bernardo Provenzano, 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 what emerged during the hearing, and confirm the information given by Giuffrè in terms of accuracy and precision, since he had learnt it directly from Provenzano himself.

We intend making 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, since these have all been verified by a multitude of counter checks through the convergence of a number of the statements made by other state witnesses.

There has also been multiple confirmation 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).

This is all combined with far-reaching significance with the fact that all the information that Giuffrè reported on, comes directly from Bernardo Provenzano, that it the absolute “boss” of the “Cosa Nostra”, with whom Giuffrè had a deep-seated and long-lasting friendship, and communion of intent.

For this reason, Giuffrè’s collaboration in such recent times is extremely relevant for this Court, and for the purposes of these proceedings.

We are in effect dealing with totally new proof, that has never been evaluated previously by any judicial body. It has exceptional value due to the intrinsic characteristics of the

witness, the high-level function he held within the organisation until very recently, and the multitude of external counter checks supplied by the investigators.

Including this probatory material within the overall frame of reference together with the testimonies documented from other state witnesses, allows us to define Palazzolo's role and especially the current nature of his contribution to the "Cosa Nostra" organisation, in much clearer terms.

Having said this, there are additional elements of proof presented by the Prosecution during the course of these proceedings.

These relate to telephone interceptions made in the context of proceedings running parallel to the present case (no. 16424/01 RGNR) and transcribed during the course of the hearing.

There are specifically four telephone interceptions relating to four conversations that took place fairly recently (2003) between the accused and his sister Sara, and between other speakers.

One of the unique aspects of these conversations is the fact that Palazzolo and his sister planned and carried out a series of initiatives with the unmistakable purpose of influencing the current criminal proceedings.

As we will show, the siblings used a concentrated network of people (lawyers, consultants, ministerial officials, journalists, parliamentarians), with the support of Senator Marcello Dell'Utri (as is well known, the Senator is on trial for association in a Mafia organisation, and has recently been convicted in the first degree for external participation in a Mafia organisation), using him as a point of reference in trying to 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 swinging public officials and even judicial entities in Palazzolo's favour.

It is the Court's opinion that this relentless and continual campaign posted by the two siblings, constitutes completely reprehensible conduct both on an ethical level and strictly criminal 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 corrupting and pervasive desire to contaminate the criminal process and a series of related proceedings (the rogatory hearings and extradition).

In the conversations intercepted, the two Palazzolos discuss the need to oppose (hinder) the proceedings for extradition by the South African government, to influence the workings in the Appeal Court so that the relative file for precautionary arrest measures would be assigned to a “competent judge” 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.

What makes this probatory material all the more significant is that these complex and intricate initiatives were to be coordinated and driven in some way by Senator Marcello Dell’Utri, who is originally from Palermo, and has been convicted on charges of association in a Mafia organisation.

In terms of the methods used, the merits and the rank of the people intervening on his behalf, Palazzolo’s initiatives acquire a more serious significance, both for his intrinsic ability to contaminate criminal process and other related administrative proceedings, as well as demarcating his personal context of reference within an unorthodox power group able to influence public activities through improper methods.

And we need to pay careful attention, because when Palazzolo asks for help, he does not limit himself to complaining about being the alleged victim unjustly persecuted for inexplicable reasons by the Italian criminal procedure system, but offers his support on business initiatives in Angola that this Italian power group evidently seeks to establish, in exchange for the assistance that he requires.

This is the attitude of a man with financial clout and strong business credentials in South Africa and Angola, who can intercede and guarantee the business initiatives that his Italian counter parts had intended conducting in various commercial sectors in those countries (fishing, mining, petroleum and public works).

The picture that emerges from an analysis of this levelling and reciprocal relationship between people who have different roles to play, but are brought together (not only) by the fact that they represent power groups able to exchange favours, is extremely negative in connotation.

This is especially when we consider that today both Palazzolo and dell’Utri stand charged in the first degree for participation in the crime of Mafia association, and specifically for their close links with the “Cosa Nostra” organisation.

It is obvious that the presumption of innocence does not allow us to draw hasty and simplistic conclusions from these elements of proof, but the fact remains that a

relationship exists, which has the potential for both parties to attain the goals they have set themselves.

These elements above all stand as proof of attempts 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 concludes with a conviction in the first degree, the hearing on precautionary arrest measures that resulted in the measures against the accused being denied, and the trial which sought the recognition of the so-called *international ne bis in idem* principle, and succeeded in this regard).

It is the Court's opinion that not only are these attempts suited to Palazzolo's purposes, but that they also send a disturbing signal on the intrinsic danger of today's accused in strictly Mafia terms, based on the methods and the choice of people involved.

An examination of the contents of the four telephone interceptions referred to above, (which will be transcribed hereunder given the delicate nature of the contents), 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.

Sara Palazzolo was tasked by the accused with contacting Palli telephonically (Palazzolo retained her number), and Palli would act as go-between with Senator D'Utri.

Using this channel, a pro-memoria drawn up by Palazzolo and containing a series of "viable" requests from him and his collaborators, would be passed on to the Senator.

The channel of communication worked perfectly, since during the course of her conversation with her brother on 26.6.2003, Sara Palazzolo says that Dell'Utri had called her a short while ago ("*he called me a while ago"*), and that he had been called upon by someone else 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's done it..*").

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 we can understand from the content of various conversations, and the one on 3.12.2003 specifically, where we read: Man:" *What does the contact achieve as a next step? Is it*

business or just to know about it? 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. For at least one of these a technical fee was paid (destined to some professional consultant of Dell'Utri's, not specified), that went from 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 a conversation between the accused and his sister on 26.6.2003 at 22h18, the two 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 clearly intends letting his sister know that Senator Dell'Utri has already been solicited to help and has made himself available to do so.

During the course of the conversation, reference is made to certain initiatives that Dell'Utri (at times with his colleagues), was to initiate and support in favour of Palazzolo. These specifically include:

- to request the intervention of the Ministry responsible in order to obtain a favourable interpretation of the so-called *international 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 Palazzolo's appeal for the *ne bis in idem* principle was accepted in relation to the previous Swiss conviction, and consequently the first degree conviction was amended;
- to request intervention in relation to 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 annulled by the Review Court of Palermo on the 9.1.2004 (reference made to this judgement a number of times);
- to request intervention "*at government level*" with regard to the South African authorities, so that both Palazzolo and Agusta could be "*left in peace*" (even if necessary, intervention through the "*President*" (sic));

- to request a parliamentary debate in order to draw attention to the persecutory nature of the Attorney General's office in Palermo with regard to Palazzolo and his family members;
- to request intervention over the process of assigning the appeal in the Appeal Court, so that it would be heard by "*competent judges*" that could "*put a stop to it*" in a legitimate context. For this reason, Palazzolo 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 intervention could be monitored;
- and finally, to request an intermediary at ministerial level who would follow the proceedings 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 was appointed as financial adviser to the government.

Palazzolo's sister went on to clarify with Dell'Utri that her brother did not want to ask for further assistance through Sicilians, so that he could 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…*").

At this point we include the text of the more interesting sections of the conversation held on 26.6.2003 (in order to allow a thorough verification of the emerging frame of reference, indicated above).

Conversation no.73 dated 26.6.2003 at 13h20:

Sara:" *I wanted to tell you something, but have you heard from that lady friend of yours, that Italian lady, no?*"

Palazzolo: "*no*"

Sara: "*Did you try again?*

P: "*No, she told me that she had spoken to the person, and after that I have not heard again*".

S:" *No, I am asking,* ***because he called me a while ago****..*"

P: "*Oh, yes, so that's why you called, yes."*

S: "*Yes,* ***he called me because he said he had been told to call me, and he said we would see each other next week****".*

P: "*Yes*"

S: " *So now, we need to understand clearly how to put things.. because everyone says: what can I …"*

P: "*Right*"

S: "*Right! I don't want to do anything wrong*.."

