

STRATEGIES OF MASSACRES, COUP STRATEGIES AND
TRIAL STRATEGIES.
SOME ANALYSES ON THE MEMORY OF THE PIAZZA DELLA
LOGGIA MASSACRE AND THE SUBVERSIVE STRATEGIES AND
CONCEALMENT OF THE TRUTH IN ITALIAN HISTORY IN THE
SIXTIES AND SEVENTIES OF THE PAST CENTURY
*STRATEGIE STRAGISTE, STRATEGIE GOLPISTE E STRATEGIE
PROCESSUALI
RIFLETTENDO SULLA MEMORIA DELLA STRAGE DI PIAZZA DELLA
LOGGIA E DELLE STRATEGIE EVERSIVE E DI OCCULTAMENTO DELLA
VERITÀ NELLA STORIA ITALIANA DEGLI ANNI SESSANTA E SETTANTA*

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Abstract Italiano: Ricordare la tragedia di piazza della Loggia a Brescia secondo le linee del convegno *Stragi e strategie. Questioni di giustizia verità e memoria* ha indotto a ripercorrere le tappe di dieci anni di storia italiana: anni devastati dai tentativi di abbattere i principi della costituzione democratica. Le strategie dei movimenti della destra eversiva furono architettate per incutere terrore e disorientamento nei cittadini. Dal punto di vista ideologico e politico, l'eliminazione del principio dell'equilibrio dei poteri fu perseguito con tre tentativi di colpi di Stato tesi ad instaurare governi autoritari. Alla volontà di indebolire ulteriormente la magistratura e di eliminare i «giudici rossi», si sono aggiunte numerosissime 'deviazioni' per impedire o alterare le indagini sui responsabili, mandanti ed esecutori, della strage ed è stato impossibile il completo accertamento della verità processuale e storica. Sono tutti aspetti facilmente tracciabili attraverso il «groviglio processuale» che non ha ancora consentito di fare completa giustizia a cinquant'anni dal tragico 28 maggio 1974, dopo cinque fasi istruttorie e tredici fasi di giudizio.

Parole chiave: Storia d'Italia 1964-1974; stragi; colpo di Stato; servizi segreti; processo penale; magistratura; garantismo; accertamento della verità.

Abstract English: Remembering the tragedy of Piazza della Loggia in Brescia according to the guidelines of the conference *Stragi e strategie. Questioni di giustizia verità e memoria (Massacres and strategies. Questions of justice, truth and memory)* led to retrace the key episodes of ten years of Italian history: years devastated by the attempts to overthrow the principles of the democratic constitution. The strategies of the subversive right groups were carefully planned to instill terror and disorientation in citizens. From an

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ideological and political point of view, the elimination of the principle of the balance of powers was pursued with three attempted coups d'état aimed at establishing authoritarian governments. In addition to the determination to further weaken the judiciary and eliminate the «red judges», there were also 'deviations' to prevent or alter the investigations into those responsible, instigators and executors, of the massacre so that it was impossible to fully ascertain the judicial and historical truth. All these aspects can be traced in the «procedural tangle» that has still not allowed complete justice to be done, fifty years after the tragic 28 May 1974, five phases of investigation and thirteen phases of judgment.

Keywords: History of Italy 1964-1974; massacres; coup d'état; secret services; criminal trial; judiciary; guarantees; ascertainment of the truth.

Summary: 1. The value of memory for the defense of democracy. – 2. Strategies against the «democratic dictatorship» and the «red judiciary» to «sow terror among the Italian plebs». – 3. Coup strategies between 1964 and 1974 and blocking of political-military secrecy from judicial investigations. – 4. Circumstantial and indirect evidence in the trials on the Piazza della Loggia massacre and procedural strategies between due process and reasonable doubt. – 5. «not everyone was innocent»: the responsibilities of the State apparatus.

1. The value of memory for the defense of democracy

Preserving the memory of massacres and murders means, first of all, not forgetting the victims and the torment of their families. The value of memory also consists in the awareness of the irreparable outrage to Italian citizens and institutions caused by the subversive plots against the consolidation of the new democratic order sanctioned by the 'miracle' of the 1948 Constitution: an irreparable outrage caused by strategies designed not only to insinuate terror and disorientation, but also to prevent or 'divert' the ascertainment of the judicial and historical truth. The risk is always present and the memory of that past must help keep attention alive to unmask and counter any attempt to conceal and misrepresent the truth.

Why, fifty years after the massacre in *Piazza della Loggia* Brescia, after five phases of preliminary investigations and thirteen phases of judgement, has justice not yet been fully done and procedural truth reconstructed? We will probably never again be able to complete the only 'partial' knowledge and to unveil as yet unclear aspects of the impressive sequence of events connected with the subversive massacres of the 1960s and 1970s.

. In Brescia on 28 May 1974 there were eight deaths and around one hundred injured among unarmed citizens, trade unionists and anti-fascists guilty only of having organised, according to the Constitution, a general strike and a demonstration of the *Permanent Anti-fascist Committee* and the *Provincial Secretariats of the Unitary Union C.G.I.L., C.I.S.L. and U.I.L.* against the «bomb» attacks that had taken place in the city and had intensified «in conjunction with the divorce referendum».

A concise reconstruction carried out essentially on the basis of the law can serve to recall the shadows, the silences, the complicities that for decades hindered the work of the judiciary on ascertaining those responsible for the massacre. I refer, first of all, to the sentences, easily accessible thanks also to the *Casa della Memoria* website¹, and to the *First report of the Parliamentary Committee for Information and Security Services and for State Secrets* chaired by Senator Massimo Brutti and approved by Parliament in 1995 in relation to the 'deviations' of the investigations as identified and defined in the same report². Also useful were some information reported by parliamentary commissions established at the end of the 1980s which had numerous extensions. Although their work did not lead to unanimous conclusions, some reports were published after in 2000 (*Massacres and terrorism in Italy from the post-war period to 1974*)³ and in 2001 (*On the causes that prevented the identification of those responsible for the massacres*)⁴.

¹ See Tobagi for a summary of the procedural process and the «incredible series of obstacles that were opposed to the investigations, even at an institutional level (by SISMI and by unidentified people at the Italian Embassy in Argentina)». The sentences between 2010 (Court of Assizes of Brescia) and 2017 (Court of Cassation) are also published on the website of the *Consiglio Superiore della Magistratura. Terrorismo*.

² *Relazione del Comitato parlamentare per i servizi di informazione e sicurezza e per il segreto di Stato, Primo rapporto sul sistema di informazione e sicurezza comunicato alla Presidenza* [of the Senato] on 1995, april 6th [President Massimo Brutti], in *Senato della Repubblica, Camera dei Deputati, XII legislatura, Disegni di legge e relazioni- Documenti, Doc. XXXIV, 1* (from now on = *Primo rapporto sul sistema di informazione e sicurezza*), pp. 7-96 and on the definition of 'deviation', pp. 41-42.

