APPEAL COURT OF CALTANISSETTA
REVIEW APPLICATION EX ARTT. 629 AND FOLLOWING OF THE ITALIAN CRIMINAL PROCEDURE CODE

The undersigned Attorneys Baldassare Lauria of the Court district of Trapani and Riccardo Olivo of the Court district of Rome, defence and holders of a special mandate from VITO ROBERTO PALAZZOLO, born in Terrasini on 31.07.1947, resident in Cape Town in the Republic of South Africa, on the basis of the attached mandate, and in terms of articles 629 and following of the Italian Criminal Procedure Code, herewith submit a

REVIEW APPLICATION

regarding the judgment handed down by the First Criminal Section of the Court of Appeal in Palermo on 11.07.2007, which became irrevocable on 13.03.2009, which partially reformulated the First Order judgment and sentenced Mr PALAZZOLO to nine years imprisonment, excluding ancillary penalties, for the crime of association to commit a Mafia type crime, provided for under article 416 bis of the Italian Criminal Code.

PAR. 1: INTRODUCTION AND OBJECTIVE OF APPEAL

The conviction handed down by the Court of Appeal in Palermo, in respect of which this review is being requested, held that Mr PALAZZOLO had participated in a Mafia association called "Cosa Nostra", together with several other associates. This was in fact a reformulation of the judgment handed down in the First Instance, which on the contrary had excluded the accused's participation in the abovementioned Mafia association with the latter sentence, while holding that the conduct being contested against the accused was suited to an integration of external complicity in terms of articles 110 and 416 bis of the Italian Criminal Code, within the case in question.

But, before getting into the merit of the conviction judgment in question, we need to briefly trace the Applicant's judicial history, which takes place before the Swiss and Italian Authorities, resulting in the Attorney General of Palermo repeating a criminal action that had already been heard and concluded with the judgments handed down by the Court in Rome in 1992 and the Criminal Court of Appeal in Lugano.

And more specifically:

IN SWITZERLAND, VITO ROBERTO PALAZZOLO was convicted with judgment handed down by the Criminal Court of Appeal of the Ticino Canton on the 26 September 1985, which was made final by the Swiss Federal Court – Criminal Appeal Court – on 3 May 1994. (Annex no. 10 and no. 11)

The judicial action began with an international warrant of arrest being issued by the Court of Rome on the 20.04.1984, which requested Mr PALAZZOLO's extradition for the crimes under articles 416 bis and 416 of the Italian Criminal Code, and article 75 of Law 685/75. This request was refused by the Swiss Authorities so that they could try the Applicant together with other Swiss citizens involved in the same financial transactions, and this on the basis that the fact being contested had been committed

in Switzerland.

The fact-crime of the Swiss proceedings is described in the criminal charges of the Ticino Canton Criminal Court of Appeal sentence of the 26 September 1985, with indications regarding the conduct and violations of the law being contested, which can be summarised as follows: In 1982, due to his position as Chairman of a Swiss financing company, the Applicant was involved in an investigation, relating to the transfer of funds from the USA to Switzerland on behalf of certain clients.

IN ITALY, as outlined above, before the proceedings for which an appeal is being sought under paragraph c), VITO ROBERTO PALAZZOLO was charged in two proceedings before Judicial Authorities, where the convictions were then "absorbed" by the judgment of the Criminal Court of Appeal in Lugano, related to the sameness of the facts that have formed the subject of the respective charges.

Specifically:

a) – With judgment dated 28 March 1992, the Court in Rome applied a sentence of two years imprisonment against PALAZZOLO, in terms of article 444 of the Italian Criminal Procedure Code for the crime under article 75 of Law no. 685/1975; while, in relation to the crime under article 416 bis of the Italian Criminal Code, the Criminal Court in Rome acquitted him with the formula "because the fact does not exist". (Annex no. 5)

b) – With judgment dated 12 October 2000, the Court in Palermo convicted PALAZZOLO to 12 years imprisonment; this judgment was then reformulated by the Court of Appeal in Palermo with judgment on the 22.07.2003, which stated that the criminal action could not proceed due to the constraints of the previous judgment; and this related to the sameness of the facts that formed the subject of the conviction, with those that had formed the basis for the Swiss judgment (Cooperation Treaty between Italy and Switzerland ratified under Law no.367 dated 05.10.2001 in other words during the delay of the appeal process).

c) – With judgment dated 5.6.2006, the Court in Palermo convicted PALAZZOLO for external complicity to committing a crime in a Mafia type association, for the crime of external complicity in a Mafia association.

This judgment was confirmed quod poenam by the Appeal Court that re-qualified the fact as participation in a Mafia association, and this without any specific appeal being made by the Prosecution, on the basis of reasoning that will be discussed in further detail hereunder.

The charge contested in these last proceedings from both an historical and legal standpoint, appeared to be completely identical to what had been assumed against the accused in the proceedings detailed under heading a), which concluded with his acquittal.

So then the acquittal judgement from the Court in Rome constitutes the epilogue to the Criminal Proceedings no. 2289/1982 R.G. from the Court in Palermo, where VITO ROBERTO PALAZZOLO received a warrant of arrest on the 11.06.1985 because he had been accused of the crime of association to commit a crime, under article 416 bis of the Italian Criminal Code, together with a number of other accused: this refers to the proceedings that generated the historic and well noted proceedings against the Mafia in Palermo, or so-called "maxi-proceedings".

That criminal action in fact has its consummation in the judgment handed down by the Appeal Court, which while deciding on the conflict of jurisdiction that had been raised by the Court in Rome that

was actually proceeding for the same facts, gave jurisdiction to the Court in Rome, thus divesting the Authorities in Palermo from any jurisdiction in the matter.

For the sake of completeness, it should be stated that the thema decidendum relating to the violation of the ne bis in idem principle was dealt with in the conviction judgment that had examined the acquittal judgment from the Roman Court, but as will be seen hereunder, this last judgment was in effect only formally acknowledged, while in actual fact was not taken cognisance of in terms of its judicial and factual aspects by the relevant judges in the proceedings that we are interested in: thus making it possible for the Appeal Court in Palermo to build its "in peius review" from the acquittal judgement.

And in fact, the Judges from Palermo admit how a close examination of the Court of Rome's acquittal judgment does not allow for a critical check to be done on the probatory material that is the subject of the review, nor of the hermeneutic criteria followed by that Court to reach the acquittal judgement…. with the entire motivation limited to the laconic and stony formula referred to above, included in a single line written in on the form. This motivation however appears contradictory seeing that in terms of the same judgment PALAZZOLO was sentenced to two years' imprisonment in relation to the crime under article 75 of Law 685/75 (see par. 28).

So then, an exact reading of the Roman acquittal judgment and the supporting documentation – the novum of the review application – inevitably leads to a completely different result, which is incompatible with what was upheld in the conviction judgment.

But there is more.

In the part where the Court of Rome's judgement applied the sentence under article 444 of the Italian Criminal Procedure Code for the crime of narcotics, it in fact constitutes a duplication of the judgment for the same fact that had already been handed down by the Criminal Court of Appeal judgment in Lugano on the 26.10.1985.

And in point of fact, with a subsequent judgment dated 31 March 1993, in applying the ne bis in idem principle, the same Court in Rome cancelled the sentence against PALAZZOLO in its judgment on the 28.3.1992 for the crime on narcotics, because he had served the sentence that had been imposed on him in terms of the Swiss judgment, given the identity of the fact- crime. (Annex no. 20)

It then becomes obvious how the question is not directed at the "re-evaluation" of a subject that was already the object of a judicial examination – and notoriously excluded in the context of the annulment hearing – but rather represents an error of fact that prevented the presiding Judges from recognising the apparent "confusion" between the Roman judgment and the judgment from the Court in Lugano.

Essentially, the novum of this review application is appropriate and directed at demonstrating firstly the unsubstantiated nature of those elements that resulted in the alleged perpetuating of PALAZZOLO's association after 1992, the impossibility of proceeding with criminal action and the total legal incompatibility of the (different) outcomes that the judgments under headings a) and c) arrived at, after both had judged an identical criminal association, both in terms of its subjective and objective elements.

PAR. 2 THE CONVICTION JUDGMENT THAT IS THE SUBJECT OF REVIEW AND THE CONFLICT WITH THE ACQUITTAL JUDGMENT.

Judgment no. 2253/2006 of the 5 July 2006 handed down by the Third Criminal Section of the Court of Palermo, in its charges summarises the conduct that was contested with regard to today's Applicant, ascribing him … "*the crime of participation in a Mafia type association (article 416 bis of the Italian Criminal Code), for having in complicity with several other associates, amongst them Salvatore RIINA, Giovanni BONOMO and Giuseppe GELARDI, been part of a Mafia association called "Cosa Nostra" or for having being permanently included in the above association in numbers that exceed five people, for having used the force of intimidation resulting from the link to the association and the condition of subjugation and the resulting conspiracy to silence to commit crimes against life and "personal safety", against personal freedom, and against property, directed at the trafficking of narcotics and T.L.E, as well as firearms and currency, and for the purposes of realising unjust profits and gains; and for further, having abetted the status of Mafia associates such as Giovanni Bonomo and Giuseppe Gelardi as fugitive from justice, even in a foreign country. With the aggravating circumstances under sections 4 and 6, for having being part of an armed association and for having financed business activities with the profit resulting from crime.*

Having been committed in Palermo and other locations in Italy and abroad, up until today's date." (Annex no. 1)

The time reference "up until today's date" is then changed on the request of the Prosecution during the hearing of the 13 November 2002, with the tempus commissi delicti specification set to after the 28 March 1992.

According to the First Order judgment, ……the reason for identifying this tempus commissi delicti is obviously connected to the uncontested circumstances, whereby PALAZZOLO was acquitted on this charge with the irrevocable judgment from the Court in Rome on 28.03.1992. In actual fact this does not refer to an acquittal judgment, but most probably to a release judgment in accordance with article 129 of the Italian Criminal Procedure Code, where the motivation reads as follows: "taking into consideration that the assumption under article 129 of the Italian Criminal Procedure Code stands, and that no elements of proof whatsoever emerge in relation to article 416 bis of the Italian Criminal Code.