P" "W*e'll speak this evening, no?*"

S: "*Let's get our thoughts in order calmly*"

P: "*Alright we'll speak this evening, I'll firstly speak to.. no* ***he made the appointment surely otherwise why call you****"*

S: "*No, he told me.. sure, he didn't' t tell me his name, he told me that he got the number and called, he said, surely you would know… what difference does it make? No, you understand …"*

P: "*yes, yes*"

S: "*in fact I asked you: did you try again?*"

P: "*yes, yes*"

S: "*that's why I was asking..*"

P: "*No,… I told you.. since she promised me categorically.. I told you I wouldn't call her again, because… when people promise something and then don't do it…* ***since that person was my guest; I treated her very well.. she's a friend of Riccardo, no?****"*

S: "*No, well, it means that they were busy, everyone is… it wasn't something quick, but now I want to have a very clear idea, because it's not every day you get…"*

P: "*Do it.. put together a pro-memoria of what you want to discuss, no?"*

S: "*Okay"*

P: "***Make a pro-memoria of everything****… no? And .. then you can let me know, no? I will call you this evening, no?*

S: "*No, I was saying..*"

P: "*We'll talk about it, okay?"*

S: "*Think about it as well.. because each one… they are viable, within their own context*"

S: "*No, that was not there, so I spoke only to Luberti, but at this point it's useless that I…you can speak directly… a little with … and with clearer ideas,* ***but so that everyone says: let's see what can get done in Rome, etcetera, it's nothing something more than..***"

P: "*alright, you certainly know exactly what we need .. what we need to do, write up your pro-memoria, so that when I call you this evening, we can speak more calmly.."*

Conversation no. 74 on 26.6.2003 at 22h18

S: ”*then Angelucci phoned me,,, that man is on the ball, always very pensive, he told me that he had contacted a.. a lady professor in international law that draws up, let's say, opinions etcetera, and that he knows someone else that does the same thing, he said: let me see who I can find that's available, because time is short, so to draw up an opinion for me in ten days say, I don't know if they can do it.. so he'll get going.. he told me: "****for whatever we need..” Angelucci said, perhaps we'll need it later, he said, who knows, if the trial continues and they don't close it off here, we might possibly need it for the Court, for other reasons, he said, in any case, if however it closes up, nothing, we won't need it at all..****"*

P: "*and let's say.. and for your things, you know how things stand, and there's no-one better than you to explain things to him, no?.. for the rest,* ***you must explain that actually what would be excellent is intervention with the Ministry with regard to this*** **ne bis in idem** ***story, no?****"*

S: "*yes"*

P: "*and the other thing..* ***and the other thing is to have some reassurance from the Ministry that this situation will end****, it's really a disgrace no… that they carry on like this all the time, can't they understand this other new thing,* ***they've done this thing that has to go Appeal now.. no? So where are they with this application for Appeal? What does the application say?***"

S: " *No,* ***the application is ready, Angelucci told me it is ready****.. he said*: *this time I will support annulment without a postponement and I hope to God.. we get a Court.. that you happened to get, when it was your case, that is prepared to make the extra effort.. to read the papers, because here they need to read these papers a little.."*

P: "***And so this is the other point that you must push on, no?****"*

S: "*Yes, okay, these things I know, these things well, speaking with lawyers about these things I do know about*"

P: "***Because.. naturally this would put an end to this situation, at least in such a way that there will be no repercussions and.. any possible applications for extradition, .. and other things, no?"***

S: "*Sure, sure, and in the meantime.. that's the position.."*

P: "***Then you can naturally explain.. the position that's been created here is embarrassing because they keep harassing me, and writing and doing and saying all this police information*** *..as you know all these lies, these stories, so you explain,*

you give a picture of the situation ***to see also if there isn't some possibility of approaching someone in authority that has contact here, with the people here, etcetera.. that could intervene at government level and say "alright now, leave these people in peace"***

S: "*yes, yes*"

P: " ***and Riccardo as well****.. because you get to a point when I don't know.. what do they need to study, to do, to say.. no? And say that* ***perhaps have a point of reference here, of someone that could be approached, make a recommendation at a level and say: leave them in peace, these are good people.." etcetera, no?.. not to go and believe all this rubbish, all these things, otherwise they believe these things then the Government is also discredited, no?****"*

S: "*sure.. unfortunately the position here.."*

P: "***see if there's an intermediary, an intermediary that can be made aware*** *because … there's this.. they call it.. the African Renaissance.. there's always someone from the European government.. that is in contact with them here to check on the progress they've made.."*

S: "*sure*"

P: "***and do it.. authorise the right person to get a message to the President etcetera, no***? "

S: "*sure*"

P: "*See how it can be done, also so that we can have some quiet here while we look at these things closely, no?* ***And then naturally the ministerial thing to put a stop to this thing, the debate in Parliament, something about the persecution of this family that doesn't end, say that : that doesn't ever end..*** *and there's that new woman, that doesn't understand shit and keeps insisting on wanting to do something.."*

S: "*sure*"

P: "*explain everything exactly: this is the situation here, what do we do?* ***At least let's put a stop to the Appeal*****, no?**"

S: "*okay, okay*."

P: "***Let's see if we can give it to competent judges.. no? "***

S: "***No, with regard to the environment.. let's say .. in these situations, I know them so there won't be problems****, let's say these are the basic questions.."*

P: "*other.. other.. I don't have anything else to say.. what else do I have to say? You asked me to make this appointment and I .."*

S: "*sure"*

P: "*It's not that I can..* ***I don't understand these things.. if it was me, you know I would know what to say,*** *but.. for the rest.. it's not that you don't know, you live them every day, you live this drama every day, you ask [Sicilian dialogue?]*

*S: "*yes, yes

P: *"It seems right to us.. I don't know.. where do we have to get to at this point.. no. .****let's try and.. finalise something, no,.. I understand that… you are a professor and <u>that you also have your problems, no..</u>****"*

S: "*sure, sure*"

P: "*but tell him that the situation is in fact becoming.. there are also these accusations, for example, against the party.. of help that we gave that we didn't give, there are always these.. so if we want there are always..* ***and then tell him.. what do we do to keep in contact, to know more or less where this thing must go and what we can do here, and where the lawyer can go and knock on the door to have some reassurance .. this situation at ministerial level****, no?"*

S" "*yes, yes, okay, good, I had thought of that and I am.."*

P: "*And ask for clarification on this "ne bis in idem", no.. if there is someone in authority who can give an authoritative opinion.. that can end this thing, no?*

S: "*exactly*"

P: "***<u>write down who the magistrates are, who the prosecutors are, who the presiding judge in the Court of Appeal is, write down everything</u>***"

S: "*yes, sure.."*

P: "***make a complete pro-memoria of everything.. no.. there is a certain availability, I will let you know, I told you to make the appointment with that man, no..***"

S: "***No, absolutely, but he was extremely polite****. No, absolutely. in fact, completely, he was very polite, very accessible, he told me: don't make problems, we'll sort it out here.. he said: okay, there are no problems"*

P: "*when are you meeting him more or less?"*

S: "*he said next week.."*

P: "*good, alright.. then my son will come and see you.. no*?"

Omissis. *"well then, let's hope that this meeting with the professor brings results.."*

S: "*you're right, let's really hope*.."

P: "***At least.. there's a light at the end of the tunnel, let's say, no?****"*

S: "*well, let's hope that he's got what it takes, at least he's someone for the right things because.. this is also done.. okay"*

P: " *but sorry, you are speaking to a professor who has the maximum knowledge in these things, no..*"

S: "*sure in fact, I'll tell you, if someone working these things does not understand them, then who can understand them?"*

P: "***he has experience… he has personal experience with the history of these things, it's a lifetime that he's been fighting these things.."***

S: "*yes in fact,.. its like that. alright"*

P: "***you don't have to convert him.. he's already converted, no? (laugh)****.. then tell him, in the same way****, if there's anything that his clients need, because I know that he has important clients****, either in the fishing sector, or in the mining sector or public works, to build highways, motels… in that country I told you about.. you follow?.. then you tell him:" if there is something like that in that country… seeing that I am financial adviser for that country, no.. they've asked me if I can introduce .. some serious companies.. either in the construction of.. public works, or the fishing sector, or in the mineral sector.. or in the petroleum sector.. no, there are .. we can give a worthwhile contribution to these things.."*

…

P: "*you say:* ***my brother did not want to ask anyone down in the South, there, because he wants to avoid being involved like the other times.. in unpleasant things..*** *but tell him, that I will be responsible .. without .. I will be there directly, I will answer directly for the connections that.. that the person will be able to speak to, there will be someone that accompanies them, you understand where I am going with this, no?"*

S: "*yes, yes*"

P: "..***that accompanies them directly to ministerial level, to presidential level and will speak to whoever has to be spoken to, no..****"*

P: "***because at the level of a professor .. he can recommend this Court, the other Court****… there are things that can be done and things that cannot be done.."*

S: "*yes, sure*"

P: "***but there are some very viable things no?***"

S: "*sure, but legal things.. each one to his own work, hey, besides, this is also his area let's say…*

One needs to read the complete text of the abovementioned interceptions to have a complete picture. From this one can deduce among other things, a further attempt to coordinate a press campaign aimed at supporting the accused's story and discrediting the investigative and judging aspects operating in the judiciary in Palermo.