³ Senato della Repubblica, Patrimonio dell'Archivio Storico, *Stragi e terrorismo in Italia dal dopoguerra al 1974* elaborato redatto dai senatori Raffaele Bertoni, Graziano Cioni, Alessandro Pardini, Angelo Staniscia e dai deputati Attilio Attili, Valter Bielli, Michele Cappella, Tullio Grimaldi e Piero Ruzzante, 22 giugno 2000 (Senato della Repubblica, Camera dei Deputati, XIII legislatura Disegni di legge relazioni Documenti in Terrorismo e stragi X-XIII legislatura, 6. Atti parlamentari, XIII, Documenti Doc. XXIII, pp. 67-245 (from now on = *Stragi e terrorismo in Italia dal dopoguerra al 1974*).

⁴ The Commission, established in 1988 (*Commissione Parlamentare d'inchiesta sul terrorismo in Italia e sulle cause della mancata individuazione dei responsabili delle stragi* (Gualtieri President), (see also note 34 below) was extended in 1990, 1992, 1995, 1996, 1997 (*Repertorio delle commissioni parlamentari d'inchiesta 1948-1998*, pp. 175-208, 363-365). Some reports were published on 21 April 2001 (*Decisioni adottate dalla Commissione nella seduta del 22 marzo 2001 in merito alla pubblicazione degli atti e dei documenti prodotti e acquisiti* in Senato della Repubblica, Camera dei Deputati, XIII legislatura. Disegni di legge relazioni Documenti Doc. XXIII n. 64, vol. I. t. III (from now on = *Commissione parlamentare d'inchiesta sul terrorismo in Italia*). It had been unanimously decided that «in the absence of a document submitted to a vote, all the acts and documents produced and acquired by the Commission be published in full [...]» considering «that the material collected by the Commission is of considerable importance

The Piazza della Loggia massacre is part of a sequence of murders and slaughters, which began well before that of Milan in 1969 with the terrorist acts of the secessionists of South Tyrol in the 1950s, «the first node of a gigantic deception»⁵, and followed by other episodes, many of which unfortunately risk losing our memory⁶.

In the historical context of the Cold War, these crimes were intended to arouse «public fear» and alternated with three coup attempts between 1964 and 1974 with the aim of modifying or overthrowing the democratic Constitution and its key principle, that of balance of power⁷. Moreover, according to the authoritative voice of the judge of the Court of Cassation, Giovanni Colli, the democratic constitution was already «aged»⁸.

The massacres occurred, in fact, together with three projects organized between the years 1964 and 1974 to establish (albeit with some variations between one and the other) authoritarian governments, aimed at eliminating or silencing the most authoritative voices of the population that that Constitution and those principles wanted to defend and bring to full implementation: politicians - starting, naturally, with the communists - magistrates, intellectuals, journalists and those responsible for information systems, first and foremost, the RAI⁹. Carefully planned attempts, but interrupted just before their implementation, perhaps due to a decision by the organizers themselves or due to a lack of support from the United States services¹⁰.

As clarified by official documents, also as a result of the failure of the purge after the liberation from the Nazi-fascists, exponents of the right in agreement with part of the secret services and military forces hatched a subversive plot and

for an overall evaluation of the most recent history of our country».

⁵ Gruber, 2018, p. 42.

⁶ Biscione, 2012, p. 18, lists, in the context of the terrorist spiral, after the Piazza Fontana massacre in Milan (17 dead): 22 July 1970, the *Freccia del Sud* train massacre in Gioia Tauro (6 dead); 31 May 1972, the Peteano massacre (3 deaths), 17 May 1973, massacre at the Milan Police Headquarters (4 deaths). He also recalls the revolt in Reggio Calabria between July 1970 and February 1971 and, after Piazza della Loggia, 4 August 1974, the *Italicus* train massacre in San Benedetto Val di Sambro (12 dead).

⁷ It was hoped for Italy to carry out a coup d'état similar to that which had led to the establishment of the 'colonels' regime in Greece (1967-1974) and, in South America, to the military dictatorships in Brazil with Humberto de Alencar Castelo Branco in 1964, in Chile with Augusto Pinochet (1973-1988) and in Uruguay with Juan Maria Bordaberry (1973-1985). See also *Stragi e terrorismo in Italia dal dopoguerra al 1974*, pp. 198-199.

⁸ Storti, 2014, p. 285 also for the bibliography on Giovanni Colli.

⁹ Further references below § 3.

¹⁰ Historical Documents Foreign Relations of the United States, 1969–1976, Volume XLI, Western Europe; NATO, 1969–1972, document 195. *Response to National Security Study Memorandum 88 e*, in proposito, Limiti, 2023, p. 108 nt. 11.

had no scruples about attacking the life, as well as the freedom, of the Italian people¹¹.

Not just a lack of purge, however. The Italian path of «difficult democracy» began all uphill in the 1950s after the «miracle» of the publication of the democratic Constitution¹². The complete realization of the separation and balance of powers was hindered - in the words of Leo Valiani in 1953 - by the «original sin» of the Constituent Assembly: that of having confirmed the primacy of the executive and of having left much of the legislation in force, in addition to the codes, of the twenty years of the fascist dictatorship¹³. A judgment which, moreover, was confirmed by the 1995 report on the information and security services¹⁴.

In this context, on the one hand, the judiciary was still considered as an authority 'customarily' subordinate to the political power mainly based on the argument that its members were not elected¹⁵. On the other hand, the military power continued to retain exclusive control of the secret services (the State defense services) in application of the R. D. Leg. 1161 of 1941, while in the investigations and trial the executive power could oppose political-military secrecy to the judiciary. In accordance with the articles 342 and 352 of the criminal procedure code of 1930, as we will have the opportunity to reconsider shortly¹⁶, the Minister of Justice could have opposed, depending on the case, political or military secrecy, both in the investigation and in the hearing, to exclude the testimonies of public officials and the publication of documents classified for 'security' reasons on facts that the investigators could not clarify through other sources of information¹⁷.

¹¹ Biscione, 2012, p. 19: «Black is the prevalent, although not exclusive, political color of this set of episodes. However, it was not «official» neo-fascism, the one of the *Movimento sociale Italiano* [MSI], which, although it arose and grew in the wake of Mussolinism and in the tradition of the *Repubblica sociale italiana*, had developed a prevalent practice of parliamentarism and civil coexistence. In the 1960s, a new type of neo-fascism had grown, sometimes on the margins of the M.S.I., but substantially outside it, which had been nourished by racism and Evolian and esoteric theories, closer to Nazi mysticism than to popular fascism; it had been interpreted above all by youth and university groups such as *Ordine Nuovo* and *Avanguardia Nazionale*. It is above all this variant of fascism that we find in the strategy of tension, protagonist or at least present in all the episodes». See also Rao, 2006.

¹² Gotor, 2011, p. 511 ss. and Storti, 2014, p. 279.

¹³ Valiani, 1955, pp. 70 ss.. See also Lacchè, 2010, pp. 271-304; Storti, 2014, p. 281.

¹⁴ *Primo rapporto sul sistema di informazione e sicurezza*, in part. p. 19.

¹⁵ Storti, 2015, pp. 237-242.

¹⁶ See § 3.