Now then, with regard to the merit of this acquittal formula on a simply judicial level, the allegations put forward by the Judges from Palermo appear totally incorrect.

On closer examination, the reference made by the Roman Court to article 129 of the Italian Criminal Procedure Code, far from being ambiguous, was shown to be correct and justifiable in legal terms, in view of the special procedure (plea bargaining) adopted to reach a decision on PALAZZOLO.

Pronouncing judgment in terms of article 444 of the Italian Criminal Procedure Code should in fact be preceded by a check on whether one of the causes that are not punishable in accordance with article 129 of the Italian Criminal Procedure Code exists, and a positive outcome to this check, then obliges the Judge to acquit the accused .

And, in fact since "the verification for a plea bargaining judgment is perfunctory, in the sense that when faced with the request to apply sentence, the Judge can hand down an acquittal judgement only if there are elements that appear from the records, which are appropriate to overcome the presumption

of guilt, which the legislator has obviously tied in to this request" , it is clear that an acquittal in relation to an application in terms of article 444 of the Italian Criminal Procedure Code, takes on special merit and significance when it is tied to the absolute lack of elements that are appropriate to sustain the incriminating case.

Nor can it be overlooked that in the case in question, Palazzolo's acquittal takes on greater connotations when one considers that this was handed down following the outcome of an in-depth analysis of procedural records.

And in fact, Palazzolo was judged in the context of complex criminal proceedings that involved several people, many of which received convictions.

Therefore, the extent of the Roman Judges cognisance of the case that Palazzolo was involved in was not only broad, but equally comprehensive and in-depth.

If we effectively consider that Palazzolo's plea bargaining judgment was handed down following a "single" court hearing convened in chambers where the closed session established the position of all the accused, some of which were judged under ordinary court procedures and others under summary procedures, and only Palazzolo's judgment was handed down following plea bargaining, which consequently meant that it had been possible for the Court to examine every element of proof relating to the numerous charges, and specifically the one relating to the participation of the accused in a Mafia association de quo.

From this it follows that despite the brief motivation given for the acquittal ex article 129 of the Italian Criminal Procedure Code, the decision relating to Vito Palazzolo's exclusion from participation in a Mafia association was taken by a Judge that had the appropriate cognitive instruments on hand to formulate his opinion.

The simple change made to the tempus commissi delicti by the Prosecution could not, and cannot therefore discount the obvious incompatibility of the conviction judgement in relation to the Roman acquittal, and this due to the very fact that the elements at the basis of the conviction referred to a period that was covered by the judgment.

Nonetheless, the First Instance judgement against PALAZZOLO, which will be discussed in greater detail hereunder, conclusively states on page 179 that: "……it cannot be stated with certainty, taking into consideration the elements of proof available to the Court that the accused "was part" of the Mafia association "Cosa Nostra", nor that the latter had called on him to become a part thereof".

As stated, the judgment from the Appeal Court on the 11 July 2007 reached the opposite conclusion, where by "changing the fact"; the Court confirmed PALAZZOLO's definite participation in the Mafia association. (Annex no. 2)

In fact, the modus decidendi guiding the Appeal Court in Palermo in its amended approach to the judgement stems from the principle confirmed by the Supreme Court of Appeal in judgment no.14589 of the 20.03.2006, whereby the impossibility to proceed in a criminal action with regard to the part of the period of belonging to the association does not prevent the factual elements relating to this period being assessed as proof for the purposes of proving the association crime with regard to the residual period of permanence, with all this being offered up on the altar of the ill-conceived concept of "free conviction".

Now beyond any consideration regarding the inappropriate reference of the above precedent, whose

objective was the impossibility to proceed in a criminal action and not the acquittal because the fact did not exist as with the case in hand, a formula which notoriously discards the historic fact, it must be said in this forum that the question appears tangibly misleading, considering the proof that was examined by the Roman Court, and which the presiding Judge did not take cognisance of in his judgment.

Consequently, the Appeal Court in Palermo concluded by stating that: "the existence of such a role (that of money-laundering that Palazzolo was accused of) is not only discerned from the statements made by the state witnesses, but also from the outcome of the investigations in the so-called Pizza Connection (plea-bargaining judgement from the Court in Rome), ……Based on these elements then, we can confirm not only that Palazzolo formally belonged to the "Cosa Nostra", but that he had relationships at the highest possible level with the heads of the "Cosa Nostra", and played an extremely delicate and valuable role on their behalf (page 107 motivation).

The reference given from the above sentence in the judgement shows the Appeal Court's need to confirm that Palazzolo had been part of the "Cosa Nostra" from the eighties and that he continued to belong to the organisation up to 2006, because the elements of proof relating to his participation in the years subsequent to 1992 were found to be completely inconsistent, and would certainly not have justified the assertion of guilt for that crime.

By providing this motivation however, the Court in Palermo blatantly swept aside the judgment handing down the acquittal that would have excluded the existence of the crime of association against Palazzolo, thus creating an irreconcilable conflict between judgments that must be resolved by this Honourable Court, by ordering the repeal of the conviction judgment.

Moreover, attributing the procedural significance of a confirmation to the Roman plea-bargaining judgment, which was the outcome of the investigation into the so-called Pizza Connection, results from the lack of cognisance given to the procedural reality connected to the Roman judgement, which as stated previously falls under the vis actrativa of the Swiss judgement, given that the fact – crime is identical, and is in point of fact referred to in the court order from the Court of Rome on the 31.03.1993.

And in any case, the reference made to the elements in the so-called Pizza Connection investigation that forms the subject of the acquittal judgement handed down by the Court of Rome, appeared to have been done in a manner that was even more inappropriate, when one considers the permanent nature of the crime being contested against Palazzolo.

On this point, the judgment by the First Criminal Section of the Supreme Court of Appeal no. 3857 of 2004, which as stated came into context of the de libertate proceedings and was referred to by the Judges in Palermo, confirmed the principle according to which while the Sicilian Judges were permitted to assess the elements gathered and referring to the period prior to 1992 (namely those that were covered by the Roman judgement) as a frame of reference for the new conviction, these elements on their own would not be sufficient to validate the fumus of the crime, in the absence of more recent indicators.

More specifically, the Supreme Court stated: "We need to start from…… the uncontested and undisputed fact that Palazzolo was acquitted with the set phrase 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 regarding the "fact" of the accused's participation in the criminal association.

It is true however, as was duly observed by the Court of Review, that in order to formulate a framework of proof, it is possible to make reference to prior elements of proof should they be indicative of the accused's participation in a Mafia association in a subsequent period.

But, 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 fact, 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 …

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 can still be prosecuted as an independent crime. When, vice versa, an acquittal judgment is handed down, it is not conceivable to consider any form of permanence regarding criminal conduct that has been judicially excluded…. as the material element of the crime has been swept aside, and an unlawful situation that was deemed never to have existed cannot result in legal consequences that are damaging to the person being investigated (or accused)."

This judgement takes on special significance because it clarifies how a crime under article 416 bis of the Italian Criminal Code cannot be based on elements that refer to a previous period covered by an acquittal judgment issued in relation to the same criminal fact.

This conclusion stands both from a logical and systematic viewpoint, and in the light of the most recent judgments from the Supreme Court regarding the principle in relation to a crime under article 416 bis of the Italian Criminal Code, when a previous acquittal exists because the fact does not exist, it is inconceivable for criminal conduct that was excluded judicially to be permanent, unless the fact can be qualified as an independent crime, which is separate from the previous charge that has already become crystallised in the First Order judgement .

It is not by chance that in the body of the judgment, the Palermo Court makes a number of references (repeated, merely as a "frame of reference") to Palazzolo's past affiliation to "Cosa Nostra", based on the outcome of the investigations during the so-called Pizza Connection.

This reference constituted the basis on which the Palermo Court then argued the conviction handed out to Palazzolo: and in point of fact, this was the single episode of alleged hospitality offered by the accused to Bonomo and Gelardi, according to the statements given by the state witnesses that had not been examined by the Roman Court, which on their own would not have been in any way appropriate

to justify the handing down of a conviction.

In fact, the presiding Court attributed the same potential as a confirmation to the alleged membership of the Mafia association to this conduct that had been the subject of a specific trial, which was positioned during the eighties in terms of time, and which then continued up until the facts that constitute the subject of the conviction.

In other words, the (re-)examination of elements that had already been covered by a judgment relating to the accused's alleged participation in the "Cosa Nostra" constituted far more than a simple frame of reference for the Court in Palermo, taking on the effective role of a logical-factual irrevocable supposition in relation to the new charge.

In this regard, we should note the fault with this basic reasoning: as a logical antecedent to the conviction, the Court used circumstances – the abovementioned membership – with regard to which not only it should not have taken cognisance, but in which the accused had received an acquittal judgment from the Court in Rome with an irrevocable judgment! (the motivation for this judgement stated that "there were no elements of proof relating to the existence of association in a Mafia type organisation").

It is therefore apparent that despite the Palermo Judge's attempts to create some differentiation at least in terms of chronology, between the facts covered by the judgement and those that were subject to being examined by them, Palazzolo was convicted by the Palermo Judges for the same circumstances as those in previous Roman proceedings.

On closer examination therefore, the motivation for the conviction effectively constitutes a cover up, a kind of "lock-picking tool relating to the judgement", which was instrumental in reorganising the elements of proof already assessed by the acquittal judgment, and in this way violated the very incontrovertibleness that the judgment should be ensuring.

This modus operandi indicated above was made possible by way of two new elements of proof that were allegedly appropriate to show the perpetuation beyond 1992 of participation in the Mafia organisation, which the accused had allegedly belonged to in a time period prior to the judgment, namely during the 80's. (Page 112 judgment).

Of the two elements of proof used, only one of them effectively introduced a new thema probandum (hospitality offered to BONOMO and GELARDI); while according to the judgment, the other simply actually provided further confirmation of the relationship context between PALAZZOLO and PROVENZANO (state witness Giuffre's statement).

a) – The episode of hospitality offered to BONOMO and GELARDI from Partinico

The episode in question for the relevant judgment not only constituted conduct that referred to well beyond 1992, but rather a specific point in the charges ascribed to him (Page 63 motivation).

