

TICINO
IN THE NAME OF THE REPUBLIC AND CANTON OF TICINO

COURT OF CRIMINAL ASSIZES

Consisting of the following judges and attorneys: Plinio Rotalinti (Chairman), Lorenzo Anastasi (in place of the judge Verda), Mginio Rezzonico (in place of the judge Lepori), and jury: Daghini Rodolfo, De Filippo Pierluigi, Derighetti Luigi, Giannoni Marco, Valsecchi Beniamino.

Sitting with the undermentioned secretary of the criminal prosecution courtroom of this Court House for the trial of:

DELLA TORRE Franco, son of Carlo and Alice Grisoni, deceased; born in Mendrisio, on November 20, 1942, but originally coming from Vacallo, domiciled in Balerna, Via Guisan, married and manager; already held in custody from November 14, 1984 to March 31, 1985;

PALAZZOLO Vito, son of Ludovico and Giuseppina Palazzolo, deceased; Italian citizen, born in Terrasini (Palermo), on July 21, 1947, resident in Breganzona, 27 Via Polar, married, storekeeper; held in custody from April 20 1984;

ROSSINI Enrico, son of Amelio and Eride Frapolli, born in Sorengo, on October 19, 1951, but originally coming from Valcolla, domiciled in Viganello, at 13 Via Quiete, married, business consultant; already held in custody from November 14, 1984 to March 31, 1985;

for having committed successive and aggravated crime in violation of the Federal Law on drugs

since the crime is connected with a considerable amount of drugs capable of jeopardizing the health of many people,

since they have taken part, in complicity with each another and with other people, in financing an illegal traffic in drugs, and acted as intermediaries for the financing of this traffic, putting for sale high quantities of base morphine which was partially shipped from Turkey to the South of Italy. The base morphine after being refined into heroin was sent to the United States and finally sold to retail consumers.

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The defendants took several simultaneous actions aiming at the same criminal design, under the circumstances and conditions specified hereunder.

1. The three defendants set up the delivery and transfer of the money, so as to send it, direct or indirect, not only to drug suppliers as an advanced payment for the purchase of the base morphine, but also to the several drug dealers involved in the traffic, in order to bear the cost of their organization, as well as that of refining and transportation.

2. The three defendants jointly and severally contributed to achieving the above purpose, by setting up the delivery, transfer, concealment and clandestine distribution of the following sums of money:

2.1. Approximately \$ 40 (forty) million virtually taken in delivery in the U.S.A.;
(cf. Minu. PP No.5, p.3)

2.2 other sums of money for a total of approximately \$ 7 (seven) million taken in delivery in other ways;
(cf. sub section 5./22)

3. The above money was disbursed to some of the drug traffickers, in particular to:

3.1. Musullulu Yasar Avni, 1.1.1942, alias Oksuz Attila, who at the time was living in Kussnacht and was the owner of a company having its offices in Zurich. He used to buy base morphine from Turkish suppliers mainly based at Canturk Behcet, at the price of \$ 13 000 per kilo. In this operation he was assisted by Heridel Paul, a liaison between the traffickers and the defendants;

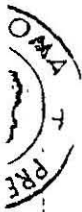
3.2. The base morphine was purchased by some Sicilian groups which took delivery of it off the Italian coasts. At that time the base morphine was processed into heroin and eventually transferred to the U.S.A. to be sold to retail consumers.

These groups were represented by Rotolo Antonino, alias Rudy and Carlo, January 3, 1946.

Rotolo worked alone and at the beginning in conjunction with La Mattina Nunzio, June 2, 1934, and with his son-in-law Priolo Salvatore, October 12, 1956; later on, he worked alone and in conjunction with Greco Leonardo, June 6, 1938, who was also represented by Tognolo Oliviero, March 10, 1951.

For this purpose, Rotolo, Greco and Tognoli came into contact with the three defendants under the circumstances and conditions specified hereunder.

4. The three defendants participated in the delivery, transfer, concealment and disbursement of the above-mentioned sums of money as follows:



4.1. Palazzolo and Della Torre,

all the money mentioned in the present indictment

4.2. Rossini

all the money mentioned in the present indictment with the exception of

4.2.1. the money taken in delivery in a place other than the United States

(section 2.2)

4.2.2. the money taken in delivery in the United States

after the summer of 1982

(section 26)

5. Late in 1981,

Palazzolo and Della Torre made available bank accounts in Chiasso (in the name of Della Torre, e.g. number Frater 215'159 and Graziano 220'250) for the deposit and re-disbursement of the money—received—according—to—the instructions given by Tognolo Oliviero.