¹⁷ Art. 342 c.p.p. (*Doveri di esibizione da parte dei pubblici ufficiali*) § 2: When the declaration concerns a political or military secret, the proceeding authority, if it does not deem it well founded, takes action in accordance with the second paragraph of the art. 352; art. 352 c.p.p. (*Diritto di astenersi dal testimoniare e divieto d'esame determinati dal segreto d'ufficio*): Public officials, public employees and those in charge of a public service cannot, under penalty of nullity, be forced to testify about facts known by reason

2. Strategies against the «democratic dictatorship» and the «red judiciary» to «sow terror among the Italian plebs»

As for the extraordinary «procedural tangle» surrounding the Piazza della Loggia massacre, it immediately turned out to be even more complex than those relating to other massacres¹⁸. Just an hour after the explosion of the bomb, the head of police administration ordered the firefighters to clear away the debris and clean up the square with water cannons and this operation had a devastating result for the investigations: it caused «perhaps the dispersion of precious finds» and raised «disturbing questions about the haste of the operation»¹⁹. Other delays were caused in September 1974 by attempts to divert the investigations which immediately appeared «clearly ambiguous and of suspicious origin», so much so that only at the end of January 1975 did «a trace» begin to emerge²⁰. Added to all this were reticence, silence, false testimonies, retractions on the part of the suspects and possible witnesses which delayed the conclusion of the first inquiry due to the need for further investigations, although much, albeit fragmentary, information on the 'black plots' had also emerged during the inquest and trials relating to other events, for example, those relating to the weapons depots and the Piazza Fontana massacre of 1969.

The responsibilities of the far-right subversive matrix were immediately evident. In Brescia, since the beginning of the Seventies there had been continuous episodes of violence, in 1973 a TNT bomb had devastated the provincial *Federation of the Socialist Party*. Other attacks followed, «partly successful and partly unsuccessful»²¹. In the imminence of the massacre, messages, press releases and threats had been issued since 21 May 1974 (by the neo-fascist groups *La Fenice*, *Ordine Nero*, *Anno Zero*), after a bomb, transported to commit an umpteenth attack, had exploded ahead of schedule by killing the perpetrator²².

of their office and which must remain secret. / They, under penalty of nullity, must not be questioned about the political or military secrets of the State or about other information which, if revealed, could harm the security of the State or the political interest, internal or international, of the State itself. / The prosecuting authority reports it to the attorney general at the court of appeal who informs the Minister of Justice.

¹⁸ *Stragi e terrorismo in Italia dal dopoguerra al 1974*, p. 41; *Commissione parlamentare d'inchiesta sul terrorismo in Italia*, pp. 254 ff.

¹⁹ Procura della Repubblica presso il Tribunale di Brescia del 17.5.1977 Preliminary ruling nr. 319/74 (from now on = Sentenza Tribunale di Brescia 1977), pp. 41 ff.

²⁰ For example, a report from the *Ispettorato Generale per l'Azione contro il Terrorismo* e cfr. Sentenza Tribunale di Brescia 1977, pp. 46 ss. and p. 47. On the reconstruction of the phases of the massacre, pp. 96 ff.

²¹ *Stragi e terrorismo in Italia dal dopoguerra al 1974*, in part. pp. 247-250 and nt. 285.

²² On May 19, 1974, Silvio Ferrari died, convinced by the «flattery work of persuasion» of Ermanno Buzzi and Fernando Ferrari, to transport a bomb that should have exploded only the following morning and which, instead, had been programmed to explode at

Messages and threats were addressed, first of all, to the «communist rabble», to the «police» and to the «red judiciary». There were also demonstrations by «comrades» with the display of the «double-headed axe» symbol of the *Ordine Nuovo* party even though it had been dissolved in November 1973 by decree of the Minister of the Interior Taviani²³. The government decree motivated by the «reconstitution of the national fascist party» occurred five months after the opening of the investigation by the prosecutor Vittorio Occorsio, the magistrate, who also investigated the Piazza Fontana massacre, the *Piano Solo* and the *Loggia P2*²⁴. Vittorio Occorsio was assassinated on 10 July 1976 in the name of the fight against the «democratic dictatorship» and against his «accomplices», «Marxist judges» according to the claim of the *Movimento Politico Ordine Nuovo*²⁵.

As Floriana Colao pointed out, right-wing terrorists were protected by a 'strategy' and by a network of protections - as well as, as happened in the case of the Piazza Fontana massacre in Milan, by the mechanisms of transferring the lawsuit to a court lacking territorial jurisdiction²⁶. Even the introduction of the

night and cause exasperation (Sentenza Tribunale di Brescia 1977, p. 70, as well as pp. 35 ff. in part. p. 41 and pp. 48 ff, 68 ff.

²³ Loc. ult. cit. pp. 41-42 and 35-38, 45. «more than the shootings, it is the massacres that sow terror in the Italian plebs» is the statement attributed to Ermanno Buzzi by a suspect for the massacre (loc. ult. cit. p. 133). Ermanno Buzzi was killed in prison during the appeal process in 1981.

²⁴ The decree of 1973, November 23 in *Gazzetta Ufficiale*, a. 104 nr. 302, 23 novembre 1973, p. 7716 and see also *Stragi e terrorismo in Italia dal dopoguerra al 1974*, p. 241: the massacre in Piazza della Loggia was attributable to the *Ordine Nuovo* matrix, no differently from that of Piazza Fontana, the Milan Police Headquarters and the *Italicus* train.

²⁵ The full text of the claim is published on the website of the *Consiglio Superiore della Magistratura. Terrorismo*: «Bourgeois justice stops at life imprisonment, revolutionary justice goes further. A special court of the M.P.O.N. judged Vittorio Occorsio and found him guilty of having, out of careerist opportunism, served the democratic dictatorship by pursuing the militants of Ordine Nuovo and the ideas of which they are the bearers. Vittorio Occorsio has, in fact, investigated two trials against the M.P.O.N.; at the end of the first, thanks to the complicity of the Marxist judges Battaglini and Cairo and Baron D.C. [Democrazie Cristiana] Taviani, the political movement was dissolved and dozens of years in prison were inflicted on its leaders. During the second investigation, numerous M.P.O.N. militants were investigated and imprisoned and brought in chains before the courts of the bourgeois system. Many of them are still illegally held in democratic prisons, many others have been forced into hiding for years. The inquisitorial attitude held by Occorsio the servant of the system is not worthy of any mitigating circumstances: the fury he used in hitting the *Ordinovists* has degraded him to the level of an executioner. Even executioners die! The sentence issued by the M.P.O.N. court it is death and will be carried out by a special operational unit. Forward to the new order!». The judgments against those responsible for the murder are also published on the same site (Tribunale di Roma del 21 novembre 1973 and Court of Appeal of Roma 1978, May 17th). See also Gotor, 2011, p. 208.

²⁶ Colao, 2013, in part. pp. 149-157.

'reward' legislation for the 'penitent' terrorists in the time of the «emergency» (1974-1984) gave «little results in terms of neo-fascist subversion»²⁷.