The judgement formally noted that both BONOMO and GELARDI are recorded as having finally left South Africa on the 21.05.1996, through the border post with NAMIBIA, using a Mercedes motor car, with the registration plate CJ81148, registered to the "Terre de Luc", in other words at a time period prior to the issuing of the precautionary warrants of arrest against the two Sicilians (29.5.1996).

And all the same, despite the subjectivity of the above date, the judgment held that the statement made by the Farm Manager HANS questioned during the hearing in Cape Town on the 01.01.2004, was significant on a probatory level, where it referred to an elderly man and a young couple being hosted

by PALAZZOLO for a few days (between 10 to 15 days). The guests were said to have occupied a cottage on the farm up until the day before the search was conducted on the 14.06.1996.

For the sake of completeness, it should be noted that the witness never confirmed the physical identify of the above guests by means of any photographs.

b) – The statements made by state witness ANTONINO GIUFFRE'

The statements made by GIUFFRE', who was considered to have been close to BERNARDO PROVENZANO, represent one of the most significant collaborations offered by state witnesses for the relevant judgement, given that GIUFFRE' had previously been placed at the top of the "Cosa Nostra" organisational structure.

This is certainly not the forum to again bring up the questions regarding the procedures used to introduce the state witness into the proceedings, which was in clear violation of the provision set out under Law 45/2001, which imposes the requirement on the person wanting to turn state witness to set out in an initial statement the facts of his collaboration; this within 180 days from him confirming his intention to turn state witness: in our case the initial statement dated 11.12.2002 omits any reference to the applicant, who was then alleged to be the cashier for the "Cosa Nostra"'s boss of all bosses.

But all the same, the above legal aspect constitutes an important aspect when reviewing judgement, since it will involve checking on whether the previously mentioned element of proof can stand up to the novum.

In actual fact the statements made by GIUFFRE' constituted an important junction for the presiding Judges in the proceedings against VITO ROBERTO PALAZZOLO, as this referred to elements of proof that were unknown to the Court of Rome in its acquittal judgment.

It will certainly not escape the Review Court how the same premise set out by the presiding Court further revealed the "steps" taken in the in peius review of the acquittal judgment.

At the time of his arrest, ANTONINO GIUFFRE' was the head of the Caccamo district, and in very close contract with BERNANDO PROVENZANO; there was a deep seated friendship between the two Mafia members.

But then it should be stated immediately that the state witness had never met VITO ROBERTO PALAZZOLO and that the information that he passed on had been learnt from PROVENZANO himself and from LEONARDO GRECO and NINO GARDANO, men that were allegedly very close to PALAZZOLO, (page 83 relevant Court judgment).

In the course of his statement ANTONINO GIUFFRE' has stated how PALAZZOLO had "joined up" during the eighties on Provenzano and Riina's wishes, so that they could extricate him from Badalamenti's influence (at the time, "boss" in the area and sworn enemy of the Corleone family), and they made him a "man of honour" in a different area to Cinisi, namely in the Partinico district through Nenè Geraci (head of the Partinico family), (page 82 of Palermo Court of Appeal judgment dated 11.07.2007).

In summary, according to the cognitive judgment, GIUFFRE's statements originating from an intrinsically reliable person that was in constant contact with PROVENZANO, found confirmation not only in some telephone interceptions, but also in the Swiss judgment in which PALAZZOLO was accused on trafficking in narcotics in the context of the proceedings known as the "Pizza Connection"

(in this regard, one can see the "confusion" between the Roman judgement, which was the epilogue of the Pizza Connection investigation and the one handed down from Lugano).

PAR.3: THE LEGAL BASIS FOR THE REVIEW APPLICATION

The violation of the ne bis in idem principle (art. 4 Protocol no. 7 European Convention on Human Rights and article 649 of the Italian Criminal Procedure Code)

This review application is positioned in the paradigm referred to under headings a) and c) of article 630 of the Italian Criminal Procedure Code, which respectively makes provision for the assumption of conflict in judgments – when the facts confirmed in a judgment cannot be reconciled with those placed at the basis of another judgment that has become irrevocable – and the discovery of new proof that differs from what has already been examined showing that the accused must be acquitted in accordance with article 631 of the Italian Criminal Procedure Code.

With regard to the provisions under heading a) of article 630 of the Italian Criminal Procedure Code, the historic fact, intended as the judicial outcome that the Court in Rome judgment reached, in the sense of the fact not existing is irreconcilable with the judicial outcome reached on the other hand by the Appeal Court in Palermo, which was the subject of review, in the sense of the same historic fact existing.

As is known, the provisions under article 631 of the Italian Criminal Procedure Code states that the elements based on which the review is being requested (failure to comply resulting in this being inadmissible), must be such that if they verified, would show that the accused must be acquitted in accordance with articles 529, 530 and 531 of the Italian Criminal Procedure Code.

Now it appears evident how the letter of the Law provides for the institution of a review as an instrument directed not only at demonstrating the non existence of the historic fact (subject of the conviction), but also demonstrating the lack of the general supposition for the judicial proceedings, namely that it is impossible to bring about a criminal action or it is impossible to pursue it.

In fact the combined provisions under articles 529 and 649 of the Italian Criminal Procedure Code explicitly referred to under article 631 of the Italian Criminal Procedure Code, easily led to the extension of the acquittal institution to those specific vitia in procedendo, associated with the rules that govern the execution of criminal action, the violation of which has tangibly conditioned the outcome of the case, by combining a "substantial prejudice" to the invalidity of the proceedings.

Legal argument in this sense effectively finds its basis in the European Convention on Human Rights, more specifically under article 4 of the Added Protocol to the above European Convention, relating to the bis in idem principle – which expressly allows for the reopening of proceedings in the case where a «fundamental defect in the previous proceedings» is such that it can invalidate the intervening judgment.

So that it appears obvious to consider that the purpose of the principle expressed in the Additional Protocol to the European Human Right's Convention is to direct Member States in making provision in their respective judicial proceedings for specific Review Laws for cases in which the conviction judgment was determined by a fundamental defect in the proceedings, in other words for those vitia in procedendo that are relevant in establishing the decision.

Besides which, it cannot be denied that an irrevocable judgement, which in theory arrives at a result

corresponding to the truth, by way of a non equitable process because it does not comply with formal law as it does not constitute an unjust judicial decision, should without doubt be represented in the legislation as an invalid pronouncement.

Now then independently of the value to assign to the provisions of agreement-based International Law, in respect of which as is well known, the principle dictated by article 10 of the Constitution does not find application regarding the fact that Constitutional Legislation should automatically be adapted, there can however be no doubt that making the principles of "due process" part of the Constitution, represents not only an individual guarantee, but also a dialogue methodology to search for the truth.

And in fact, in accordance with this provision, judgment no. 348 handed down by the Constitutional Court on 24.10.2007 confirmed that the new text of article 117 of the Constitution – which as is known introduced a new section in which it established that the exercising of legislative authority by the State and Regions, must be exercised respecting the Constitution, the regulations deriving from European Community Law and international obligations – makes the greater authority of the ECHR regulations irrefutable in relation to subsequent ordinary laws, and the possible conflicts generating questions of constitutional legitimacy.

But in the case in point, the question goes well beyond this and as mentioned previously, besides taking on vitia in procedendo also and especially takes on the so-called vitia in iudicando, where the systematic violation has resulted in an actual disease that has contaminated the entire judicial proceedings, throwing a sinister light on them.

In effect, the novum that gives rise and forms the basis for the present review application is based on the verification of an historical fact, and not merely a quaestio juris that is obviously not provided for under article 629 of the Italian Criminal Procedure Code: among the cases for the admissibility of the review in terms of article 631 of the Italian Criminal Procedure Code, the express provision states the novum should leads to the acquittal of the accused in accordance with article 529 of the Italian Criminal Procedure Code, thus presenting us with further considerations.

On closer examination, besides the obvious correlation with the principle set out under article 111 of the Constitution, the ratio of the regulatory provisions associated with the bis in idem principle is directed at the guaranteeing one of the basic Human Rights, which is protected by the European Convention on Human Rights, and other sources of International agreement-based Law.

Furthermore, it cannot escape notice that there is a direct causal link between the violation of the regulations on proceedings relating to exercising a criminal action and the decision of a conviction.

In the Criminal Procedure Code, a matter that has been irrevocably judged embodies the basic and irrefutable condition for safeguarding the incontrovertible nature of a judicial examination.

However, to be completely and effectively protected, it is necessary for the above judicial Authorities to be corroborated and supported by a legal institution that is capable of ensuring and preserving the essential inviolable nature of the final court judgement, even outside the proceedings a quo.

The indisputable nature of the judgment would in fact be rendered totally futile, if subsequently the same fact for which the accused was convicted or acquitted with an irrevocable sentence, could become the subject of additional criminal proceedings, and thus subjected to examination by a different Judge.

Therefore in order to safeguard the effective and tangible incontrovertible nature of the criminal

dictum, the irrevocable nature of the judgement is not sufficient, but it becomes necessary to prevent a new judgement de eadem re: the basic thing that was judged provides directly for this in typically being a negative constraint, and is identified in the ne bis in idem principle that finds expression (as is well known) in the provisions under article 649 of the Italian Criminal Procedure Code.

Besides the subjective presupposition regarding the identity of the person that was judged and the one subjected to new proceedings, the effective preclusion of the basic judgement is based on the objective presupposition represented by the identity of the fact that has already been decided by an irrevocable judgment and the fact that the new criminal proceedings are being initiated for.

As was the case when the repealed Code was valid, the question of effectively identifying the concept of "fact" in terms of section 1 of article 649 of the Italian Criminal Procedure Code, which had concerned jurisprudence in attempting to define the semantics of the concept.