On concluding the examination of what emerged during these proceedings, we need to clarify certain things in fact and especially, in terms of the law.

Today's proceedings against Palazzolo have deeply felt the effects of the limits imposed on evaluating probatory material that this Court has had to contend with due to the existence of a previous judgment for the same crime.

As was explained in detail in the introduction, the existence of the first judgment in relation to the crime of Mafia association imposes and implies a reduction in the elements that the Court can fully evaluate, in perfect compliance with the principles of law set down by case-law.

Particularly the information reported by state's evidence relating to the period before March 1992 is taken under review as was already explained, as correctly laid down by the Supreme Court of Appeal, not as proof of Palazzolo's criminal responsibility, but rather to create the frame of reference in which we can insert (and fully evaluate) events subsequent to the first judgment.

This operation must be carried out, despite the singular nature and certainty that the proof represented by the multiple statements made by the state witnesses is absolutely new in relation to the elements of proof that had been taken into consideration during the first judgment against the accused.

As has already been shown, not only weren't these statements evaluated by the Court in Rome, but they also cannot be taken freely into consideration by today's Court on the basis that this is proof that no other judicial authority has been and is able to fully verify in order to demonstrate Palazzolo's criminal responsibility.

It does not seem superfluous to add that if these statements made by state's evidence had been drawn up during the course of the first trial, the outcome of the proceedings would with all likelihood, have been different. In the same way, that if today's Court had been able to fully evaluate the entire compendium of probatory material, the outcome of today's proceedings would also have been quite different.

There is no doubt in fact, that if the events and conduct relating to the period prior to March 1992, (as set out in the multiple and converging statements heard from state's evidence), could have been fully evaluated, they could have readily confirmed

Palazzolo's criminal responsibility for the crime of continuing participation in a Mafia organisation, called "Cosa Nostra".

And in fact, if the accused's conduct subsequent to 1992 were to be evaluated in the light of the information that emerged in relation to the preceding period covered by the judgment (firstly, in the light of the "fact" of the accused's formal affiliation to the organisation as a "man of honour"), it would have been analysed quite differently, and could have represented an element of continuity in the typical activities of a "man of honour" (who was never expelled from the organisation, or had disassociated himself by turning state evidence), despite the fact that he lived permanently in a foreign country.

A free and complete evaluation of the events starting from Palazzolo becoming affiliated with the organisation in the eighties, together with an evaluation of the specific conduct of the accused before 1992 (involvement in drug and cigarette trafficking, recycling 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"), would in fact have allowed us to take subsequent conduct into consideration (hospitality given to Bonomo and Gelardi, investments with and on behalf of Bernardo Provenzano and other "men of honour" like Geraci and Mangiaracina), to create an overall picture with much stronger significance.

We would essentially have been able confirm the basic continuity in the criminal activities typical of the Palazzolo as a "man of honour", in relation to the permanent crime which is under contention today.

Today's Court is however called to judge Palazzolo within very well defined and clear-cut interpretative criteria, which in fact limit the Court in exercising it discretionary powers within the context of today's judgment.

As we have already stated, the elements of proof that emerge from state's evidence (with the exception of Giuffrè) relating to the period covered by the judgment can only be evaluated as a "frame of reference" for subsequent conduct.

Consequently, for the purposes of this criminal trial, these emergent elements of proof can only constitute a systematic referral, appropriate for establishing certain significant information, (as for example, the relationship context of the accused), but cannot constitute an independent element of responsibility.

On the premise of the above however, it must be said that the frame of reference that we have often referred to, appears extremely clear and meaningful, since Palazzolo appears to have had relationships of great trust and secrecy with a number of high

ranking Mafia “bosses” (Riina, Provenzano, Madonia, Geraci, Mangiaracina, etc.), and to have covered the role of drug trafficker and recycler of dirty money with great ability, as well as “sweeper” between the world of business and international finance and the Mafia organisation, “Cosa Nostra”.

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

Beyond the meaningful relational and interpersonal network (already significant enough in itself), the fact that Palazzolo played the role of main recycler for the enormous gains originating from the illegal trafficking of drugs and cigarettes run directly by the heads of the “Cosa Nostra”, constitutes an extremely important and significant element for evaluation. An element that is essentially confirmed and convalidated by the conviction handed down in the Pizza Connection trial.

Based on these elements then, and despite the information relating to his formal affiliation that we cannot fully evaluate, we can confidently confirm that Palazzolo did have relationships at the highest possible level with the heads of the “Cosa Nostra”, and played an extremely delicate and valuable role on their behalf. Given the necessary abilities required and the crucial existence of a high level relationship of trust, this role made him a valuable if not almost, irreplaceable asset to the organisation.

It has also been established that in preferring to evade Italian justice, Palazzolo lived first in Switzerland, and then in South Africa, remaining far from Sicily for many years.

Another element that will in fact be evaluated is the historical and uncontested fact of the accused physical distance for so many years from the area that the “Cosa Nostra” operates in.

The accused continued to put his undisputed experience 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 a ruthless and efficient manner.

It has already been demonstrated from the official South African documents and the investigations conducted by witnesses Smith and Viljoen, how Palazzolo gained his tumultuous entry into South Africa, bringing with him a substantial amount of money originating from the abovementioned illegal trafficking.

In South Africa, he continued operating using the methods that were very similar to those used before (intimidation methods, and the methods used to create a financial,

political and criminal power base), and typical of the “Cosa Nostra”, to become one of the main financial operators in the Cape region, and probably 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 either through his sister, and other contacts, including Provenzano’s brother, Geraci, and Bonomo (who confirmed this fact to Brusca in 1995, when he indicated to him that he wanted to contact Palazzolo to take up business with him again).

We cannot also exclude the possibility that after his move to South Africa, Palazzolo preferred to tone down his relations with Sicily and with members of the Mafia that he was closely linked to, to concentrate on his own local businesses.

Despite his initial tribulations, Palazzolo had reached a significant position in the South African establishment, mixing legal and other clearly illegal activities. He became the personal friend of high ranking members of the police and local institutions, that could guarantee him protection and security, as appears confirmed in the refusal to accept the extradition application, the continual leaking of information and the outcome of proceedings against him.

What has certainly been demonstrated in fact is that every time the “Cosa Nostra” needed Vito Roberto Palazzolo, they could always count on his total support and complete availability.

The times that the organisation would see the need for his contribution would be less frequent with the knowledge that he was in a country so far from Sicily, but when the need did in fact arise, Palazzolo was always available and ready to give the support that was required, from time to time.

What was definitely asked of Palazzolo over the years was to specifically give hospitality to the two fugitives from justice Bonomo and Gelardi, and guarantee Bernardo Provenzano a safe recycling channel overseas for the organisation’s dirty money.

In both these cases, Palazzolo was immediately on hand and gave “Cosa Nostra” the assistance they required from him. If we look closely in fact, both these requests were perfectly suited and appropriate to Palazzolo’s specific and subjective position.

In the case of Bonomo and Gelardi’s flight from Italy, Palazzolo represented a safe refuge, both because of the distance provided by his place of residence, and the political and institutional cover he enjoyed in South Africa.

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

As stated by Giovanni Brusca, Bonomo remained in contact with the accused for personal and business reasons, so much so that he assured the ex head of the San Giuseppe Jato district and executive member of the "Cosa Nostra" that he was available to act as go-between with Palazzolo, in view of new business ventures that were to be established.

There was nobody better than Palazzolo therefore that could offer refuge overseas to Bonomo and Gelardi, both because of the personal relations and common origins they shared, as well as the high level 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), to the extent that the accused received prior warning shortly before the search to find the Sicilian fugitives from justice was conducted at this home.

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

By the same standards, Palazzolo was extremely valuable to "Cosa Nostra" in relation to another form of refuge that he had already given in the past, with ability and reliability.

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 recycle 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 in fact very few people 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 admired Palazzolo's qualities from the time of the Pizza Connection, decided to continue using him to recycle parts of the organisation's illegal funds.

It meant essentially using someone whose abilities and dependability had been widely proven from distant times, and who had special consideration for Provenzano, and was blindly counted on whenever he was needed.

Judicial proceedings held over the past few years, clearly show how important it was for "Cosa Nostra" to make investments abroad (in Eastern Europe and South America etc.),

so that part of their capital would be removed from the inherent and very real risk of sequestration and confiscation through criminal judgments and prevention measures.