The difficulties encountered in ascertaining the truth of the Brescia massacre were denounced in the first sentence of indictment which the judiciary managed to pronounce, for the reasons mentioned above, only after three years - on 17 May 1977 - when the charges against the possible instigators and executors were classified under the title of common massacre to cause public fear (art. 422 of the criminal code), while a substantial part of the investigation was dedicated to the murder of the May 19 attacker²⁸.

Thus began an impressive and tortuous sequence of investigations and lawsuits which only allowed the third degree of judgment to be concluded in 2017²⁹ with the final sentence to life imprisonment of the two instigators Carlo Maria Maggi 'pillar' of *Ordine Nuovo* and Maurizio Tramonte for the crime of massacre perpetrated with the aim of attacking the security of the State (art. 285 of the criminal code)³⁰, while the trials against the suspect material authors Roberto Zorzi and Marco Toffaloni are still underway³¹.

If the historical and procedural reconstruction of the Brescia massacre was the most complex compared to that of the other 'political' crimes perpetrated or merely attempted in that period, for the prosecutors and judges who dealt with the most tragic cases of those years it was nevertheless extremely complicated distinguish between true and false, instigators and executors, effective members of subversive groups and infiltrators in the secret services or in other groups (in particular, in that of anarchists as had happened in the case of the attacker at the *Questura* of Milan), sincerity and falsehood of the people aware of the facts, of the 'penitent' or 'dissociated' criminals seeking 'protection' or penalty reduction and therefore only partially (but how much?) useful for investigative purposes. This also happened due to the mis-directions or even just the concealment of the truth about facts and people (as well as about the supplies and depots of weapons) systematically implemented also by the secret services, partly deviated, partly parallel.

²⁷ While it was decisive for «disarticulating «red» terrorism» (Ibidem, p. 176).

²⁸ The no. 23 of the indictment sentence (pp. 11-12) attributed to Angelino Papa, in agreement with Ermanno Buzzi and Fernando Ferrari as «organizers, instigators and determinants» the responsibility of having placed an explosive device with the aim of killing «endangering public safety». On art. 422 c.p. see below note 57 ff.

²⁹ See in Tobagi a summary of the different procedural phases.

³⁰ On art. 285 c.p. see notes 58ss. On the 2017 Supreme Court ruling, see § 4.

³¹ On ongoing trials: <https://www.ilfattoquotidiano.it/2023/11/13/piazza-della-loggia-rinviato-a-giudizio-roberto-zorzi-per-laccusa-e-tra-gli-autori-della-strage/7352079/>; <https://www.rainews.it/tgr/lombardia/video/2024/03/strage-di-piazza-della-loggia-il-processo-a-toffaloni-torna-al-punto-di-partenza-57a1c0be-770f-4c4e-9167-2a71c3080c7a.html>

This was denounced in the first report of the *Parliamentary Committee for Information and Security Services* in 1995, established three years earlier with the task of identifying and reporting to Parliament³²

illegitimate initiatives carried out within the security apparatus with the aim of supporting party interests or illicit purposes.

According to the conclusions of that report, the difficulties were also caused by the shortcomings of the Information and Security Services, in which the *P2 lodge*³³, between the end of the Seventies and the beginning of the Eighties, had its exponents «[...] with pollution evidence effects». In any case:

If the collaboration of the Services with the judicial authorities had been timely and had not come so many years later, the fight against terrorism and subversive phenomena would have been much more effective. Many impunities would have been broken and it is reasonable to believe that some bloody crimes could have been prevented³⁴.

3. Coup strategies between 1964 and 1974 and blocking of political-military secrecy from judicial investigations

An attempted coup d'état had been conceived in 1964 (the so-called *Piano Solo*) by General De Lorenzo in collaboration with SIFAR, i.e. with the *Italian Armed Forces Service* established in 1949 and then linked to the CIA. In reality, the project had not even begun to be implemented, but had been meticulously designed (as can be seen from the «highly confidential planning» and the documentation which 'survived' and was declassified in 1990) with the aim of taking control of the institutions, occupying the headquarters RAI TV, the «telephone exchange» and some party headquarters and to arrest and deport at least seven hundred exponents of left-wing parties and trade unions³⁵.

Only three years later, in 1967, the newspaper *L'Espresso* made public opinion aware of it and, at that point, the Carabinieri general Giovanni de Lorenzo sued the editors of the newspaper Lino Jannuzzi and Eugenio Scalfari for defamation. During the trial, the opposition of military political secrecy hindered the ascertainment of the truth by preventing verification of both the SIFAR documents

³² *Primo rapporto sul sistema di informazione e sicurezza*, p. 7.

³³ Ivi, p. 42 and see also Colao, 2013, pp. 198-202.

³⁴ *Primo rapporto sul sistema di informazione e sicurezza*, p. 49.

³⁵ Many data can be obtained from *Relazione sulla documentazione, concernente gli "omissis" dell'inchiesta SIFAR, fatta pervenire dal Presidente del Consiglio dei Ministri [Giulio Andreotti] il 28 dicembre 1990 ai Presidenti delle Camere e da questi trasmessa alla Commissione, con annessa la documentazione stessa trasmessa Commissione Parlamentare d'inchiesta sul terrorismo in Italia e sulle cause della mancata individuazione dei responsabili delle stragi* established by l. 17 maggio 1988 n. 172 (Gualtieri Presidente).

and the results of the investigation of the ministerial commission which had been established in 1967 precisely to investigate the coup attempt³⁶.

The two journalists were convicted by the Rome court in 1968 against the conclusions of the public prosecutor Vittorio Occorsio who had ruled for the full acquittal of the defendants for «providing proof of the truth»³⁷. In over two hundred pages of the grounds for the judgment the Court not only did reiterate that military political secrecy constituted an insurmountable limit to the right to criticism and information, but it also took up the arguments of the judge of Cassation Giovanni Colli. The powerful judge, in addition to deeming «outdated» the democratic constitution as mentioned above, had on several occasions repeated an opinion common to some constitutionalists³⁸, namely the condition of ‘minority’ of the judiciary compared to the other two powers of the State both because it was not elected by the people sovereign, and because it was delegated to resolve single and individual cases and not to provide for the collective interest³⁹.

As if justice and ascertainment of the truth were not a collective interest: Giandomenico Pisapia noted this in 1969⁴⁰.

In any case, the conviction of the two journalists was confirmed on appeal when their defender Giandomenico Pisapia, among other things, attempted to call into question the very issue of political secrecy, on whose constitutional legitimacy, moreover, jurists of the caliber of Giuliano Vassalli and Costantino Mortati had raised many reservations already in 1959, albeit with reference to the parliamentary commissions of inquiry⁴¹. Furthermore, in 1968, following the revelations about the attempted coup of 1964, parliamentary proposals were

³⁶ The results were published on January 12, 1968. Following the *Proposta d'inchiesta parlamentare d'iniziativa del deputato Scalfari. Inchiesta parlamentare sulle attività del generale dei Carabinieri e di alcuni alti Ufficiali dell'Arma nell'estate del 1964, connesse con iniziative extra-istituzionale e extra-costituzionali*, in *Atti Parlamentari. Camera dei Deputati n. 177*, was established the *Commissione parlamentare d'inchiesta sugli eventi del giugno-luglio 1964 (SIFAR)*, V legislatura con l. 31 marzo 1969 n. 93. See *Primo rapporto sul sistema di informazione e sicurezza*, pp. 34-36.