In point of fact, the provision under article 649 of the Italian Criminal Procedure Code stipulates that the bis in idem principle finds application in relation to the same fact, even if this is considered by another name: the reason underlying the ne bis in idem principle is represented by the requirement that the person is not subjected theoretically speaking, to unlimited prosecution, and this can only be avoided when the "fact" in its accepted meaning, is not subordinated to any transformations and/or inflections determined by judicial opinions.

So as not to run the risk of falling into digressions relating to jurisprudence and ethics on the constitutionality of the ne bis in dem principle, it must be said that the inviolable nature of the criminal judgment cannot simply be considered a principle of the procedural system directed at ensuring the requirement of judicial certainty.

Rather it involves an actual Human Right, which has found extensive and specific recognition not only in article 14 of the International Covenant for Civil and Political Rights, but also in article 4 of Protocol no.7 of the European Convention on Human Rights, which under section 1 states that …..

No one shall be tried or punished in criminal proceedings for an offence for which they have already been conclusively acquitted or convicted with a final sentence in accordance with the Law and criminal procedures of said State.

And as proof of the importance afforded to the de quo principle in the context of Human Rights, the European Convention sanctioned a system for protecting this right without any time limitations, and this regardless of the manner in which National Legislation conceptualises the "judged thing" in regulatory terms.

And in point of fact, section 2 of the same article 4 stipulates that ……..The provisions of the previous paragraph do not prevent the reopening of proceedings, in accordance with the relevant Country's Laws and Criminal Procedure Code, if new facts that have emerged or new findings or a fundamental defect in the previous proceedings are such that they can render the intervening judgment invalid.

No setting aside of this article is permitted in terms of article 15 of the Convention.

Now beyond any other consideration on the standing of these provisions under agreement -based International Law, which inevitably conditions national judgements, it will only be said as confirmed by the Bench in decision no. 388 of 22.10.1999 that independently of the value that can be attributed to agreement-based regulations, it must be noted that the human rights guaranteed by international conventions find expression and no less guarantee in the Constitution.

And yet again, regarding the significance that this right has in the context of International Law, it should be remembered that in a subsequent period the ne bis in idem principle was specifically included in the Convention for the application of the Schengen Agreement, which was signed on the 10 June 1990 and ratified by Italy under Law no.388 of 30 September 1993. This Convention – which became effective on the 27 October 1997 – sanctions the prohibition of a second judgment for the same fact and in relation to the same person in all signatory Countries (article 54), and also governs the consequences during the execution stage.

The intervention of the European Judicial Authorities has been especially provident on the very content and legal meaning of the ne bis in idem principle.

And in fact, Section II of the European Court of Justice in the criminal proceedings under case C-288/05 on the 18 July 2007 in the case of Juurgen Kretzinger, on the ne bis in idem principle in relation to criminal proceedings in different contracting Member States in the application of article 54 of the Schengen Agreement, stated that the sole criteria for the application of article 54 is that of identifying the material facts, intended as the series of facts that are inseparably linked among themselves, an identity that remains indifferent to the legal qualification given to the conduct in a national context. According to the Court, from this criteria it follows that it is irrelevant that in the criminal proceedings initiated in two contracting States that the charges against Mr Kretzinger referred to the violations of different customs, tax and banking laws: and in fact the Court stated that in the evaluation of the identity of the facts according to article 54 CAAS the judicial interests safeguarded have no relevance, beyond their legal qualification."

And more recently, the European Court of Human Rights in the noted judgment dated 10.02.2009 in the case of ZOLOTUKHIN v/ RUSSIA, where it was stated that after having analysed the concept of the same fact for the purposes of forbidding the bis in idem, provided for by article 4 of Protocol no.7, and after stating that in the past it had adopted different approaches, and now placed the emphasis on the identity of the facts, independently of their judicial definition, accepting the theory that the identity could also be deduced from different crimes, or on the existence of mutual elements that were common to different crimes, the Court considered it appropriate to provide a clear definition of what should be understood by the "same offence" for the purposes of the Convention. It clarified that the guarantee provided by the above article was created to prohibit the prosecution or trial of a person for the second time for a crime that had as its subject the same facts, or facts that were "substantially" the same as the ones he had already been judged on.

PAR. 4: THE NEW FACTS RELEVANT FOR THE PURPOSES OF THE REVIEW ELEMENTA FACTI NOVITER COGNITA

4.1 The procedural records and elements of proof from the acquittal judgment of the Court of Rome

As already indicated, VITO ROBERTO PALAZZOLO was charged in the context of proceedings that were heard before the V Criminal Section of the Court in Rome, together with OLIVIERO TOGNOLI and others: they were standing on charges, among others, for the crime under article 416 bis of the Italian Criminal Code and the crime under articles 71, 74 and 75 of Law no. 685 of 22.12.1975.

More specifically, in the review handed down by the Investigating Judge GALASSO on 06.10.1986, under section 2) he contested the applicant's participation in a Mafia type association to commit a

crime ex art. 416 bis of the Italian Criminal Code, which had been described under section 1) as having the purpose of …….organising the trafficking of narcotics between Italy and the USA…with the revenue from this business coming back into Italy through Switzerland, making use of PALAZZOLO's cooperation among others …….

Fact committed in Rome, Milan, Palermo, Naples, New York and other locations in Italy and abroad. (Annex no. 6)

As stated above, the proceedings concluded for PALAZZOLO with judgment handed down on the 28.03.1992 applying the sentence that PALAZZOLO had requested in terms of art. 444 of the Italian Criminal Procedure Code, which was restricted to the crime relating to the regulations on narcotics: the same judgment on the other hand, ordered the applicant's acquittal, in terms of article 129 of the Italian Criminal Procedure Code, with regard to the crime under article 416 bis of the Italian Civil Code because the fact did not exist. (Annex no. 5)

In fact, the failed cognisance given to the Roman proceedings on a factual and judicial level, which now constitutes the novum of the review application, was a determining factor with regard to the presiding Judges, influencing the guilty judgement.

Due to the importance that it has in identifying the historical fact, this compendium of probatory elements is now suited to altering that guilty judgment formulated by the presiding Judges against PALAZZOLO for the crime of Mafia association and therefore removing the judgment.

But in order to better understand the Court's acquittal judgment it is necessary to set out a summarised listing of the judicial facts, and more specifically the matter relating to the lack of jurisdiction that characterised those proceedings.

The question, which was completely ignored by the presiding Court in the conviction judgment that concerns us, stems from a simple procedural fact, and takes on a direct significance with the reason on which this review application is based, namely the impossibility of exercising a criminal action due to the constraints of the previous acquittal judgment.

Nonetheless, in the context of the above series of criminal proceedings, on the 17.07.1989, the Court in Rome raised the question with the Supreme Court of Appeal regarding the conflict in jurisdiction with the Court in Palermo relating to the position of all the accused (TOGNOLI AND OTHERS), among whom was also today's applicant. (Annex no. 7)

In short, following the statements made by state witness TOMMASO BUSCETTA, the Investigating Judge in Palermo issued warrants for the arrest (29.09.1984) of 366 people, among whom were also included LEONARDO GRECO, SALVATORE GRECO, ANTONINO ROTOLO, who had already been investigated by the Attorney General in Rome, and which was followed up on the 11.06.1985 with a similar warrant of arrest being issued against PALAZZOLO. (Annex 16)

An identical initiative had been taken by the Investigating Judge in Rome, who on the 16.4.1984 issued another warrant of arrest again against PALAZZOLO, within the context of a more extensive precautionary arrest action that had also affected LEONARDO GRECO, ANTONINO ROTOLO and ANTONIO VENTIMIGLIA. (Annex no. 17)

In the meantime, with an order dated 8.11.1985, the Investigating Judge in Palermo issued the well-known indictment regarding 707 accused ("maxi proceedings" against the Palermo Mafia).

It should be noted that already in the past, with judgment dated 27.5.1986, the Supreme Court of

Appeal had already declared the conflict of jurisdiction raised by today's applicant as being inadmissible, upholding that… he was accused in Rome as a member of a general association that had as its objective specifically the trafficking of heroin with the USA, and on the other hand in the proceedings in Palermo PALAZZOLO was being tried as a participant in a specific association called the "Cosa Nostra".

This was sufficient for the Supreme Court to reach a decision confirming the ontological difference between the two criminal associations.

Nonetheless, according to the Court of Rome's order that (further) reported the conflict in jurisdiction, the fact-crime that was contested against the accused was identical, and this identity was distinguished by the accused's involvement in the same association that had as its purpose the conducting of extensive trafficking of drugs, which were imported and refined in Sicily and sent to the United States, with the profits laundered into investments and bank deposits in various countries, but especially Switzerland, with the duplication of proceedings in the various courts creating the conflict in jurisdiction.

So it was that, the Supreme Court of Appeal with judgment handed down by the First Section on the 9.1.1990 and contrary to the decisions that had been adopted previously, decided the conflict of jurisdiction that had been reported, recognising that the Court in Rome had jurisdiction for the position among others of VITO ROBERTO PALAZZOLO for the crimes under article 416 bis of the Italian Criminal Code and article 75 of Law 675/75, thus depriving the Authorities in Palermo of any jurisdiction.

With regard to the above criminal matters, the Supreme Court effectively recognised the "identical nature of the facts" being contested against the accused by the Judicial Authorities in Palermo and Rome.

According to the presiding Judges, in the case in question, the attention given to the res judicanda showed the identity of the facts that formed the subject of the charge (intended as conduct that was punishable by an event that was linked to it by cause): specifically…. the consistency of the fact-crime that forms the subject of the judgment (intended as conduct, and the relationship between the cause and event) is resolved in having established, organised and managed, or in having participated in a single organisation articulated in association to commit a crime, which had as its objective international drug trafficking between countries in the east, Sicily and the USA, and the laundering of the relevant profits.