On the basis of these considerations, it becomes clear how despite the distance, Palazzolo represented a valuable point of reference for the entire “Cosa Nostra” in relation to two well defined areas of intervention, being assistance to fugitives and the recycling of illegally procured capital.

And even though Palazzolo has lived in South Africa for many years, and has toned down 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 aware that he was giving refuge to the above Mafia organisation as a whole.

There is no doubt, given 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, that he was perfectly aware of the nature and purpose of the specific contributions that were asked of him over time.

So then in conclusion, if this is the picture of the results emerging at the end of the trial, we need to proceed with a careful evaluation of the events brought about by the accused, so as to place them in their correct context, and position them in the most appropriate and suitable judicial format.

To do this, it is necessary to briefly discuss the evolution of case-law on the distinction between participation in a Mafia organisation and external complicity in this crime.

An in-depth examination of the law in the complex case in hand of so-called external complicity in the crime of Mafia association must perforce begin with the decision taken by the Joint Sections in the Demitry judgment in 1994 (c.c. 5 October 1994, deposited 28 December 1994).

This judgment represents the first major expansion of this subject; both in terms of volume and the complete nature of the arguments presented, and therefore serves as a starting point for a brief overview of the principles and subsequent case-law, including the more recent rulings.

In confirming the configuration principle of external complicity in a criminal Mafia type association, the Supreme Court underlined the diverse nature of roles between the participant in the association and the material accomplice. In the sense that the first is the person without whose daily and assiduous support, the association would not achieve its objectives or would not reach them quite so timeously; in other words someone that acts within the “physiology” of the everyday life of the association. While

the second is by definition someone who does not want to be part of the association and that the association does not call on to "be part of it ", but to whom the association turns to fill temporary vacuums in a specific role, especially in times when the association's "physiology" is in difficulty [text uses medical term "fibrillation"], and requires a temporary contribution from an external person to overcome this "pathology", which may be limited to a single intervention; in short, it is someone who occupies a specific position at times of emergency within the association's life.

With this ruling, the principles applied in previous lower courts were disregarded (see for example, Cillari, Section 1 13.06.1987; Abbate, Section 127.06.1994; Clementi Section 1 27.06.1994; Mattina, Section 1 18.05.1994; Della Corte Section 1 03.06.1994), where with essentially similar arguments, they stated that there was no reason to differentiate between the material conduct of the accomplice and that of the participant.

According to the Joint Sections, the accomplice cannot be identified with the participant, because: "*the conduct and psychological attitude of the latter does not coincide with the conduct and psychological attitude of the accomplice*".

The material element of the associative crime is constituted by the typical behaviour of participation, which means the stable permanence of the link with the association, between the players, and is achieved in being and feeling part of the association, and being "permanently hinged" within it.

The accomplice is not the person who presents the typical behaviour of participation, but a different atypical behaviour, which in order to be relevant "*must contribute – atypically – to the realisation of typical behaviour presented by others*".

This atypical behaviour is identified as complicity by the fact that it manifests itself in making <its contribution> <of a temporary nature> <available> to the participants, and <within a fixed time frame>, even though it is such that it <allows others to continue to sustain the typical behaviour, and the stable permanence of the link>.

The Joint Sections observed in the Demitry judgment with regard to the psychological attitude, that if the participant expresses his "*willingness to be part of the association, with his willingness to contribute to its objectives*", the psychological attitude of the accomplice (that is of someone that "*wants to make a contribution without being part of the association.. gives an atypical contribution because he is available, but it is not his intention to become a part or be permanently hinged within the association, but rather he offers his detached and distant support, independently from the permanence of the organisation..*") is one that permeates atypical behaviour aimed at providing the support

described above, without a participatory spirit, but with the "*voluntary awareness that his.. actions contribute to the further realisation of the objectives of the societas sceleris"*.
Again, in terms of the Demitry judgment, it cannot be alleged that the external accomplice has the same intent as the person who is part of the association, or the specific intent (the will to realise the objectives of the association).
Besides the information in the most authoritative case-law (proposed "also by recent contributors on specific intent examined under various categories of crime"), according to which "*there can be complicity with generalised intent in a crime with specific intent"*, in that it is sufficient for the accomplice to "*aware that others are willing and are a part of the association, and act with the willingness to pursue the objectives*", the two forms of intent (the participant's and the accomplice's) should not coincide.
The accomplice, at variance to the participant, could "*be disinterred in the overall strategy (of the association), and the objectives that it is trying to achieve*".
But then again, he could be aware of it, without this *quid pluris* changing his external role, of not being or wanting to be a member. According to the Joint Sections, his conduct limits itself to "*contributing to the fortunes of the association*".
The Supreme Court established these principles with reference to moral as well as material complicity and in this way moved beyond the so-called theory of the intermediary that admitted only moral complicity, but not the material aspects.
If in fact moral complicity is admitted in the case of specific intent, then according to the Demitry judgment, it cannot be excluded that material complicity is also conceivable in the case of psychological attitude.
On closer examination, the specific intent of the accomplice (moral or material) varies from that of the participant because the objective of the former would be missing aspects of the second's intent: the willingness to be part of the association. What would remain in this case, is only the possibility of complicity, in wanting to make a contribution to the realisation of the <association's objectives>.
In the light of these criteria, one could also understand how the accomplice could bring about conduct that would also include the crime of aggravated abetment, in terms of article 7 of Law 152/1991 (modified into Law n. 203 of 1991).
One needs to ascertain in essence whether the crime stands alone or whether it contributes <to the stability of the association's ties and the pursuit of the association's objectives>.

The Demitry judgment also tried to give an explanation for the difficulties that case-law encounter, in reaching a full admission of material external complicity.

The reason for this is in the greater distance between the external accomplice on the moral level, compared to someone who is an accomplice through his material conduct: since the latter constitutes support for the participation activities, placing it in an immediate time frame, which could therefore create confusion.

Using the criteria of the contribution's time period, should allow for the difference to be identified, but the same result can be reached by demarcating the parameters between these abstract concepts in a better fashion.

The motivation rejects the theory on the basis that in terms of article 148 of the Criminal Code (that punishes associates for assistance), the expression <outside of cases of complicity in the crime> should be understood as a synonym of <necessary complicity> and not as possible complicity (ex. Art. 110 Criminal Code).

Finally, the motivation goes on to define the limits, between the two types of material conduct under examination (material participation and complicity).

The distinguishing feature lies in the claim of temporary support (that could consist of a single intervention) with the purpose of bringing the association back to normal. This means that the accomplice could intervene when requested by the association, or when there is a temporary opening in a position ("*temporary vacuums in a specific role*"), or at a time when the "pathology" of the association is in difficulty (as in the case of settling a case relating to members of the association).

The objective would be to sustain the criminal organisation. In other words, the actual "space" of any material accomplice seems to in emergency situations within the association, and not the space that "normality" would occupy by one of its members.

This abnormality and pathology could require a once-off or unique contribution, but still allows "*the association to sustain itself, even if in only one specific sector, so that it can achieve its objectives*".

The Demitry judgment constituted a clear point of reference in case-law, but at the same time attracted a lot of criticism and dissent among authorities on case law.

The main *punctus dolens* has always been constituted by the deemed general incompatibility between the regulations on complicity of persons (art.110 and following Criminal Code) and the subjective form of the crime. According to critics, the Demitry judgment did not overcome the crux of this incompatibility, especially in consideration of

the peremptoriness principle, in this case (as in the associative) lacking any descriptive efficiency.

There is a high risk of getting into areas of imprecision, according to critics, especially when it deals with identifying a “possible accomplice” in the conduct of “participation” to associate, in a conduct therefore whose definition is often considered tautological.

Criticism was also based on the structural incompatibility between associative conduct and regulations on complicity of persons, as well as the difficulty in reconciling non – permanent complicity in a permanent crime.

In terms of the subjective element of the crime, the solution offered by the Demitry judgement was again considered unsatisfactory: the subject of intent may not encompass all the circumstances included in the incriminating paradigm in the case of an external accomplice, and the intent may not even include the essential elements of the crime, that is the “affectio” and the attainment of social objectives; so that it becomes difficult in the reconstruction offered by the Appeal Court, to contest that the external accomplice is lacking in some type of typical general intent in the context of the organisation, and that is his willingness to be a member, and enter the organisation.

Further criticism has been levelled against the Joint Sections with regard to the comparison relating to the facilitating conduct carried out by those external to the criminal association (art.307/418 Criminal Code and art.7 of Law 152/91, and art.378 section 2 and 416 – 3 of the Criminal Code), and in relation to the difficulty in distinguishing the “physiology/ pathology” of associative life.