³⁷ On Vittorio Occorsio cf. also above notes 24-25 and text.

³⁸ Carlo Esposito in 1962 had noted that by «constitutional custom» the judicial power was «in a somewhat subordinate position» (Esposito, 1962, pp. 283-482 and see Storti, 2015, in part. p. 241).

³⁹ Some bibliographical references on Giovanni Colli in Storti, 2014, p. 285. When he became Attorney General of the Supreme Court of Cassation in 1974, he reiterated this opinion in the report for the inauguration of the 1975 judicial year (Colli, 1975, in part. pp. 9, 18-23, 32-34 and see also Storti, 2015, pp. 232-234).

⁴⁰ Pisapia G. D., 1969, in part. pp. 168-169 and see Storti, 2015, p. 236.

⁴¹ *Dibattito sulle inchieste parlamentari*, in «Giurisprudenza costituzionale», 4(1959), pp. 596-621 Esposito, Mortati, Giannini, Crisafulli, Vassalli and Virga constitutional lawyers, Delitala criminal lawyer (Storti, 2015, pp. 225 -230).

put forward to at least make the judges aware of the secret information, but naturally without success⁴².

The replacement in 1966 of the SIFAR, compromised by the events of 1964, with the S.I.D. (*Italian Defense Service*) always depending on the military bodies, had not prevented a second coup attempt from being equally meticulously planned - in the year following the massacre in Milan on December 1969 - for 8 December 1970 (and therefore called the 'Immaculate coup'). It was conceived by Junio Valerio Borghese, former commander of the X MAS and founder in 1968 of the *National Front* which, as in the case of the *Piano Solo*, had gathered around itself the consensus of generals, admirals and neo-fascists⁴³. This too was blocked, perhaps by Borghese himself, after the occupation of the Ministry of the Interior and before proceeding with the attack on the other institutional headquarters⁴⁴.

In Milan, another massacre occurred on May 17, 1973 in front of the police headquarters (*Questura*), where the first anniversary of the murder of Luigi Calabresi was commemorated. As it seems, it was destined to kill the Minister of the Interior Mariano Rumor guilty of not having kept his promise to establish the state of exception or emergency desired by part of the Italian right⁴⁵. Caught red-handed, Gianfranco Bertoli, linked to *Ordine Nuovo* but infiltrated into anarchist groups, informant first for SIFAR and then for S.I.D from 1966 to 1971 and having just returned from Israel, was sentenced to life imprisonment in 1976⁴⁶.

The Piazza della Loggia massacre in Brescia in May 1974 and the immediately following *Italicus* train massacre on 4 August occurred during preparations for a third coup attempt. The so-called *White golpe* was scheduled for the days between 10 and 15 August 1974 (postponed until autumn and ended up dissolving). The creator was the 'anti-communist', white partisan Edgardo Sogno del Vallino, who in addition to the communists also intended to «put the fascists out of action». The preparations of the Democratic Resistance Committee (*Comitato di Resistenza Democratica*) dated back at least to 1970, in continuity with the Borghese project of 1970, also due to the participation of some people who had joined it and in connection with Licio Gelli's *P2 lodge* established in 1965 as it was, albeit very partially verified, due to misdirections, by the parliamentary

⁴² Ivi, p. 231.

⁴³ Limiti, 2023, pp. 105-108.

⁴⁴ Biscione, 2021.

⁴⁵ Limiti, 2023, pp. 51-53, 105-112, 213-216, 235-238.

⁴⁶ Court of Cassation 19 November 1976 and see also *Commissione parlamentare d'inchiesta sul terrorismo*, Senato della Repubblica – Camera dei Deputati, XI legislatura, Disegni di legge e relazioni, documenti, doc. XXII, nr. 13; *Commissione parlamentare d'inchiesta sul terrorismo in Italia e sulle cause della mancata individuazione dei responsabili delle stragi*, *Relazione sull'attività svolta dalla Commissione* (1993 June 1994 - February 28th); *Schede informative sulle stragi meno recenti*, pp. 65-66.

commission of inquiry established in 1981⁴⁷.

On May 5, 1976, Luciano Violante issued arrest warrants for Sogno, Cavallo, Borghesio, Pacciardi, Ricci, Drago, Pecorella, Pinto, Orlandini, Nicastro Pagnozzi and other unidentified persons for attempting to modify the State Constitution and the form of government with means not permitted by the constitutional order and, in particular, through violent action, designed as ruthless and very rapid so as not to allow a possibility of direct reaction to limit the personal freedom of the President of the Republic and to force him to appoint a provisional government expressed by the armed forces. The coup aimed at the dissolution of Parliament, the abolition of parliamentary immunities, the establishment of concentration camps and an extraordinary tribunal to prosecute high political figures, the establishment of a single trade union, the formation of a provisional government for the implementation of a restructuring and recovery program for the country, a referendum on electoral-constitutional reform and an advanced social reform that would allow the relaunch of economic development⁴⁸.

It was precisely during the trial against Edgardo Sogno⁴⁹ that Luciano Violante, faced with the refusal of the SID – after an initial collaboration – to produce documents, turned to the Constitutional Court which for the first time ruled not on the conflict between the judiciary and the executive power, but on the constitutional legitimacy of political-military secrecy.

Since its establishment in 1956, the Court had suffered the barrage of the Court of Cassation which in 1970 had rejected as manifestly unfounded an appeal for constitutional illegitimacy regarding the secrecy⁵⁰.

In 1977, the Constitutional Court affirmed the legitimacy of the secrecy relating to military security for the external protection of «the territorial integrity, independence and survival of the State» and internally against «any violent or in any case not in conformity with the democratic system». However, the Court maintained that secrecy could never have been opposed «to prevent the ascertainment of facts subversive of the constitutional order» or, according to the subsequent interpretation of some jurists, to protect «particular interests»⁵¹ and «undermine the very values that the secret he was called upon to protect»⁵². However, the Supreme Court declared unconstitutional the articles 342 and 352 of the code of criminal procedure only in the

⁴⁷ *Commissione parlamentare d'inchiesta sulla Loggia P 2. Relazione di maggioranza dell'On. Tina Anselmi, La Loggia. la P. A. e la Magistratura. I rapporti con la Magistratura e cfr. Primo rapporto sul sistema di informazione e sicurezza*, pp. 59-63; as well as bibliography cited in Storti, 2015, p. 246.

⁴⁸ *Stragi e terrorismo in Italia dal dopoguerra al 1974*, pp. 196-207.

⁴⁹ Storti, 2015, pp. 231-237, 244 and see also Cazzullo, 2000.

⁵⁰ Storti, 2014, pp. 287-288 with reference to Cass. Sez. 1, 24 febbraio 1970 in «Il foro italiano» (1971), cc. 185-190.