Thus, on the very basis of the above decision the Investigating Judge in Palermo, Dr. GIOACCHINO NATOLI, on the 07.11.1990 handed down a judgment that it lacked jurisdiction against VITO ROBERTO PALAZZOLO, ANTONIO VENTIMIGLIA and OLIVIERO TOGNOLI, whereby he took note of the perfect correlation between the Mafia Association being contested in Palermo (in the so-called maxi proceedings against the Mafia), and the association that formed the subject of the judgment pending at the Court in Rome, referring the matter to the latter as it fell to their jurisdiction. (Annex no. 9)

On the basis of these complex procedural steps, the Court in Rome thus arrived at a decision on the 28.03.1992 against TOGNOLI, DELLA TORRE and CAVALLARO (for Palazzolo, as stated, the proceedings concluded on the same day, with a judgment that was formally different, and which

applied the requested penalty in the matter of the narcotics and acquitted him on the charge of Mafia association). (Annex no. 4)

In the above judgment, it was confirmed that the Mafia association being contended against the accused was the same as what had been ascertained in an irrevocable manner, after the judgment of the Supreme Court of Appeal on the 30.01.1992, with the name of "Cosa Nostra" in the well-publicised "maxi-proceedings" in Palermo, (page 10 motivation).

Now, with no great effort, an examination of the single crime being contested in the context of these last proceedings easily shows the failure to examine the factual and judicial significance of the constraints posed by the judgment in the case of the conviction for Mafia association handed down against VITO ROBERTO PALAZZOLO by the Appeal Court in Palermo on the 11.07.2007.

And in fact, on examining the judgment handed down by Judge NATOLI, among the people associated with the criminal organisation called the "Cosa Nostra", which was the subject of the charge in those proceedings, the following were also listed, among others, SALVATORE RIINA, BERNARDO PROVENZANO, NENE' GERACI, LEONARDO GRECO, MANNOIA MARINO, ANTONINO MADONIA, SALVATORE ROTOLO, GIUSEPPE and GIOVANNI CARUANA and PASQUALE CUNTRERA.

It is obvious that this involves the same people, which according to the conviction PALAZZOLO had "joined up with" in the Mafia association or had had relations with in continuation.

Essentially, for his alleged membership of the same criminal organisation during the eighties called the "Cosa Nostra" (similarly composed in subjective terms), PALAZZOLO was firstly acquitted by the Court because the fact did not exist, and then inexplicably and illogically convicted by the Appeal Court in Palermo in 2007, which referenced the very membership of the eighties: two "legal truths" for the same fact.

This last judicial outcome was determined as stated above, by the failure to give cognisance to the previous proceedings relating to the Roman judgment: the surfacing of this that today forms the novum of the review, clearly discomposes the judgment, making it completely irreconcilable with the acquittal dictum.

TO THE MERIT of the acquittal judgment from the Court in Rome, as already indicated previously, the physiological development of the criminal action exercised by the Prosecution in Palermo against VITO ROBERTO PALAZZOLO for the crime under article 416 bis of the Italian Criminal Code in the context of the so-called "maxi – proceedings" against the Sicilian Mafia, showed that besides assessing the same probatory compendium, the two proceedings had the same res iudicanda .

For the purposes of this judgment, the probatory novum of the statement made by the state witness TOMMASO BUSCETTA takes on special significance. His role and importance in the top levels of the "Cosa Nostra" organisation are superfluous to deal with in this forum.

TOMMASO BUSCETTA was the co-accused of VITO ROBERTO PALAZZOLO in the famous and historic "maxi proceedings" held against the Palermo Mafia, together with other high ranking members of the Sicilian Mafia, amongst who were SALVATORE RIINA, BERNARDO PROVENZANO, GIOVANNI BRUSCA, MICHELE GRECO, LEONARDO, GERACI and many others.

Well then, it was the very statement given by BUSCETTA to Dr GIOVANNI FALCONE that

allowed for the preparation of the proceedings in Palermo, in which PALAZZOLO was struck by a warrant for his arrest issued by the Investigating Judges FALCONE, BORSELLINO and DI LELLO.
Besides the crime of Mafia association, specific episodes such as the trafficking of enormous quantities of narcotics, currency and firearms were being contested against the accused.
TOMMASO BUSCETTA gave extensive information, providing new details on the trafficking of narcotics with the U.S.A and on the illegal activities of ANTONINO ROTOLO.
This refers to the same ROTOLO that linked PALAZZOLO to the proceedings, and whose relationship caused the break with SALVATORE RIINA, as was referred by the state witness GIOVANNI BRUSCA.
Well now, when questioned by the Investigating Judge GIOVANNI FALCONE on the 21.07.1984 and thereafter, BUSCETTA gave detailed descriptions on the organisational structure of the Mafia families from Partinico, Palermo, Cinisi etc, and among these he never indicated VITO ROBERTO PALAZZOLO as a man of honour of one of these families, pages 17 and following. (Annex 12)
This plainly involves an important element of negation relating to the applicant's alleged participation in the Partinico Mafia association, which at the time was controlled by the same GERACI, who was his co-accused in the Palermo proceedings.
It is plainly evident how the detailed description of the Mafia families, the narcotics trafficking with the USA, the financial relationship with Switzerland, where the role of ROTOLO was highly detailed, all constitute significant proof of the negative cognisance of VITO ROBERTO PALAZZOLO.
A conclusion that on closer examination conflicts with the alleged importance of PALAZZOLO in the context of the "Cosa Nostra" based on his expertise in international finance: the very top ranking role covered by BUSCETTA within the Mafia organisation reasonably makes it impossible to believe that this person could not have known VITO ROBERTO PALAZZOLO, who in turn was alleged to be a high ranking member of the organisation.
It appears clear then how the statements made by TOMMASO BUSCETTA constitute an important element supporting the confirmed non involvement of PALAZZOLO in the Mafia, which had resulted in the acquittal from the Roman Court, a judgment that has remained unexplained by the judgment that this review is being sought against.
4.2 – The statements made by Giovanni Brusca
Within the framework of the relations between RIINA, PROVENZANO and ROTOLO, the statements made by GIOVANNI BRUSCA take on a significant role. These were examined by the judgment that this review is being sought against, which are now "irreparably linked" with the statements made by BUSCETTA, which reported on a specific time regarding the relations between PALAZZOLO and the organisation……when RIINA was there he looked after the relationship……I know that relations were interrupted due to a series of problems and especially because of this fact of ROTOLO and PALAZZOLO.
This obviously refers to an element of proof that in the context of being complementary to the novum that this review application must be assessed under in terms of the provisions under heading c) of article 629 of the Italian Criminal Procedure Code, referring the thema decidendum back to the status prior to the acquittal judgment of 1992.

4.3 – The impossibility of exercising the criminal action ab origine.

In the light of the new probatory elements emerging, the significance of the acquittal judgment from the Court in Rome inevitably leads to the question, which was already brought up in the introduction of not being able to proceed with a criminal action, which at the time had been exercised by the Prosecution in Palermo against VITO ROBERTO PALAZZOLO.

And in point of fact, the criminal action brought by the Prosecution in Palermo that resulted in the conviction in question should not have proceeded and therefore been exercised, as the same Office had already "consummated its powers".

The reference is to the proceedings under no. 2289/1982 R.G. Investigating Office in Palermo, where VITO ROBERTO PALAZZOLO received a warrant of arrest on the 11.06.1985 for the crime under article 416 bis of the Italian Criminal Code: that criminal action finally closes off and is consummated in the judgment handed down by the Supreme Appeal Court on the 09.01.1990, which in deciding the conflict of jurisdiction that had been reported by the Court in Rome, ordered the Court in Rome to have jurisdiction on the presupposition regarding the identity of the facts being contested.

As already stated previously, this review application is positioned within the context of the provisions under heading c) of article 630 of the Italian Criminal Procedure Code, whereby the discovery of new proof must show that the accused should be acquitted in accordance with article 631 of the Italian Criminal Procedure Code, which in turn comes out, among others, to the acquittal formula under article 529 of the Italian Criminal Procedure Code.

Well then, the explicit reference to the regulation under article 529 of the Italian Criminal Procedure Code that governs the judgment on the inability to proceed, imposes an analysis regarding its legal extent: in actual fact, the above regulation refers to the judgment of being unable to proceed that together with the acquittal judgment governed by the next article, falls under the broadest concept of an exoneration judgment.

The tangible practise of the provision under article 529 of the Italian Criminal Procedure Code is therefore not limited, according to judgment no. 27 of 1995 handed down by the Constitutional Court, to cases of failure to meet the conditions for proceeding expressly stipulated under Heading III of Book V of the Italian Criminal Procedure Code, but can reasonably be extended to include all the scenarios where for the same fact, the criminal action should not have been initiated under separate proceedings, "because another had already been started" (On this point, see Constitutional Court judgment no. 318 of 12 July 2001).

Given the status of the principles of legitimacy, there is no doubt how the matrix of the prohibition posed by the bis in idem should be identified under the category of procedural preclusion, which is well established in terms of both civil and criminal proceedings.

But, before being explained as the extreme limit marked off by the judgment, the preclusion releases the function from detailing the individual steps of the proceeding's progression and to set the timing and way in which powers are exercised by the parties and the Judge, which that progression depends upon, so that the preclusion represents the control prepared by the Legislation to ensure the functioning of the proceedings in relation to the distinctive formats it may take on resulting from the legislator's choices.

In point of fact, the proceedings as an ordered sequence of actions formulated according to specific

chronological order, activities, stages and levels, is characterised legally in accordance with set criteria regarding logical congruence and economies in proceedings, in view of reaching the final outcome, in which a balance can be achieved between the requirements of justice, certainty and swiftness.

This setting in terms of meaning, which has also been endorsed by procedural- criminal jurisprudence, makes it obvious how the preclusion corresponds to an institution that is mutually essential to the very concept of the proceedings, which cannot be conceived in any way other than as an ordered series of actions that are coordinated among themselves in terms of the Law, with each of these actions being conditioned by those that have preceded it – within the context of the series of the single case that is subsequently being formulated and which in turn conditions those that follow according to precise functional inter-relationships.

In fact, it is clearly evident how the institution of preclusion, pertinent to the procedural rules, is intrinsically qualified by the fact that it manifests in different formats, which have in common the result of constituting an obstruction to the Judge of the parties exercising a power in relation to the failure to comply, with the procedures stipulated by procedural laws, or the incompatibility of an action that was previous carried out, or the same power having been exercised previously.