Valid and authoritative case-law however has conformed almost completely to the principles expressed by the Joint Sections in their 1994 judgement, without conducting any further revision in this regard (with the exception of the Villecco judgment).

As an example of this, we can cite the following judgments: Alfano (Section IV, 27.03.995), Sibilla (Section 5 10.11.1995), Mannino (Joint Sections 27.09.1995), Dminante (Section VI 13.06.1997), Montalto (Section V 23.04.1997), Necci (Section VI 07.03.1997), Cabib (Section 1 05.01.1999), Cusumano (Section VI 25.06.1999), Trigilli (Section VI, 25.06.1999), Frasca (Section 5, 06.02.2000), Pangallo (Section VI 15.05.2000), Cangialosi (Section V 22.12.2000), Frasca (Section 1 17.04.2002).

The case-law debate on the question of external complicity reopened following the Villecco judgment (Section VI, cc. 21.09.2000, deposited on 23.01.2001), with the stated intention of verifying the Demitry judgment’s “capacity”.

The judgment is summed up as follows (218330):

"*On the question of a Mafia type criminal association (art. 416 bis Criminal Code), the provisions under articles 110 and 115 of the Criminal Code preclude any form of external complicity, seeing that the assistance given in an objective or subjective capacity to the association at a time of crisis or internal difficulty, precludes wanting to "be a part" of the criminal organisation*".

The Villecco judgment took up the question of previous case-law (that denied complicity and the so-called intermediary that denies only material complicity), and outlined a solution that denied external complicity, based on the necessity of resolving the perplexing difficulties contained in the Joint Section's judgment, and proposed a revision.

The Joint Sections of the Appeal Court came back to the question of external complicity in a Mafia association with the well-known Carnevale judgment (30.10.2002/21.5.2003).

Essentially, in this important judgment, the Court confirmed the principle that: "*in the matter of Mafia type association, "external" complicity can be constituted, with the specification that the person who is deemed an "external" accomplice in the crime of Mafia type association, is the person who while lacking in affectio societatis and a place within the organisational structure of the association, makes a concrete, specific, conscious and voluntary contribution, provided that this has effective causative relevance to the purpose of conserving or strengthening the association, and is even partially directed to realising the criminal objectives of the association.*"

The Court went some way in resolving the question on the nature of the crime of participation in a criminal association, specifically in a Mafia association context.

While not accepting the theory that the crime of participation is limited to the single person (because the inclusion of that person in an association cannot only depend on the willingness of the person who intends becoming part of the association, but also requires willingness on the part of all the other members and those that they represent), the Joint Sections deemed that all associative crimes are always by necessity crimes in complicity, that is to say with many people involved in the case.

Consequently, the affiliation of one person to a criminal association depends on the willingness of the others, who are already participants in the existing organisation.

And in this sense the rules of the organisation can come into play, even though the acceptance of the person into the organisation may only be a matter of fact: depending on the facts indicating the willingness to include the accomplice.

The "statutory" provisions of the association need not be examined, what should be looked at is the effective willingness of the members, as is the case with every

intentional crime, even when this willingness can be deduced from the respect of rules or criminal practices.

Therefore "*the necessity of applying the regulations on complicity derives from the necessity of assigning criminal relevance to significant contributions made to the criminal organisation on the part of those who are not considered to be included by its members. If the associative crime is in fact a crime with several parties involved in the crime, the collective willingness for inclusion is a determining factor; but it cannot denote criminal irrelevance of significant and perfectly conscious behaviour on the causal level".*

"Article 110 of the Criminal Code provides for criminal relevance to be assigned to behaviour that differs from typical conduct, and which is nonetheless necessary or at least useful or instrumental in committing the crime. Besides which the regulations pertaining to complicity of persons in a crime are general in nature and as such are applicable to any type of crime, and this means they are also valid in the case of "associative" crime, where the legal paradigm already provides for the participation of more than one person. It follows therefore that the difficulty in applying these regulations on complicity to the associative scenario does not stem from the fact that there are a number of persons involved."

"Complicity in cases structured around a single subject model (like robbery or murder) certainly do not present the problematic aspects that arise when the crime is already structured around a number of people, but these innate difficulties do not therefore only make the conduct of the accomplice <undistinguishable> from that of the participant, they give rise to suspicion that through the mechanisms of articles 110 and 416 bis of the Criminal Code, the basic regulatory principles relating to peremptoriness or determination of the criminal paradigm will be violated. One knows that the principle has been respected when the paradigm reaches the necessary level of determination, making it sufficient to allow for the identification and full interpretation of the type of fact governed by the regulation.

And the level of determination in the case of article 416 bis can be considered to have been reached, because far from the legislator limiting himself to making reference to a generalised concept of Mafia consorting, he identifies behaviour that is sufficiently typical (those included under section one and two of the provision), so that the extensive purpose of the provisions under article 110 of the Criminal Code still appear to be anchored to specific regulatory references."

With reference to the presumed atypical nature of the accomplice's causative support, the Joint Sections have established that: "*within the context of article 110 of the Criminal Code, causative or instrumental support is by definition atypical. It is not possible to attempt to typify it only for external complicity in association, something that by definition cannot be typified in any other case of complicity.*

This limitation has no justification, unless it excludes it from all crimes committed by more than one person, a concept which is however denied by minority law and case law.

So the much criticised setting out of the problem in the Demitry judgement then seems to be correct, in terms of looking for the typical aspects of the participant's behaviour compared to the accomplice's behaviour that is deemed atypical (this method was already put forward in the Graci judgment, Section 1, 01.09.1994).

Legislation sets down the typology of the accomplice's behaviour in the expression "whoever is part of a Mafia type association" (article 416 bis section 1). Taking into consideration the meaning assigned to a Mafia association by the section 3 of article 416 bis, it then means that the person who "is part of" of the organisation is someone who commits himself to making a contribution to the life of the organisation, availing himself (or knowing that he can avail himself) of the association's power of intimidation and the subsequent conditions of coercion and the conspiracy to silence ["omertà"] to realise the objectives that were set.

"*At the same time, highlighting an expression like "is part of" alludes to behaviour that takes on different and variable forms and content so as to demarcate the typical crime figure "in free hand", consistent with a significant and concrete contribution to the existence and strengthening of the association on a causative level, and therefore to committing the offence typical of the interests stipulated in the above regulation.*

Consequently, we cannot only take the meaning of "is part of" that qualifies the participant's behaviour, to signify the mere psychological sharing of the criminal programme and relative methodology, but rather the more extensive meaning of concretely assuming a material role within the criminal structure, which manifests as a reciprocal and consistent commitment, focused in function towards the structure and activities of the criminal organisation. This expression thus takes on the meaning of becoming to all effects and purposes a part of the organisation's structure, in which one ends up becoming permanently "hinged".

It follows then that if we take the meaning of "being a part of" to signify what we have just indicated, then from a logical point of view we can only conclude that the position of

someone who "enters to become part of the organisation" sharing its life and objectives, can clearly be distinguished from the person who is not part of the organisation, and makes a significant contribution from the outside, to sustain and strengthen the organisation.

There is therefore no problem in including this difference detectable in these situations into judicial corpus, using the respective categories of participation and complicity for people involved in the crime, and on which the Demitry judgment is based.

With the result that the objection that the participant's behaviour, as outlined in the above judgment (typical consistent conduct of "being part of") would then be transformed into some type of status crime is not accurate; in the same way that it would not be imaginable for an external accomplice to materially "contribute only to being a part of [the organisation]". What does stand true is that the Demitry judgement clearly demarcated the figure of the participant, and identifies the typical conduct not in the sense that it takes on "status", but in the contribution made to the criminal organisation in which he is "permanently hinged with well-defined and continual tasks within his sector of expertise".

So that it rightly follows that one can participate externally (that is not being part of the association) with someone on the inside in committing an associative crime, and the crime remains the "same crime", as stipulated under article 110 of the Criminal Code, and is not transformed as some fear, into a "different" crime than the one provided for under article 416 of the Criminal Code".

Furthermore, in the Supreme Court's opinion, there is no linguistic or conceptual ambiguity between originator and participant in the principles set down in the Demitry judgment.

"*In the typical legal paradigm of special parties (as in article 416 bis), the instigator and participant coincide: the "participant" is the instigator of "participation" behaviour. In other words, as was wisely observed, the term "participant" has a double meaning: firstly it differs from the instigator (any complicity); and secondly it identifies with the instigator (typical legal paradigm of special parties)*".