⁵¹ Constitutional Court 86/1977, 24 maggio 1977 pres. Rossi, rel. Roehrsen.

⁵² Storti, 2015, p. 231 with reference to Mastropaolo, 1971, in part. 232-233.

part in which they attributed the responsibility for opposing secrecy to the Minister of Justice and not, however, to the Presidency of the Council, which, pursuant to art. 95 of the Constitution, «directs the general policy of the Government and is responsible for it» before Parliament in the case of abuses.

These indications were followed in the subsequent law 801 of 1977, which imposed on the Prime Minister the obligation to justify the opposition of secrecy and, in addition, distinguished the secret services into two distinct bodies, the one responsible for the «internal» defense of democracy (SISDE) and the deputy for «external» defense (SISMI), supervised by a parliamentary commission which immediately decided to secrecy of all its supervisory activities⁵³. In reality the secrecy remained under the control of the SISMI until 1991, as ascertained in 1995 by the first report of the *Parliamentary Committee for Information and Security Services*, which also denounced the Government's lack of collaboration⁵⁴.

This law was a huge disappointment for many jurists as it limited itself to sanctioning a mutation of the name of military political secret into the even more 'ambiguous' name of State secret. A new code of criminal procedure came into force on 24 October 1989⁵⁵ and did not substantially modify this regulation. Articles 202 (*State Secret*), 203 (*Informants of the judicial police and security services*) and 204 (*Exclusion of secrecy*) confirmed the enforceability of State secrecy, «stubbornly» defended by all governments⁵⁶, as a limit to verification of criminal facts with the provision of an exception relating to «facts, news, documents concerning crimes aimed at subverting the constitutional order»⁵⁷.

4. Circumstantial and indirect evidence in the trials on the Piazza della Loggia massacre and procedural strategies between due process and reasonable doubt

In the first trials of 1977 and 1982 against the alleged perpetrators of the Brescia massacre, the accusation, as mentioned above, was that of common massacre

⁵³ L. 801, 1977 and see Storti, 2014, p. 290.

⁵⁴ *Primo rapporto sul sistema di informazione e sicurezza*, pp. 21-22 (also with regard to the suppression of *Gladio*) and pp. 23-25.

⁵⁵ The code of 1989 underwent numerous changes since 1990: Colao 2013, pp. 305-344; Orlandi, 2012a, pp. 680-681.

⁵⁶ Orlandi, 2012b, pp. 2327-2333; Storti, 2014, p. 282; Storti, 2015, pp. 243 ff.

⁵⁷ *Codice di procedura penale e normativa complementare aggiornato al 1° settembre 1999*, ed. G. Ubetis: *Norme di attuazione, di coordinamento e transitorie del codice di procedura penale* art. 66, p. 399; *Disposizioni transitorie*, p. 465, L. 28 settembre 1998 n. 336. The maximum duration of preliminary investigations concerning massacre crimes committed before the entry into force of the criminal procedure code was extended to three years in the cases referred to in letter b of the c. 2 art. 407 c.p.p. and see on the legislative reforms of those years Colao, 2013, pp. 345-371; Colao, 2015, pp. 214-220.

on the basis of the art. 422 of the criminal code⁵⁸. Only in the third, which began in 1984, was the massacre classified as political, that is, as a massacre with the aim of attacking the security of the former State (art. 285)⁵⁹.

The 'political' nature of the massacre was represented with extreme drama by judge Gianpaolo Zorzi in the preliminary ruling of 23 May 1993 at the end of the investigations begun seven years earlier⁶⁰. In his opinion it was a question of

a real frontal attack on the very essence of democracy, i.e. the right of the members of the 'polis' to meet in the 'agora' and to express - there - directly, without any kind of mediation, their own political, individual and collective subjectivity in the form foreseen and regulated by the Law of Laws, in defense of the minimum conditions of recognizability and practicability of free and civil coexistence.

In contextualizing «the ignoble and vile means of the massacre», the judge referred, among other things, to the political faith of the demonstrators in Piazza della Loggia, to the outcome of the *referendum* on divorce fifteen days earlier, as well as to the «ghosts of dark season of the R.S.I. which had its main scenario in Brescia and Salò»⁶¹. The use of massacres was defined by him «as 'normal' tools of political struggle for the radical right»⁶².

In the same sentence, judge Gianpaolo Zorzi had also begun to reconstruct the «incredible series of obstacles» placed in the way of judicial investigations: a series of expertly pre-arranged and engineered mis-directions through revelations of fake 'penitents' and collaborators of justice in prison including Angelo Izzo, one of those responsible for the Circeo massacre⁶³.

The Court of Assizes of Appeal of Milan went back to the comparison between the two articles 285 and 422 of the penal code – especially with regard to the

⁵⁸ Art. 422 c.p. *Strage*: Anyone, except for the cases provided for by art. 285, with the aim of killing, carries out acts that endanger public safety is punished, if the act results in the death of more than one person, with life imprisonment.

⁵⁹ Art. 285 c.p. *Devastazione, saccheggio e strage*: Anyone who, with the aim of attacking the security of the State, commits an act aimed at causing devastation, looting or massacre in the State territory, or in a part of it, is punished with life imprisonment.

⁶⁰ Preliminary ruling of the Court of Brescia, 23 maggio 1993, Gianpaolo Zorzi Investigating judge, in *Rete degli archivi. Per non dimenticare*, Documenti 12, in part. pp. 72-73.

⁶¹ Ivi, pp. 73-74 e pp. 76-77 with reference also to the final sentence of the Court of Assizes of Appeal of Bologna of 14 February 1984 (on the establishment of *Ordine Nero*) and see also Tobagi.

⁶² Preliminary ruling of the Court of Brescia, 23 maggio 1993, p. 92.

⁶³ Ivi, on Angelo Izzo who had developed and coordinated «in every detail the declarations to be made to the magistrates» pp. 10 and 58 ff; on *Gladio* p. 65-67; pp. 67-71 on the impossibility of linking truth and falsehood in the sometimes «sibylline» statements made by the various suspects, as well as on the intervention of the deputy commissioner, pp. 107-108.

determination of the sentence in relation to the crimes of massacre and murder⁶⁴ –, in the sentence of 22 July 2015 which concluded the eleventh degree of judgment with the conviction for formal complicity in the massacre of Maurizio Tramonte (an extremely controversial figure for his links with the secret services who had begun to speak since 1974)⁶⁵ and of the Carlo Maria Maggi, who had «stable contacts with Italian and foreign security services»⁶⁶ and had organized *Ordine nero* after the dissolution of *Ordine Nuovo* in 1973⁶⁷.

As in the entire series of proceedings on the massacre of Piazza della Loggia, the investigations of the prosecutors and the decisions of the judges could only be carried out on the basis of circumstantial or indirect evidence according to the definition of the new code of criminal procedure.