In this last case, preclusion is normally considered a consequence of the power having being consummated.

Essentially, unassailable logic and systematic considerations compel us to consider that the same Prosecutor's office that had exercised a criminal action in relation to a specific charge, cannot subsequently promote a new action against the same person for the same fact, for the simple reason that with the objective and subjective terms of the review action remaining unchanged, the Prosecution's power to act has been conclusively used up.

Following from this, with these conditions existing, the constraint of legality inherent in the mandatory nature of criminal action in terms of article 112 of the Constitution, not only renders the criminal action irrevocable, but also unrepeatable, at the hand of the same Prosecution Office.

The principle, expressed in the traditional maxim "bis de eadem re ne sit actio", represents the corollary of the characteristics of rationality and order in the process that the above preclusion – consummation is ordained to protect, with it remaining perfectly clear that a procedural system that leaves it to the discretion of the same Prosecution Office to possibly repeat a criminal action against the same person for the same fact, would be moving in a totally contradictory and dissonant direction, lying asymmetrically in relation to the principles of legality and would not be compatible with the salient aspects of "due process" set out by article 111 of the Constitution, as well as by the European Convention on Human Rights.

Well now, based on these semantics, it is perfectly clear that there has been a very real "abuse of the process" in the case in point against PALAZZOLO, who has been on the receiving end of a criminal action that should not have been undertaken.

It now remains to be seen with regards to what is relevant to this forum, what type of reaction the procedural code makes provision for in a case of a criminal action being exercised in the face of a case of the criminal action being unable to proceed.

In actual fact, the regulation under the combined provisions of articles 529 and 649 of the Italian Criminal Procedure Code makes explicit reference to acquitting the accused when ….the criminal

action could not be exercised or could not be pursued …….

This obviously involves two specific segments of the same prohibition to exercise a criminal action that operates on several levels: it is quite evident in fact that if the legislator had wanted to join up the two scenarios of procedural circumstances, he would certainly not have specified the different procedural stages in which the prohibition occurs.

It is therefore abundantly clear that we are faced here with a disqualification of the criminal action that the legislator had intended to make explicit as a guarantee that the person that has already been judged would not be prosecuted.

The consummation of such a circumstance must therefore be seen as a genetic default of the process, which because of it having being compromised ab origine with the violation of the above prohibition, the eventual outcome can only result in an abnormal provision, lying outside of the Code's paradigm.

Besides which, even if one wanted to argue differently, a process initiated in this way, in violation of the prohibition mentioned previously, would give rise to a kind of process that was open to possible contingencies and "opportunistic elements of proof".

But a procedural assumption of this kind would fatally collide not only with the rules of due process under article 111 of the Constitution and the provisions under articles 529 and 649 of the Italian Criminal Procedure Code, but also with the prohibition expressed in the bis in idem sanctioned by the European Convention on Human Rights.

Essentially in the face of a violation in the prosecution of someone that has already been judged for the same fact, the reaction from the procedural Code cannot be that of invalidating every subsequent provision in relation to which the declaratory judgment, for now that of an acquittal ex article 529 of the Italian Criminal Procedure Code, has the characteristic of an ex tunc verification.

To argue differently in the sense of allowing for possible indemnity in the absence of the genetic presupposition that generates the criminal action would result in the inadmissible conclusion that the provisions under the Code were pointless.

The judicial analysis of the procedural preclusion that has been attempted imposes a final consideration that relates to the specific fact that is under contention, namely the one relating to the alleged hospitality provided in South Africa to two Sicilians BONOMO and GELARDI.

This episode effectively constitutes the only element of newness in contesting the crime, laying the foundation for the criminal action, without which the crime being contested would be reduced to a mere duplication of the what had been contested in the Roman acquittal judgment, which notably seems to be superimposed on the judgment under examination.

Now then, putting aside the fact that at the time of the supposed hospitality at PALAZZOLO 's house, BONOMO and GELARDI had never been identified as Mafia members; the episode that was being contested, in having being committed abroad already posed obvious problems of whether one should have proceeded in terms of article 9 of the Italian Criminal Code

This obviously involves the point of closure on the question relating to the impossibility of promoting a criminal action that determined the conviction judgment that is being reviewed: the preclusion deriving from article 9 of the Italian Criminal Code regarding the specific episode being contested reverts the episode to the original status of the Roman contention, where the proceedings reached an acquittal decision due to the non existence of the fact.

It is obvious that the acquittal judgment was by-passed, creating serious prejudice to the rights of the accused, who was then subjected to another criminal proceeding despite the explicit prohibition, as well as the prohibition arising from the International Convention referred to previously and article 649 of the Italian Criminal Procedure Code.

Now, in the light of the novum, it is patently clear that there is an irreconcilable conflict between the judgments formulated against Palazzolo and, specifically, between the acquittal judgment handed down by the Court in Rome on 28 March 1992 and the conviction judgment of the Appeal Court of Palermo 11 July 2007, which while partially reformulating the judgment dated 05 June 2006, convicted PALAZZOLO for complicity in committing a crime in a Mafia type association.

A result such as this was only made possible due to the mistaken cognisance of the fact, namely the legal truth confirmed by the Roman decision.

ELEMENTA FACTI NOVITER PRODUCTA

4.4 – The statements of GIUSEPPE GELARDI

According to the judgment, GELARDI GIUSEPPE was the person to whom PALAZZOLO allegedly offered hospitality while he was a fugitive from justice.

In point of fact, on being heard on 23.04.2010 in terms of article 391 bis of the Italian Criminal Procedure Code, according to the formats under article 210 of the Italian Criminal Procedure Code, in the presence of his defence Attorney MARASA', Gelardi stated that he had been convicted to six years imprisonment for the crime under article 416 bis of the Italian Criminal Procedure Code with judgment handed down by the Court of Palermo no. 717 of 09.07.1999, which was confirmed by the Appeal Court in Palermo on 7.07.2000.

With regard to his visit to South Africa, GELARDI a wine merchant referred that he had been to South Africa during the spring of 1996 with the purpose of investigating the South Africa wine market, which was considered an interesting option at the time, and that he had met VITO ROBERTO PALAZZOLO, the owner of the company LA TERRE DE LUC, a company that PALAZZOLO had intentions of selling.

Given that GELARDI considered the prospective purchase an interesting option, he began doing a check on the local market as well as the company's financial standing; GELARDI then referred that once he was joined by his wife, he left South Africa for a holiday in Namibia, where he stayed at a prominent residential hotel in Windhoek.

GELARDI referred that he did not return to South Africa because while he was staying in Namibia he learnt that a search had been conducted on PALAZZOLO's farm; Gelardi then left Namibia for the Ivory Coast on a scheduled flight with a stopover in London. It was only once in the Ivory Coast that GELARDI learnt that there was effectively a warrant of arrest issued against him, and he consequently appointed a defence attorney while he was in that country.

And further, the deponent excluded ever having had other relations with PALAZZOLO besides those already indicated above, specifying that he had entered and had left South Africa on his own passport, and that when he was arrested, his driver's licence issued in the Ivory Coast, his residence permit for the Ivory Coast, the application for his residence permit and the certificate of residence for the Ivory Coast were all confiscated.

Well now, there can be no doubt that the principle by which elements of proof are assumed by the defence in the context of defence investigations, in accordance with the regulations under articles 319 and following of the Italian Criminal Procedure Code and the provisions set out in the above, have the same judicial merit as those assumed by the Prosecution.

Besides which, we run the risk of stating the obvious with regard to the accusatory formulation of the customary code, which is inspired by the very principles of equality between the Prosecution and the Defence and by "due process": in point of fact, the defence's activity is set out by the legislator as an activity that is independent and runs parallel to that of the Prosecution, affording it procedural merit that legitimises the examination of elements collected for the purposes of the Judge's decision (article 391 octies sections 2 and 3), thus establishing the use of declaratory proof that has been collected by the defence in terms of articles 500, 512 and 513 of the Italian Criminal Procedure Code, and even in specific cases, transcripts from hearings included into the file (391 decies sections 2 and 3).

Therefore, in the so-called rescinding stage, directed at testing the admissibility of the review application, the prognostic examination carried out by the Review Judge is done only on the potential of the new elements of proof to remove the judgment, with an analysis on their reliability excluded: there are varying views on this point from jurisprudence, while a reading of the authoritative source stating that …for the purposes of deciding admissibility…. even …. defence investigation documentation carried out in accordance with article 38 of the provisions under the Criminal Procedure Code is considered appropriate …… Supreme Court of Appeal, Section V no. 1976 of 22.4.1997 Cavazza, see also on the abstract suitability of defence investigations to form a basis for the review, the Supreme Court of Appeal 4562/03 Drozdzik, 40194/2007 Lazzari.

In the case in question, the statements made by GIUSEPPE GELARDI take on an important significance in managing the conviction judgment that the Court arrived at: the Appeal Court in Palermo based its conviction regarding the appropriateness of the episode of the hospitality provided by PALAZZOLO to GELARDI and BONOMO, as indicated, to prove that the perpetuation of the association membership on the part of the accused.

4.5 – The investigations conducted at the Ministry of the Interior of the Republic of Namibia. (Annex no. 14)

The statement made by GIUSEPPE GELARDI finds irrefutable confirmation in the customs sheet signed by Gelardi, as well as the one signed by his father-in-law GIOVANNI BONOMO, held at the Ministry of the Interior's offices of the Republic of Namibia at Windhoek airport, where they acknowledge their departure on the 12.07.1996 on flight 681.

The documentation acquired as an authenticated copy from the Ministry of the Interior in Namibia is totally incompatible with the statements made by the presiding Judges on page 74 of the judgment, according to whom… it seems quite plausible that after the precautionary arrest warrant against BONOMO and GELARDI was issued (29 May 1996), they and their host took extra precautions, and avoided border control points, and easily crossed over between South Africa and Namibia using natural entry points, with no control points.