Neither is there any structural incompatibility between the two types of behaviour under review, seeing that "*the existing difference between the permanent structure of the crime of association and complicity does not in any way indicate incompatibility between the two paradigms. Article 110 of the Criminal Code works together in this specific case, where the commitment of the crime is not only linked to the existence of the association,*

but also to the upsurge and continuance of the offence against public order, and there is nothing to prevent one considering that the continuance of this offence could also be determined by the assistance brought by a person outside of the organisation, at specific moments in the organisation's life".

Another important principle set down by the Carnevale judgment is undoubtedly constituted by the fact that the causative support of the external accomplice need not be protracted over time (or even indefinite).

In fact, in the Judge's opinion: "*nor is it necessary for the support to persist for the entire duration of the association itself, in that the potential recognition of the external contribution given at any time during the association's life should not be confused with the duration over time of the organisation".*

There is no contradiction therefore with the permanent structure of the organisation, in the fact that the external accomplice's manifestation of criminal willingness is completed (exhausted) in the moment that it is executed.

It is also not necessary for the participant's bond within the association to start out with a view of unlimited tenure into the future. This Court has already clarified (Section 1, 31.05.1995 Mastrantuono), that on the contrary, other forms of participation could be envisaged from the start, with a set limit over time."

Convincing confirmation regarding the characteristic behaviour described by means of causative orientation (another point that was criticised in the Demitry judgment) emerges from a critical review of the motivation given in the Carnevale judgment.

And in fact: "*one could reply to the objection based on the "dynamics of causative typifying" (which would be the same in relation to both the accomplice and participant, with the resulting consequences, previously discussed), that says that the underlying reasoning and premise is inexact, that conduct described in terms of its causative orientation cannot be differentiated: if this were the case, complicity would be impossible in all cases that had causative orientation, beginning with murder. The truth is that what differentiates the set up that goes from the unique nature of the causative process to exclude complicity in such cases, leads to the untenable result where in all free form causative crimes there would be no possibility of incrimination in terms of article 110 of the Criminal Code, since it would be enough to look at the causative process to cover all conduct relating to the assignment of cause, worthy of conviction. The example given is enlightening: in the case of someone supplying a gun to a killer. It has been correctly noted that in this case the causative process that regulates the typifying conduct of the*

person that shoots and supplies the gun, is the same, nonetheless the accomplice that gave the weapon to the material executor of the murder will be incriminated naturaliter as an accomplice, and definitely displays completely different conduct on a causative level from the killer."

Of significance to the Court is also the direction taken by the Joint Sections in relation to the aspect of the subjective element in this matter.

The Appeal Court in fact after having clarified that the subjective element in associative crime is characterised by a consciousness and willingness to be associated with the organisation in order to contribute to the realisation of the organisation's agenda, confirmed that the two types of intent (of the participant and the accomplice) do not seem to coincide, or at least not perfectly, which would allow for the external accomplice aspect to be fully considered.

In the Carnevale judgment, the Joint Sections shared the conclusions of the Demitry judgement in this regard, reiterating and clarifying the motivation that they based it on in terms of the law. "*The accomplice is the creator of atypical conduct and therefore is not the typical conduct of the participant. The accomplice intends giving a conscious voluntary contribution, in a distanced, detached and independent manner to the stability of the organisation, without however being part of the association, and from this perspective his psychological attitude is totally different from the participant, who acts with the intention of being a permanent part of the organisation".*

The Court essentially restated that even though the two types of conduct fully converge on the volitional and contributory support level, there is a difference between the two psychological attitudes, where the participant is enriched by the element of "affectio societatis", which by definition, is lacking in the external accomplice.

Furthermore, as the Joint Sections already confirmed in the Demitry judgment: "*in the case of criminal association of a Mafia type, it is not necessary for the accomplice to also have the volition to want to achieve the goals of the association; it is sufficient that he is conscious that others are part of and want to be part of the organisation and thereby act with the willingness to pursue these goals."*

The Court in the Carnevale judgment added and clarified that "*this does not mean that the external accomplice does not want to make his contribution and that he is not aware that the contribution is asked of him in order to facilitate the organisation; but what it simply means is that even though the external accomplice is aware of this, even though he is aware that his contribution will facilitate the organisation, he takes no interest in the*

overall strategy of the organisation, and in the objectives it sets itself. It can also be added that the external accomplice may well also want to contribute to the achievement of the organisation's objectives, without this changing his external role".

The Joint Sections partly accepted the criticisms against the previous stoppage in the progress of case-law, and clarified that both types of conduct (the participant and external accomplice) must have as their objective the same event, which is typical of the crime that they are complicit in.

And since "*in the crime of association, the event is the subsistence and effectiveness of the organisation, since it violates public order or other judicial aspects protected by specific provisions of the law, and carries this out through the achievement of the criminal agenda.*

It follows, that one cannot propose that the external accomplice is someone who acts only with the consciousness that others act with the willingness to achieve the criminal agenda.

On the contrary, one must consider the external accomplice as someone who may be extraneous to the organisation and does not intend being part of the organisation, but does make a contribution that he "knows" and "wants" to be directed even partially, towards the criminal agenda of the organisation.".

"The conclusion we reach relating to the subjective profile of the accomplice is that the difference between complicity and participation essentially lies in the psychological attitude that relates to the volition to be part of the association".

In confirming this principle, the Court therefore proposes that direct intent applies in the external accomplice's psychological attitude, and in this way overcomes the criticisms directed at the Demitry judgment with regard to the ambiguous and diverse subjective element (defined as "contributing or facilitating intent").

On the specific point of relations between autonomous agents that assist the organisation, the Joint Sections noted that "*in terms of articles 307/418 and 378 section 2 of the Criminal Code, the significance highlighted on a number of occasions by this Court's judgments are decisive (latest Section V, 20.02.2001, Cangialosi), that these provisions are all pertinent to the relationship between an agent and the single members, without interfering in any way with the question of external complicity, that shapes the relationship between an external agent and the group as a whole*".

It is specifically noted that:

a) without necessarily convalidating the theory put forward by those (including the Demitry judgment) who cite the opening of articles 307 and 418 of the Criminal Code (as well as article 270 ter CC), where it states "outside of cases of complicity in the crime" as admitting the legislator's explicit recognition of external complicity in an associative crime, it should be taken into account that the provisions in question incriminate the assistance given to single members, which cannot be confused on a negative or factual level with the help given to the entire organisation: what's more the context of these applications is limited to a few contributions of minor significance that retain this value even after the amendments made by article 5 bis of Law 374 dated 18.10.2001, and converted by Law no. 438 dated 15.12.2001;

b) The same can be said about abetment, where help is substantiated in conduct that interferes with the proper functioning of the justice system, and is directed in favour of someone in order to change the relationship between the investigators and the person investigated, while the support of the external accomplice in an associative crime is a contribution made to the criminal organisation, with the purpose of achieving their aims..

Finally, denying that the provisions of extenuating circumstances under article 7 could be incompatible with the constitution of the external accomplice, are reasons that encompass the specific nature of the case in hand. The circumstance is centred on completely subjective information. For it to be integrated, it is not necessary for the purpose to be realised in the effective strengthening of the organisation (Appeal Section IV 13.11.1996, P.M. and Mango). When this happens as was confirmed in the Demitry judgment, the crime with these extenuating circumstances is joined with complicity".

Following the review of principles by the Joint Sections of the Appeal Court *in subiecta material* in the motivation given in the Carnevale judgment, the Court also stopped to consider the definition of the antinomy "physiology – pathology" of the association, which struck public opinion so forcefully following the Demitry judgment.

As we have already discussed, in an attempt to fix the parameters of complicit conduct, the Demitry judgment qualified the contribution made by the external accomplice as being pertinent to the pathology of the association's life, because the accomplice would intervene at a time of "fibrillation" in the organisation [translator: chosen to interpret this as "in difficulty"].

The "Demitry" judgment did not however go into detail regarding the pathology of the organisation's actions, so that the expression "fibrillation" took on an exemplifying

significance and provoked more interest than its actual meaning within the context of the reasoning followed by the Appeal Court.

It should be said that subsequent case-law has improved the explanation of the expression “fibrillation” to mean the difficulty that the organisation finds itself in, thus further clarifying the expression, as it was previously quite effective but too metaphorical and not very technical.