The uncertainties deriving from the considerable mass of evidence had led the Court of Assizes of Appeal of Brescia to pronounce on 14 April 2012 a sentence of acquittal of the defendants for the crimes of massacre and murder Carlo Maria Maggi, Delfo Zorzi, Maurizio Tramonte, Francesco Delfino and Pino Rauti⁶⁸. This sentence was annulled by the Court of Cassation on 21 February 2014 which had, however, recognized that the Brescia court had ascertained a fact of fundamental importance and such as to change «the circumstantial framework compared to the first instance judgement». In fact, he had ascertained that the explosive device had been made using the gelignite owned by Maggi and Digilio, stored at the *Scalinetto*, a depot for «war» material and the place where the members of the dissolved *Ordine Nuovo* met. However, the Court of Cassation accused the judges of Brescia of not having «drawn from this factual reconstruction the necessary implications on the evidentiary level» and of having adopted a «hyper-guaranteeism which distorts logic and common sense»⁶⁹. The Court of Cassation had, therefore, referred the proceedings to

⁶⁴ Court of Assizes of Appeal Milan 22 July 2015 (*Rete degli archivi. Per non dimenticare*, Documenti processuali 17), pp. 472-474. The role of Carlo Maria Maggi in the organization of *Ordine nero*, according to the reconstruction of Marshal Felli and the sentence of the Assize Court of Appeal of Milan (p. 279) consisted in the «unity of the action of regrouping the subversive forces of the right following the dissolution of *Ordine Nuovo* and in the identity of the objectives pursued, the strategy to achieve them and the concrete implementation methods». See also Court of Cassation 2 May 2017 (*Rete degli archivi. Per non dimenticare*, Documenti processuali, 18), pp. 20-24; 102-103 e 107 ss.

⁶⁵ Cf. also the text at notes 82 ss.

⁶⁶ Cf. text and nt. 87.

⁶⁷ Cf. above text and nt. 24.

⁶⁸ The Assize Court of Appeal of Brescia on 14 April 2012 (*Rete degli archivi. Per non dimenticare*, Documenti processuali 15) had rejected the appeal against the acquittal of the defendants Maggi, Zorzi, Tramonte, Rauti and Delfino.

⁶⁹ Court of Cassation 21 February 2014, (*Rete degli archivi. Per non dimenticare*, Documenti processuali, 16), in part. pp. 66-67.

the Court of Assizes of Appeal of Milan⁷⁰.

In particular, the Court of Cassation contested the considerations of the Brescia judges relating to the defensive tactics («a well-conceived plan») of the accused Tramonte and to the fact that he had only begun to speak and deny after two degrees of judgment when he had learned that other people were starting to collaborate. The Supreme Court recognized, in fact, the extreme complexity of ascertaining very old facts which occurred, in addition, in «a historical moment in which the extra-parliamentary extreme right was reorganizing itself and planning attacks throughout Northern Italy» after «the Maggi's announcement of a terror strategy»⁷¹. Indeed, the Court considered it beyond doubt that, in the specific case of the Brescia massacre, the judges had to decide in the absence of direct sources⁷².

It noted, however, that in a circumstantial trial, i.e. «in the absence of sources that directly report or reproduce the planning and implementation of the criminal action», for the purposes of evaluating the evidence, the logical procedure through which «from certain premises affirms the existence of further facts» was fundamental⁷³. To overcome «the scrutiny of legitimacy of the evidentiary reasoning»⁷⁴, it was necessary to reconcile – as the Court of Cassation reiterated in 2017 in confirming the sentence of the Court of Assizes of Appeal of Milan in 2015 – the «structural and dynamic correlation of the beyond all reasonable doubt» with the guarantees of the criminal trial which concerned, first of all, the obligation to justify the decision and the burden of proof to the prosecution⁷⁵.

⁷⁰ Ivi, pp. 54-55. The expression recalled the debate on the distinction between «due process» and «fair trial» which had been 'triggered' by the introduction of the new procedural code and cf. Colao, 2013, pp. 354-371.

⁷¹ «a historical moment in which the extra-parliamentary extreme right was reorganizing itself and planning attacks throughout Northern Italy and Maggi was certainly at the peak of this movement and intended to make use of the massacre means to achieve subversive objectives» (Court of Cassation 21 February 2014, p. 72).

⁷² Ivi, p. 51.

⁷³ Ibidem.

⁷⁴ Ivi, p. 52 «the court's legality review is aimed at verifying whether the judge has indicated the reasons for his belief and whether these are plausible: that is, whether the conclusions reached can be said to be consistent with the material acquired and are based on inferential reasoning and flawless logical deductions from the point of view of argumentative progression, respecting the principles of non-contradictory nature and logical linearity of reasoning. The object of the scrutiny of the judge of legality is therefore the evidentiary reasoning and the method of evaluating the evidence, as evidentiary trespassing is not permitted. The art. 606 § 1 letter e) c. p. p., in fact, precludes the judge from re-evaluating the evidence, but does not prevent him from verifying whether the inference criteria used by the judge of merits can be considered plausible, or whether different ones are permitted, suitable for founding different solutions, equally plausible»; as well as p. 60 regarding the circumstantial process.

⁷⁵ Thus in the subsequent ruling of the Court of Cassation of 2 May 2017 (cit. note 64). One

In other words, the evidence should have been evaluated according to very specific parameters and criteria – of which the Supreme Court offered a sort of treatise⁷⁶ – in order to eliminate any reasonable doubt⁷⁷ and overcome the barrier of the presumption of innocence (art. 530 § 2)⁷⁸ according to the evidentiary limits of the so-called indirect evidence expressly provided for in the art. 192 of the new criminal procedure code⁷⁹:

Circumstantial evidence is a certain fact from which by logical inference based on consolidated and reliable rules of experience one arrives at the demonstration of the uncertain fact to be proved according to the so-called scheme of the judicial syllogism.

Considering that «as a rule the circumstantial fact is significant of a plurality of unknown facts», the judge had to account in the reasoning of the non-contradictory nature and plausibility of the reasoning that had led him to certain conclusions⁸⁰, i.e. the «logical procedure through which from certain premises» he had deduced the existence of further facts⁸¹.

These were rules and criteria that the Court of Assizes of Appeal of Milan applied when overturning the acquittal decision of the Court of Assizes of Appeal of Brescia⁸².

According to the Milanese judges, in reality, the innovative scope of the art. 530 § 2 of the new procedural code implementing the constitutional principle of the presumption of innocence had been overestimated by the court of Brescia, «being already present

of the fundamental issues was that of the different evaluation by the two Brescia courts of assizes and of appeal of Tramonte's declarations in the first and second instance, as the Court of Cassation had supported in the sentence of 21 February just cited, in part. p. 56. On the 2015 ruling of the Court of Assizes of Appeal of Milan, see text with notes 82 ss..

⁷⁶ Court of Cassation 2014, February 21st, pp. 61-66.

⁷⁷ Ivi, p. 68.

⁷⁸ Art. 530 c.p.p. *Sentenza di assoluzione*, § 2: The judge pronounces a sentence of acquittal even when there is no evidence, insufficient evidence, or contradictory evidence that the fact exists, that the accused committed it, that the fact constitutes a crime or that the crime was committed by a not-imputable person.