The logical reasoning of the judgment directed at overcoming the objective element of BONOMO and GELARDI's departure from South Africa on the 21.05.1996, obviously conflicts with the conduct of

the two presumed fugitives, who instead of doing what the judgment had assumed, had in fact left Namibia on their own passports on a direct flight to London (in other words on European soil), to then enter the Ivory Coast.

4.6 – Witness statement of Mr. ANDREW JOHN DANIELS

(Apostille – Convention of The Hague of 5 October 1961) (Annex no. 18)

An affidavit signed by Mr ANDREW JOHN DANIELS was filed with the Department of Justice and Constitutional Development of the Republic of South Africa, Cape Town High Court on the 25.02.2010. The signature had been certified by the Commissioner of Oaths CELESTE HOLMES in terms of article 1 and following of the Convention of The Hague of 5 October 1961, which had also been ratified by the Italian Republic.

The witness, a staff member of the Terre de Luc from 1986 until 2000, where he had lived without interruption and had been responsible for the pool and the bedrooms, stated that during the spring of 1996 he had met some guests of Mr Palazzolo, specifically three adults and a child, who after a few days and after having visited the farm, left the premises in a motor car.

According to the statement, after their departure from the "Terre de Luc", the abovementioned did not return again, having left some children's toys on the patio outside of the room, which were never retrieved.

The witness stated further that in photograph no. 20 (BONOMO), he recognised the elderly man that had visited the premises and in photograph no.14 (GELARDI), he recognised the husband of the woman and father of the child, and that the guest's visit had lasted until the 20 May 1996 and was for a few days, reiterating that they did not return again after their departure.

This clearly refers to new testimony that is totally incompatible with the testimony given by the farm manager HANS, who one will recall, even though he had made reference to the visit of some Italian guests on PALAZZOLO's farm at different times, had never expressly pointed out BONOMO and GELARDI, as the investigators had never shown him pictures of the two men.

The statement made by the witness DANIELS is irremediably linked to the same statement by GELARDI and with the border documents relating to GELARDI's trip and that of his father-in-law BONOMO that have already been discussed above.

PARAGRAPH 5: ON THE ADMISSIBILITY OF THE REVIEW APPLICATION

As noted, on the subject of a review, article 631 of the Italian Criminal Procedure Code stipulates that the elements based on which the review is being requested (failure to comply resulting in this being inadmissible), must be such that if verified, they would show that the accused must be acquitted in accordance with articles 529, 530 and 531 of the Italian Criminal Procedure Code.

So that in the first stage of the proceedings, the Judicial Authority responsible for the Review must only make a summary deliberation of the elements of proof submitted, which must be directed at verifying the possible existence of something unsubstantiated, which given its definition as having to be "manifest" (art. 634 Italian Criminal Procedure Code) must be discernible ictu oculi, without the need for in-depth analysis.

It is only in the subsequent stage of the proceedings that the elements of proof on which the

application is based, must be subjected to an examination with the purpose of establishing whether they tangibly exist.

In other words, the preliminary assessment of the application cannot be that of an advance assessment of the evaluation that is reserved for the actual review judgment, which will be conducted during the cross-examination of the parties, given that during the rescinding stage that concludes with a pronouncement on whether the application is admissible, the presiding Judge must limit his task to an abstract and not a tangible assessment, relating only to the appropriateness of the new elements directed at demonstrating, where these are confirmed, that the accused must be acquitted subsequent to a complete review of all the proof, as well as the new proof provided.

And on the subject of a criminal review, the systematic reconstruction of the "new proof" concept emerges from interpretation, according to which recognition must be given to the newness, as well as the proof that has not formed the subject of assessment, and which has or has not been included in the probatory material acquired during the previous judgment.

Effectively, what qualifies the real substance is the judicial impossibility of an acquittal judgment based exclusively on a different assessment of the same proof admitted during the trial (article 637 section 3 of the Italian Criminal Procedure Code): to all effects of article 630 heading c) of the Italian Criminal Procedure Code, therefore the prerequisite of a new aspect depends solely on the fact that the proof has or has not formed the subject of a previous judicial assessment, it being irrelevant whether these were acquired at the relevant proceedings.

Again in this last case – similarly to what happens in the case of proof that has never been assessed – any elimination of a conviction that has become irrevocable does not originate from a critical review of the identical probatory evidence, inherent to the decision contained in the judgment, but rather from the reconstruction originating from whatever the Judge had not initially assessed. The decision regarding the newness of the proof therefore takes on preliminary significance with regard to the prohibition of revisiting the same proof that was already the subject of a conviction judgment.

And in point of fact, the new proof that it reveals is not only the proof introducing a new thema probandum, which was never dealt with in the relevant judgment, but also the proof that offers a different reading of a thema probandum that was already examined within the limitations of the instruments of proof that were available to the Judge at the time.

The above principle has now become jus receptum of this Court ……. on the subject of review, the concept of "new proof" that is relevant in accordance with art. 630 section 1, heading c) of the Italian Criminal Procedure Code for the purposes of whether the relevant application is admissible, should not be confused with the concept of a "new subject of investigation", in the sense that the new proof can well be gathered from a subject of investigation that was already dealt with in the judgment under review, without the new proof provided having been used up.

Criminal Supreme Court of Appeal, section VI, 30 October 2006, no. 40687 – Supreme Court of Appeal , First Section 09.06.2009 – GULOTTA.

Nonetheless, the preliminary decision directed at whether the review application is admissible must be conducted by reflecting on the merit of the acquittal models that are relevant both at the stage of deciding on admissibility, and then consequently, to the outcome of the review decision.

It is significant to note how, among the cases where the review can be requested, the much referred to

article 630 of the Italian Criminal Procedure Code (heading c) includes the assumption that "after the conviction new elements of proof come to light or are discovered, which taken alone or combined with those already assessed, show that the accused must be acquitted in accordance with article 631".

It is quite obvious that this involves a rule that is very different in its perceptive merit from article 554 no. 3 of the repealed Code, which at the time indicated as a condition for the admissibility of a request the coming to light or discovery of "new elements of proof, which alone or combined with those examined in the proceedings, made it evident that the accused had to be acquitted in terms of the first part or third paragraph of article 479".

And nonetheless, already when the old Code was in effect, prevailing jurisprudence held with regard to the presupposition that the purpose of the review was to formulate a remedy to a possible injustice of a conviction imposed by mistake, that the newness of the elements of proof can to be understood in the broader sense, assigning exponential value not only to the appearance of the fact that was the subject of the proof (noviter reperta), but also its production and assessment (noviter producta).

Consequently it was considered irrelevant that the proof had existed prior to the relevant judgment in which the review was being asked for and that the proof itself had not been acquired due to the Judge's negligence or the lack of deduction – whether by intent or fault – of the party or his defence, so as to infer that elements of proof that had been produced in previous proceedings but no examined by the Judge could be considered new, thus remaining outside of the decision that was subject to review.

It follows that the concept of new proof should be constructed from a structural and teleological viewpoint, while always bearing in mind the subject that it must introduce into the review process and which is substantiated in the representation of a fact ("possibly" founded on elements that are potentially suited to prove it, according to the model previously examined at length), and in the typical context of the admissibility procedure – able to win over the Judge's decision.

In terms of the first viewpoint, the reference to the assessment of proof constitutes an inseparable connection with the necessary gnoseological proceedings to arrive at a decision, where the instrument for checking can only be centred on the motivation according to a rule that has now become entrenched by the precept of article 192 of the Italian Criminal Procedure Code.

In the sense that the decision regarding admissibility must be formulated on the basis of what has been defined as the complementary relationship between the new proof and the proof already assessed, such that if the proof has not already been assessed by the Judge it must consequently qualify as being new.

And since the proof that has not been assessed, and the other even though it may have been acquired, was not the subject of the gnoseological proceedings that were objectified in the motivation for the judgment, it is obvious that a similar concept depends not only on the acquisition of proof, but also from the responsibility for its failed acquisition.

The wording adopted in article 630, heading c), appears completely authoritative on this point, especially if referring to the type of organisation member that is practicable in the motivation before the Supreme Court of Appeal. – so that, even though it is true that a literal interpretation cannot exhaust the options of meanings in such a complex subject, in the sense that one necessarily must put forward the use of criteria connecting it with the entire system, it is also true that from a similar use, it

emerges how the failure to assess the proof (acquired, a fortiori, not acquired) constitutes the unassailable limit to admissibility of the review judgment.

Essentially, unless one wants to preclude the possibility of effectively removing an unjust conviction, the review judgment must be connected to the decision that sparked the situation and to the justifying motivation for the relevant conviction.

In terms of the second viewpoint, what is identified as a teleological projection, namely the extension of the epilogue that the remedy of the review can arrive at, represents an opening that – in relation to the disappearance of judicial rules that are strictly stipulated, the replacement of evidence with a "demonstration" of the old traditional Code – once again, is in favour of using all the instruments directed at breaking the judgment's ability to resistance.

At the same time, the characterisation of new proof, given that it is directed at removing an irrevocable judgment, must by necessity impose that checks are done on the newness that could also reach conclusions attesting that the accused is not completely innocent, as the provisions of the 1930 Code on the other hand clearly made provision for.

The task of the Review Judge effectively is based on the one hand in ascertaining the demonstrative powers of the new elements of proof and on the other hand, on checking that the elements of proof that have already been examined may take on falsifying merit, such that the entire probatory compendium that was the subject of the examination done for the purposes of the conviction judgment is verified, but this time on the basis of the specific acquisitions for the Review decision.

In this way, once the application has passed the test of admissibility because the noviter reperta o noviter producta proof has been correctly qualified as new (in the sense outlined above) and for this application not to be considered clearly unsubstantiated, the Review Judge is permitted to re-examine the probatory sequences that led the presiding Judge to hand down the conviction, but only in the light of the novum.

PAR. 5: CONCLUSIONS

The facts that have been set out above easily make it possible for this Court to set the "judicial perimeter" within which the question underpinning this review application is based.

The guilty decision that was reached by the judgment that forms the subject of this review was arrived at thanks to the "new probatory investiture" of an identical historical fact from the standpoint of its concept (the accused belonging to a Mafia family during the 80's), that had already been assessed with a negative result by the Court in Rome.