It was then confirmed that the external accomplice, who is aware of the difficulty that the organisation finds itself in, intervenes to rescue the organisation (Section II, 13.06.1997 Dominante), and as such was for example, considered an external associate (Section 1 08.02.1999. Crnojevic), because on certain occasions he carried out the activity of interpreter in favour of the organisation, or was the attentive broker of funds needed for the life and operations of the organisation (Section VI, 02.03.1999, Tronci).

In other words, it needs “*concrete collaborative activity appropriate to contributing to the strengthening, consolidation and sustaining of the Mafia organisation, in correlation with requirements of the organisation’s cyclical trends”* (Section VI 04.09.2000, Pangallo).

In the wake of these considerations, case-law prior to the Carnevale judgment had fixed two significant principles: on the one hand, it was confirmed that it was not at all necessary for the difficult position of the organisation (state of “fibrillation”) to be such, that without outside help, the organisation would inevitably die out.

And on the other hand, it was not at all necessary that the contribution comes only from that specific person and no-one else (Section V, 23.04.2002, Apicella).

The Joint Sections came back to this particular question with the Carnevale judgment, specifying that “*the real problem is in identifying the level of intensity or quality which would be appropriate to consider the agent’s complicity as complicity in the crime of criminal association.*

It was noted in this regard that the contribution can always only be beneficial since it is directed towards the organisation, even if this is minimal or imperceptible to the consolidation or strengthening of the criminal organisation: but in this instance it does greatly extend the area of possible complicity. If, on the other hand the contribution is significant, then it would be appraised in proportion to the criminal organisation in terms of its operating practicalities, the level of its dissemination through the social fabric and other similar parameters: with the paradoxical result that the larger, more efficient and successful the criminal organisation, the smaller the area that can be legally appraised in terms of the accomplice’s contribution.

These points do not appear conclusive however, because of the obvious empiricism they inspire.

Complicity does certainly not apply to every contribution made to the organisation. Here again, the facts relating to behaviour must be examined in the light of the general principles interpreted through the specific frame imposed by the interaction between article 110 and 416 bis of the Criminal Code.

And so it must be said that should the result of typical conduct in an associative crime be the conservation or the strengthening of the illegal organisation (by whatever name we choose to give this result: strengthening of the "organisational body as a whole" or "mega organisational event", or "organisational - functional dynamics of the criminal body"), when the accomplice in the specific case can be considered as extraneous to the organisation on the basis of the indications that have been previously discussed on this specific point, then the same result is required from his conduct: that means that the contribution required of the external accomplice must be appraised as appropriate in terms of its practicability, specific nature and significance to determine the conservation or strengthening of the association on a causative level. Consequently, the circumstance that a continual or repetitive activity, or even an occasional and informal intervention has been established, bears no weight in the decision making. Whether it is a continual or repetitive activity, or whether it is a once-off contribution, the multiple or single activity should be evaluated exclusively whether in terms of its level of practicability and specific nature and its causative relevance, it can be considered appropriate in achieving the abovementioned result."

According to the reasoning followed by the Joint Sections, this evaluation (directed at demonstrating the real impact of a single or multiple instances of conduct on the future of a criminal association) risks faltering on a "probatio diabolica", since an evaluation of the external causative connection does not in itself imply greater difficulty than identifying a case of internal conduct.

According to the Carnevale judgment:" *in terms of the profile of the form of external complicity in an associative crime being assessed, this interpretive operation is certainly compatible with current standards, recognised as being legitimate de jure condito, and the evaluation and flexibility margins set by the judicial-criminal authorities provided for under our law".*

In this regard, the Joint Sections with the declared intention of specifying the characteristics of the contribution asked of the external accomplice and the

organisation's state of difficulty in clearer terms, further clarified that "*it appears obvious that mere "obliging contiguity" or "closeness" or "availability" with regard to the organisation or its members, even those in high ranking positions, cannot be ascribed to the provisions under conduct punishable for complicity, when this is not accompanied by positive actions that have made one or more indictable contributions in terms of the parameters indicated previously, to produce subjective support in strengthening or consolidating the association or one of its specific sectors*

In other words, what is required is specific intervention aimed at achieving this purpose. What counts in fact, is not the mere availability of the person on the outside to make the contribution that was asked by the organisation, but rather the effectiveness of this contribution, and that is, following the stimulus originating from the criminal organisation, the person in question has been activated in the direction indicated to him".

In conclusion, the Joint Sections summarised the main interpretation criteria as follows: "*from the previous considerations, it follows that there are two parameters that shape complicity in associative crimes:*

- on the one hand, one should ascertain the lack of affectio societatis and of permanent induction into the organisational structure;

- and on the other, the relevant instrumental significance of the support given by the external accomplice, according to the objective and subjective terms illustrated above.

So that the proof of external complicity in an associative crime (in particular, the distinctive counter checks on accomplices' typical complicity or guilt, through so-called "multiple convergence"), can only relate to the constituent elements of the paradigm identified, and should have as its subject, the accomplice's specific contribution that was consciously, effectively and causatively appropriate and given for the conservation or strengthening of the association and the achievement of the same".

In the Court's opinion, these explanations are indispensable for correctly categorising the conduct brought about by Palazzolo.

Firstly, it must be repeated that in consideration of the elements of proof at this Court's disposal, it cannot be confirmed with certainty that the accused "was part" of the "Cosa Nostra" Mafia association, nor that the organisation invited him to be a part of it.

All the same, the organisation itself, through its highest ranking members like Bonomo and Provenzano, knowing Palazzolo's level of dependability, did approach him, asking him to make a specific contribution in the higher interest of the organisation as a whole.

Palazzolo, being well aware that Bonomo and especially Provenzano (absolute “boss” from 1993) belonged to the “Cosa Nostra”, readily gave his contribution, which definitely had significant causative effectiveness, and contributed even partially, to the objectives of “Cosa Nostra”.

There is no doubt that ensuring the absconding of a district boss on the run, or even more, guaranteeing a safe recycling channel to the head of the “Cosa Nostra”, represent two contributions that allow the organisation as a whole to reach its criminal objectives.

From the perspective of the psychological element of the paradigm, the premise indicated above of external complicity appears all the more appropriate to subsume the conduct brought about by the accused.

And in fact, even though Palazzolo “was not or did not feel part of the association”, since he was permanently “hinged” in the organisation, he consciously gave his voluntary atypical contribution to even the partial realisation of its illegal objectives.

And even though he did not want to become part of the Mafia organisation, and without necessarily being interested in its overall strategy, he willingly gave his contribution, which has causative effectiveness towards the realisation of the above criminal objectives.

In the Court’s opinion, it can be deduced that Palazzolo’s role and conduct fit perfectly into the format of the external accomplice in crime in terms of article 416 bis of the Criminal Code.

In the light of case-law criteria and the principles of law indicated above, we must also exclude any possibility that the present proceedings can fit into alternative legal configurations (for example, the possibility of aggravated abetment).

Besides there being a range of multiple conducts brought about through relations with different people, in the case in question these go beyond mere interpersonal relationships, but clearly represent assistance for the entire organisation.

It is enough to recall everything that has been said regarding the specific conduct relating to the recycling of Provenzano’s dirty money through international transactions. On the one hand this conduct does not appear to fit into any alternative legal format, and on the other, demonstrates that multiple contributions did exist, which are all associated with the objective of furnishing assistance to the whole organisation, and not to single individuals involved from time to time.

It is actually unthinkable that this type of contribution could be considered as limited to an interpersonal relationship, since at that time, Provenzano was the absolute “boss” of

the Sicilian “Costa Nostra” organisation and was involved in reinvesting the significant profits emanating from various illegal activities established by the whole organisation, and certainly not from his personal savings.

And since Palazzolo was well aware of both these circumstances, we can only conclude that he was perfectly conscious regarding the ultimate purpose of his contributions, which were undoubtedly destined to realising the overall objectives of the entire organisation, and were not simply the profits of its individual members.

On this premise, and on the basis of the general principles set by more recent case-law and detailed above in relation to the crime of participation (effective and/or by way of complicity) in a criminal Mafia type association, we can only confirm Palazzolo’s criminal responsibility in relation to the crime provided for under articles 110 and 416 bis of the Criminal Code, with the aggravating circumstances stipulated under section IV and VI of the above article, and the original fact ascribed to him is requalified in terms of article 521 of the Criminal Procedure Code.

It is hardly the case to show how the altered legal qualification of the facts compared to the charge of participation in a Mafia organisation that was originally contested, does not pose any problem in violating the principle of correlation between the charge and the judgement, since there is a relationship of complete “continence” between the facts that Palazzolo was charged with and those upheld in judgement, which is totally separate from the “diversity” that could lead to a *vulnus* of the above principle.