⁷⁹ Art. 192 c.p.p. *Valutazione della prova*, § 1: The judge evaluates the evidence by giving an account of the results obtained and the criteria adopted in the justification; § 2. The existence of a fact cannot be deduced from evidence unless these are serious, precise and consistent; § 3. Statements made by the co-accused of the same crime or by a person accused in a related proceeding pursuant to art. 12 are evaluated together with the other pieces of evidence that confirm their reliability; § 4. The provision of paragraph 3 also applies to declarations made by a person accused of a crime related to the one being prosecuted, in the case provided for by article 371 § 2 lett. b [*Rapporti tra i diversi uffici del pubblico ministero*].

⁸⁰ Court of Cassation 2014, February 21st, p. 60 e nr. 28, p. 62 «multiple serious precise concordant circumstantial evidences».

⁸¹ Ivi, p. 51. These criteria had been prescribed in a 1996 Supreme Court ruling (Sez. un. Civ. 13.11.1996, n. 9961).

⁸² Court of Assizes of Appeal of Milan 22 July 2015 (*Rete degli archivi. Per non dimenticare*, Documenti processuali, 17).

in the system» and in continuity with the jurisprudence of the early republican jurisprudence relating to the art. 474 of the criminal procedure code of 1930⁸³

Faced with such an extraordinary mass of evidence, which are linked to each other and strengthen each other, all orienting themselves in the same direction, so as to integrate a evidentiary framework of considerable depth, Maggi's guilty verdict is the only conclusion that resists any reasonable doubt - it is underlined, reasonable - in the most accepted meaning in doctrine and jurisprudence.

In the presence of uncertain evidence «in the accusatory hypothesis», the court would have had the obligation to acquit, but by applying the «dialectical method of verifying the accusatory hypothesis according to the criterion of doubt», as already defined by «the Supreme Court in 2011 (section 1, 24 October 2011, n. 41110), the judges believed they had managed to «avoid» both «the existence of internal doubts (i.e. self-contradictory or explanatory inability)», or that of doubts «external to it (i.e. the existence of an alternative hypothesis endowed with rationality and practical plausibility) ».

Furthermore, the judges had omitted the evaluation of «every possible, abstract conjecture alternative to the accusatory hypothesis» and had considered «only the propositions concretely represented and plausible». As specified by the Supreme Court in another ruling, in fact, «the doubt could not be based on a completely conjectural hypothesis, even if plausible»⁸⁴.

The Milan Court of Assizes of Appeal, as recognized by the Court of Cassation in 2017 which confirmed its decision, had «scrupulously adhered» to these rules and principles⁸⁵ and had avoided «incongruous argumentative paths»⁸⁶.

In conclusion, the Court of Assizes of Appeal of Milan had decided, with particular regard to the accused Carlo Maria Maggi, that all the elements gathered converged to charge him with an impressive series of responsibilities

⁸³ See for example *Codici (I) penali con la Costituzione e leggi varie* annotati da G. Lattanzi (1974), on art. 474 c.p.p. (*Requisiti formali della sentenza*), § 4. *Prove indiziarie* (Circumstantial evidence), pp. 1641-1642.

⁸⁴ Court of Assizes of Appeal of Milan 22 July 2015, in part. pp. 469-470: «the concrete anchoring to the procedural reality is constantly reiterated by the Supreme Court, which, in multiple rulings, has stated that «The rule of judgment summarized in the formula <beyond any reasonable doubt> requires a conviction to be pronounced on the condition that the given acquired evidence leaves out only remote eventualities, although abstractly formulable and conceivable as possible «in rerum natura» but whose actual realization, in the concrete case, is without the slightest confirmation in lawsuits results placing themselves outside the natural order of things and normal human rationality”». According to the Cassation ruling, the mistake of the two Brescia courts was precisely that of not realizing «the unreasonableness» of the many alternative hypotheses they, so to speak, considered «plausible».

⁸⁵ Court of Cassation 2017, May 2nd, in part. p. 71 e 74 and see above notes 64 e 75.

⁸⁶ Court of Cassation 2017, May 2nd, p. 14.

and strategic and organizational qualities: the massacre ideology; the fervent tireless activism to reorganize the orphans of the dissolved *Ordine Nuovo* and the «mavericks» of neo-fascist extremism into *Ordine Nero*; the charisma to play an absolutely central role in this reorganization; the establishment of a group at its disposal, with a military structure and the ability to organize attacks, already operational with ramifications in several areas of Northern Italy; the availability of multiple channels for the supply of weapons and explosives, including the explosive gelignite used to make the bomb detonated in Piazza della Loggia, as well as a competent armorer (Digilio); the network of connections necessary to complete the execution phase of the attack «without getting his hands dirty»; the consciousness gained through the multiple preparatory meetings also with Italian and American members of the army of being able to count, at a local level and beyond, on the sympathy and coverage – if not even direct support – of members of the State apparatus and security services national and foreign⁸⁷.

5.«not everyone was innocent»: the responsibilities of the State apparatus

In the contrast between strategies for overturning the democratic Constitution and strategies for ascertaining procedural truth, had justice finally prevailed?

⁸⁸ The Milanese judges themselves were not very convinced of this when, at the conclusion of their sentence, they wrote their accusation against those responsible for the enormous delay with which they had only been able to arrive at a partial reconstruction of the facts and for «the too many entanglements» that had favored and protected «the underworld, including institutional ones, of the bomb era»⁸⁹:

A final note is necessary, even if it does not influence the judgment of guilt of the two accused that this Court has decided to formulate. The study of the endless number of documents that make up the trial file leads to the affirmation that this trial too - like others related to massacres - is emblematic of the underground work carried out with obstinacy by that mass of forces that Vinciguerra spoke about and which can now be identified with certainty in a not insignificant part of the State security apparatus, in the hidden centers of power, which have previously encouraged and supported the development of the subversive projects of the extreme Right, and then diverted the intervention of the Judiciary, effectively making it impossible to reconstruct the entire network of responsibility. The result was devastating for the very dignity of the State and its indispensable function of protecting democratic institutions: today, 41 years after the massacre, only a leader over eighty and a no longer young intelligence informant are sitting in the defendant's bench, while others, equally responsible, have long since left this world or even just this country,

⁸⁷ Court of Assizes of Appeal of Milan 2015, July 22nd, pp. 463 ss.

⁸⁸ *Stragi e terrorismo in Italia dal dopoguerra al 1974*, in part. p. 72.

⁸⁹ Court of Assizes of Appeal of Milan 2015, July 22nd, p. 471.

placing a tombstone on the too many entanglements that characterized the underworld, even institutional, of the bomb era.

In the meantime, the world had changed: after the massacre strategy and the plans for the subversion of the democratic Constitution, a new phase of the strategy of tension began in 1974, that of the *Brigate Rosse* and, from a normative point of view, the decade of the 'exception' and double level of legality⁹⁰.

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⁹⁰ Colao, 2013, pp. 159-180 to which I also refer you for the fundamental bibliographical references; Colao, 2015, pp. 209-214 and, in relation to the legal culture of those years, cf. now Lorusso, 2024, in part. pp. 275-285.

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