On closer examination, this involves a judicial outcome – the alleged participation in a Mafia organisation – that by necessity had to be based on the otherness of the fact-crime: and effectively, for the purposes of precluding the judgment, and according to the principles correctly referred to by the presiding judgment, a different fact is constituted by the fact that although it violates the same regulations and integrates the details of the same crime, constitutes further objectification of the person's activity, which is identified differently in space and time from the one previously put in place and accepted by the irrevocable judgment.

And within the framework of this assessment method, the otherness of the historic fact that had been examined during proceedings, constituted an unfailing condition for the conviction judgment, which

held that it was legitimate to …..assume as an element of independent judgment, circumstances of fact collected during the course of other criminal proceedings, even when these have resulted in an acquittal judgment, because the preclusion from judgment only prohibits the exercising of a criminal action for the fact crime that was the subject of that judgment, but has nothing to do with the possibility of a renewed assessment of the probatory records acquired during proceedings that have been completed, once it has been established that those probatory records could be relevant for ascertaining facts that differ from those already judged, because what has become intractable is the legal truth of the fact-crime and not the historic fact.

But this very logical – judicial supposition is the outcome of an error regarding the fact, due to the lack of cognisance given to the probatory collection at the basis of the acquittal judgment and especially the lack of cognisance given to the judicial dimensions of the judgment handed down by the Roman Court.

The error regarding the above fact thus influenced and distorted the presiding Court's judgement, and today constitutes the core of the review application as far as the novum has the potential to demonstrate the identity of the historic fact.

In point of fact, in the area of reviews, the error of fact is amendable and not the assessment of the fact; the concept of irreconcilability between irrevocable judgments referred to under art. 630 Italian Criminal Procedure Code, section 1, heading a) should not be intended in terms of the logical contradiction between the assessments made in the two decisions, but with reference to an objective incompatibility between the facts that the different judgments are based on; on this point the Section V of the Supreme Court of Appeal, 09.12.2008.

So that for the purposes of admissibility of this application, it seems obvious how the abstract possibility that the novum can demonstrate the identity of the fact, instead of the alleged otherness thereof, integrates the condition referred to under heading a) of article 630 of the Italian Criminal Procedure Code, or the conflict between the judgments.

But there is more.

Over and above what has been said, the elements of proof (noviter producta) impact on the section being contested (Bonomo/ Gelardi hospitality) that held the accused's perpetuated participation in the Mafia organisation, thus neutralising their very existence; and in the context of the review, the ability (even if only abstract) of the novum to neutralise the new section being contested, results in the same contention reverting to what that had been put forward during the acquittal judgment.

With regard to the statements made by ANTONINO GIUFFRE', it must be said that what these referred to in general terms relating to the relations between RIINA and PALAZZOLO, and a certain OLIVIERO TOGNOLI, who was PALAZZOLO's co-accused in the Swiss proceedings, led the presiding Judges to draw on the same elements from the conviction judgment of the Appeal Court in Lugano for the purposes of providing counter checks (see relationship with OLIVIERO TOGNOLI, dealing in diamonds with Palazzolo and his role as an astute financier, as well as the narcotics' trafficking).

In a paradoxical way however, the reference made in the judgment under review to the Swiss decision with regard to the relations between PALAZZOLO and TOGNOLI, on closer examination demonstrates the substantial "identity of the facts" referred to by the review judgment.

We are therefore faced with a series of elements that inevitably lead any assessment to the Roman and Swiss judgments, both of which are linked to the obvious sameness of the facts that form the subject of the decision.

Over and above any consideration, the very specific connotation of permanence to the bond relating to the criminal organisation called "Cosa Nostra", is such that the structure and the nature of the organisation remain unchanged even subsequently to physiological changes to the "organisation's structure", as for example in the case of other members coming in or a change in some of their roles or yet again, due to the dissociation or death of some of the original members.

It is obvious that this involves an organisational body that does not disband with changes to the formative elements, whether these relate to the subjective composition or changes in the "operating strategy". (On this point, see the numerous references in jurisprudence. Criminal Supreme Court, section VI, 21 May 1998, no. 3089)

From this viewpoint, the perpetual nature of belonging to the organisation should not be confused with the interruption to the permanence of the crime that the relevant jurisprudence and authoritative sources link to the conviction judgment.

In fact, the significance that jurisprudence has now quite easily reached constitutes a mere "judicial pretence" that does not place the ontological nature of the association Mafia crime under discussion: this involves two aspects, one judicial the other naturalistic, both running in complete parallel.

This type of interpretation in actual fact finds support in a series of regulations in the Criminal Code on the subject of benefits to those accused of crimes under article 4 of the Criminal Code, in which proving that the accused has terminated contact with the organisation is stipulated specifically as an inescapable condition for the application of benefits, and is a condition that is obviously presumed even after the conviction.

If this is the case, the new elements of proof in effect demonstrate how the bis in idem question and therefore the constraint of the judgment should have been dealt with not only in relation to the Roman judgment, which was partially referred to by the presiding Judges, but rather also in relation to the Swiss judgement, which as has been shown, exercised its own vis actrativa in relation to the Court in Rome's judgment, limited to the crime relating to narcotics.

It is evident then that the link between the Italian and Swiss judgments inevitably results in the latter being considered the real central nucleus, at the basis of every judicial initiative taken against PALAZZOLO.

This complexity and inter-relationship between the different judgments escaped the presiding Judges who were unable to recognise the identity of the facts, which once again resulted in the accused being prosecuted.

As has already been indicated, taking into consideration the specific nature of the remedy provided by the review in removing a decision that has become irrevocable, the fault that something is evidently unsubstantiated, according to the provisions of article 634 of the Italian Criminal Procedure Code as an independent reason for the application's inadmissibility, should be associated with the obvious inappropriateness of the reasons placed at the basis of the application for the review; all of this on the basis of a decision in which the rules of judgment that belong to the deliberation stage cannot assume relevance, otherwise an undue overlapping would result between the procedural stages that the

legislator categorically intended differentiating between.

More specifically, the Appeal Court must limit itself to an abstract assessment regarding the potential of the novum adopted in support of the review application and bringing the basis for the irrevocable conviction judgment handed down against the accused into contention, thus excluding an assessment on the merits regarding how convincing or reliable the statements made by the state witnesses or other witnesses are.

It is clear how this review application constitutes the epilogue of a complex and unique episode, in which the decision made by this Court will irreparably characterise VITO ROBERTO PALAZZOLO's destiny.

For the reasons set out above, application is made to this Court of Appeal in it capacity as Review Judge,

ONCE IT HAS DELIBERATED ON THE ADMISSIBILITY

of this review application, to

REVOKE

in terms of articles 629, 630 and 631 of the Italian Criminal Procedure Code, the conviction judgment handed down by the Appeal Court in Palermo on 11.07.2007, judged irrevocable on the 13.03.2009, and therefore every individual item in the above judgment that appears damaging to the interests of the accused Mr VITO ROBERTO PALAZZOLO, born in Terrasini on 31.07.1947, who has been unjustly convicted of the crimes on file and consequently

ACQUIT

the abovementioned of the crimes attributed to him in the above Criminal proceedings, and this in terms of articles 529 and 530 of the Italian Criminal Procedure Code, because the criminal action should not have been initiated and/or pursued, or because he did not commit the fact, or in terms of another formula considered equitable, with every consequential declaratory judgment.

Caltanissetta, 25.11.2010

Attorney RICCARDO OLIVO Attorney BALDASSARE LAURIA

INDEX OF ATTACHED DOCUMENTS -

1- Judgment of the Palermo Court on 5.7.2006

2- Judgment of the Appeal Court of Palermo on 11.07.2007

3- Judgment of the Supreme Court of Appeal on 13.03.2009

4- Judgment of the Court of Rome v/TOGNOLI and others of 28.03.1992 (extract form Palazzolo proceedings)

5- Judgment of the Court of Rome on 28.03.1992 against VITO ROBERTO PALAZZOLO

6- Order/ sentence from Investigation Judge at Court of Rome, Dr. GALASSO, review judgment proceedings AIELLO and others of 06/10/1986

7- Decision of the Court of Rome on 17.7.1989 reporting conflict of jurisdiction

8- Judgment from the Supreme Court of Appeal on 9.1.1990 resolving conflict of jurisdiction.

9- Judgment of 7.11.1990, issued by Investigating Judge at the Court of Palermo, Dr. GIOACCHINO NATOLI, declaring lack of jurisdiction

10- Judgment of the Court of Appeal in Lugano on 26.09.1985 against VITO ROBERTO PALAZZOLO and others

11- Judgment of the Swiss Federal Court on 3.5.1994

12- Transcript of examination of TOMMASO BUSCETTA given on the 21.07.1984 and following.

13- Transcript of statements made by GIUSEPPE GELARDI on the 23.04.2010, in terms of article 391 bis of Italian Criminal Procedure Code.

14- Statements of BONOMO and GELARDI to the Custom's office in Windhoek (Namibia).

15- Precautionary warrant of arrest against VITO ROBERTO PALAZZOLO (proc. N. 573/97 R.G.N.R.) issued in Palermo on 19.02.1997.

16- Warrant of arrest issued by Investigating Judge at the Court of Palermo, Dr. FALCONE on 11.06.1985 (Criminal Proceedings no. 2289/82 R.G. Office establishing charges)

17- Warrant of arrest issued by Investigating Judge at the Court of Rome, Dr. GALASSO on 16.04.1984 against VITO ROBERTO PALAZZOLO

18- Statement made by Mr. ANDREW JOHN DANIELS on 25.02.2010 (Apostille – Convention of The Hague of 5 October 1961) and sworn translator statement by Prof. ANNA LISA FUNDARO'.

19- Special power of attorney VITO ROBERTO PALAZZOLO.

20- Decision of the Court of Rome on 31.3.1993 in reply to application by Attorney Angelucci, to revoke sentence due to bis in idem with the Lugano judgment.

21- Judgment of the Supreme Court of Appeal no. 3857 of 2004

Caltanissetta, 20.11.2010

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