All the same, case-law has consistently interpreted the above principle with the purpose of safeguarding the right to defence, rather than in a formalistic manner, and again in this instance there can be no doubt that the alteration in the charge indicated previously has in no way prejudiced or precluded the possibility of defence for the accused, who is now called to answer the more serious and encompassing premise of belonging to the “Cosa Nostra” (*ex plurimus* Appeal Section IV 12.5/21.10.05).

With regard to the aggravating circumstances cited under section IV of article 416 bis of the Criminal Code, it should be said that the Mafia type association called “Cosa Nostra” (unlike other similar organisations), constitutes the typical paradigm of the crime in question, and was introduced purposely to criminally sanction this specific associative phenomena.

By definition, it has all the characteristics and prerequisites that the legislator has instilled in formulating legislation, as elements constituting the crime of Mafia type association.

Consequently, any discussion today on whether “Cosa Nostra” is or isn’t characterised by the “association’s power of intimidation” from which “conditions of coercion and the conspiracy to silence” derive, or whether it is directed towards the criminal objectives typified in the above laws, appears redundant or superfluous.

“Cosa Nostra” so to say, not only corresponds to the legal paradigm, but also represents the social and historic phenomena that it originated from.

Participation in this specific organisation therefore implies the necessary subsistence of the subjective as well as the objective elements of the crime in question.

Looking carefully, in fact the circulation of the many judicial acquisitions and news reports relating to the life and activities of the “Cosa Nostra” have been at such a level over the last twenty years that no-one can seriously claim that they are unaware of their existence, their modus operandi or their illegal objectives.

This means that belonging to this organisation in any form, by making a significant and meaningful contribution in their favour, represents a conscious form of acceptance of their rules and a sharing of the objectives of “Cosa Nostra”.

For the purposes of configuring the crime under article 416 bis, this is not in fact necessary, because the condition of participation of individual members has been fulfilled, and one or more of the objectives alternatively provided for by this regulation have been reached.

Nor is it necessary to demonstrate how each co-participant effectively uses the power of intimidation or makes profits for himself or others with financial – property gains.

Each conduct can in fact take on different forms and variable and diverse content, and does not necessarily have to fully integrate all the parameters of the law on its own; what counts on the contrary, is that it consists of an effective contribution that is real and appropriate on a causative level, to the existence or strengthening of the organisation itself than the higher parameters that it certainly encompasses.

On the basis of a similar logical and legal direction, case-law has introduced the principle of the communicability of the aggravating circumstance relating to the possession or use of firearms (section IV), to also include unarmed co-participants.

From the first judgment subsequent to Law no.19/90 (Appeal Section IV, 6.12.94 Imerti; Section 1 30.1.92 Altadonna, Section II 15.4.94 Matrone), the Appeal Court has in fact established that “*the aggravating circumstance set out in paragraph IV of article 416 bis of the Criminal Code, is communicated to the co-participants of the criminal organisation only if they are conscious of this or ignore it completely or claim it is inexistent due to an*

error caused by guilt. The proof of this knowledge and recognition .. can also be furnished by logical deductions on the basis of the probatory material acquired".

In judgment handed down by Section I on the 18 April 1995 (plaintiff Farinella), the Appeal Court set a further principle in relation to the typical nature of the "Cosa Nostra" organisation: "*With reference to the permanent possession of firearms by the Mafia organisation called "Cosa Nostra", this circumstance can be considered a well-known fact that cannot be ignored".*

This Court fully supports the direction taken by case-law and confirmed over the past few years by the Appeal, and therefore deduces that the case of aggravating circumstances in terms of paragraph IV of article 416 bis certainly do exist.

If we look carefully, the existence of these aggravating circumstances in today's proceedings do not only derive from the notoriety that firearms are available in the "Cosa Nostra".

During the course of the hearing it was directly shown that several of the people that Palazzolo had relations with and that were part of the organisation, did have firearms available to them (among others, the episode of Antonio Ventimiglia's firearm abandoned during the murder of Agostino Badalamenti in Germany or the murders during the second Mafia war of the eighties).

As for what its worth, Palazzolo himself was found to be in possession of several unregistered firearms during the first search conducted at this home (see witness Smith and documentation on file).

Based on this then, the Court considers that specific and multiple references have emerged on this point that allow the Court to confirm the existence of aggravating circumstances under paragraph IV of article 416 bis of the Criminal Code,

It is a well-known fact also that enormous amounts of capital emanating from the traditional activities of the "Cosa Nostra" (extortion, drug trafficking, etc.) were reinvested by the organisation in various business sectors on Italy and abroad.

But in the case in question and as indicated previously, we are discussing an accused who conducted the valuable role of "sweeper" between the world of international finance and the "Cosa Nostra", allowing the organisation to recycle enormous amounts of illegally procured money into various businesses in Italy, and especially overseas.

For this reason, it is both clear and obvious that the aggravating circumstances do apply in relation to the specific position of Palazzolo.

Going on then to determine sentence, and in the light of the directives stipulated under article 133 of the Criminal Code, the Court has taken into account both the seriousness of the crime and the type o contribution made by the accused to the organisation.

In exercising the discretionary powers of the judge in applying sentence, the Court considers the crime that the accused is charged with, as extremely serious.

The nature and previously stated characteristics typical of the “Cosa Nostra” organisation, which has been responsible for the most heinous crimes in recent years with regard to public offices, suffocating and corrupting practically every aspect of civil and financial life, lead to today’s undeniable statement of extreme seriousness and danger.

The information regarding the contribution and the specific role covered by Palazzolo is laid side by side with this general information. Even though he is an external accomplice, he represents an unusual figure within the context of “Cosa Nostra”, for the very reason that he has skills and abilities that have contributed in an extremely significant manner to the fortunes of the organisation.

This is not just any participant or external accomplice, but a man with unique and rare abilities that made him extremely valuable to the “Cosa Nostra”, and consequently extremely dangerous for public offices.

This intrinsic and absolute social danger excludes any possibility of conceding extenuating circumstances in favour of today’s accused, as they are incompatible with his role, the facts committed and the type of crime under consideration.

Added to this is the appraisal of the accused’s capability of committing a crime, which is deduced from the role he covered within the organisation, from the material contribution given to the organisation, and the long and protracted period as an absconder.

The following sentence has been determined based on these principles: basic sentence of seven years imprisonment, increased to nine years due to the two sets of aggravating circumstances.

Palazzolo is also by law ordered to pay costs in the proceedings.

In terms of articles 28 and following of the Criminal Code, given the extent of the crime, it is mandatory that the accused be banned from public office in perpetuity and legally indicted during the serving of his sentence.

Furthermore, in accordance with articles 228 and 417 of the Criminal Code, for the reasons stated above related to the high degree of social danger, the accused is to be kept under surveillance for a period of two years, after his sentence has been served.

Given the complexity and the length of the hearings conducted during these proceedings, the Court sets down ninety days for judgment to be deposited, in accordance with article 544, paragraph 3 of the Criminal Procedure Code.

Finally, in terms of article 275 co.I bis and III of the Criminal Procedure Code, and following a specific application by the Prosecution, the Court declares that the precautionary imprisonment measures against the accused be restored, for the reasons outlined in the separate order attached herewith.

FOR THIS REASON

On the basis of articles 521, 533, 535 and following of the Criminal Procedure Code; 28 and following, 228, 110 and 416 bis, 417 of the Criminal Code; the Court

DECLARES

Vito Roberto PALAZZOLO, guilty of complicity in the crime of aggravated Mafia type association, provided for and punishable under articles 110 and 416 bis, sections I, IV and VI of the Criminal Code; consequently meeting the criteria of the original crime ascribed to him, and condemns him to a sentence of nine years imprisonment, as well as payment of costs in the proceedings.

The Court further declares the abovementioned to be banned in perpetuity from public office and legally interdicted during the serving of his sentence, and orders that once his sentence has been served, he be subjected to surveillance measures on his release.

To be kept under surveillance for a period of two years.

In terms of article 544, section III of the Criminal Procedure Code, the Court fixes the term of ninety days for the sentence to be set down.

In terms of article 275, section I bis and III of the Criminal Procedure Code, the Court grants the application made by the Public Prosecutor on the 3.7.2006, for precautionary imprisonment measures to be imposed in relation to Vito Roberto PALAZZOLO, in accordance with the separate order that is attached to this document.

Palermo, 5 July 2006.

The Judge The Judge Judge President