The following sums of money were deposited in the above bank accounts: (AI 48)

5.1. the money smuggled from Italy by Ventimiglia Antonio, alias Toni, July 23, 1946, employed by Palazzolo and Della Torre as currency smuggler, partially credited to a bank account belonging to Bellinzona;

5.2. one bank credit of \$ 990 000 issued by San Marco Shipping Ltd of Zurich on December 1st, 1981, according to instructions given by Giuffrida Gaetano, February 6, 1948, and Spadaro Tommaso, August 20, 1937;

I.M. parr. 5, 50, 53;

Minutes I.M. 45, 54;

Minutes PP No.1 pages 7, 11 and 12; No.4 page 4; No.11 page

4; No.13 page 2;

AI 105, 130;

5.2. \$ 1 700 000 through three bank credits issued, in December 1981, from accounts opened in Lugano in the name of Cuntrera Pasquale, May 17, 1930, and Caruana Alfonso, January 1st, 1946;

I.M. parr. 8, 123;

AI 108, 122, 125, 162;

5.4. \$ 650 000 through two bank credits issued, in April and May 1982, from an account registered in the name of Caruana Alfonso;

I.M. par. 126; AI 162;

5.5. 12 chèques amounting to \$ 2 237 000, and issued by a Canadian bank in favour of Caruana Alfonso;

AI 146;

I.M. parr. 126 - 128;

5.6. different sums of money credited by a bank of Geneva;
AI 103;

6. In the spring of 1982, in Lugano,
Rossini made available to Consultfin SA, a financial company
used by Palazzolo and Della Torre, the office premises
adjacent to those of Traex SA, a financial company under his
management, located at 12 Via Balestra.
In particular, Rossini made available his money-counting
machine.
Minutes PP No.6 page 3;

7. in March 1982, in Lugano,
in the office premises located at 12 Via Balestra,
Palazzolo and Della Torre received a parcel of money which
was malodorous and in bad condition. Having tried
unsuccessfully to deposit the money in a local bank, Della
Torre took it personally on a plane to New York where he
deposited the money at Marril Lynch in favour of the
account registered in the name of Traex SA, as directed by
Rossini;
Minutes IM 177;
Minutes PP No.6 page 4, No.13 page 1;
AI 74 page 2;

8. in April 1982, in Lugano,
Palazzolo, Della Torre and Rossini met with Tognolo Oliviero
and Greco Leonardo in the office premises of Rossini located
at 12 Via Balestra. At the meeting there were also Salomone
Philip and Ventimiglia Antonio. Rossini's courier delivered
\$ 3 million which had been transferred by plane from New
York. To this sum of money was to be added other money in
different currencies which Della Torre had withdrawn from
several bank accounts belonging to Rossini;
Minutes IM 42, par. 140;
Minutes PP No.1 pages 5,6 and 7; No.4 pag. 2; No.6 pages 3
and 4; No.10 pages 4 and 5; No.13 pag.3; No.25 pag.5; No.27
pages 5 and 6; AI 114 No.3 and No.4;

9. in April 1982, in Lugano,
on the day after or on the very day of the above-mentioned
meeting, all the above people met with Rotolo Antonio and
Waridel Paul, who were delivered all the above sums of money
for a total of approx. \$ 5 million. The delivery took place
in the underground parking area of 12 Via Balestra, and the
money was loaded into a Pontiac belonging to Waridel with a
Q-plate of the Canton of Zurich.
IM parr. 65, 70, 71-75, 79, 80, 98 - 105, 114 - 116;
AI 145, 149, 141 pag.9;

10. For taking in delivery the American dollars in the
U.S.A., Palazzolo appointed a friend of his, Salamone
Philip, February 8, 1944, an American citizen, working as a
gardner and coming from his own hometown.

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Palazzolo and Della Torre supplied the name, telephone number and passport number of Salamone, not only to Tognolo Oliviero, for the man in charge of delivering the American money, but also to Rossini, for the one in charge of taking the American dollars outside the U.S.A;

Minutes IM 85; 180;

Minutes PP No.4 pag.4; No.4 pag.6; No.17 pag.1;

AI 44, 88, 166;

11. In the U.S.A., Salamone Philip was delivered the American dollars in cash by different people known by the names of Joe and Henry. One of them was Matassa Philip, June 18, 1954, the cousin of Tognoli Oliviero's wife; while the other, whose nick-name was "Sal", was Greco Salvatore, April 3, 1933, all of them being in contact with Ganci Joseph, September 26, 1933. The delivery took place in a street of New York where Salamone unloaded bags and boxes full of American dollars out of cars about which he had been informed by the men in charge of the delivery. Salamone did not even count the money.

Minutes IM 37;

Minutes PP No.1 pag.8; No.25 pag.3; No.27 pag.4;

AI 110, 26 No.3, 35; AI 68 pages 39 - 57; AI 23 enclosed 2-3.5 sheet 5; doc. PP pages 722, 778, 942, 991, 1006 - 1024;

12. Salamone Philip concealed the American dollars in his place, either in the cellar or behind the fire-place, and with the help of his wife and his children separated the money according to their denomination. Either Della Torre or his courier Ventimiglia called on him, took delivery of the bags containing the highest notes and took them to Zurich by plane.

It occurred once that Salamone delivered Della Torre some money orders that the latter personally transferred to Switzerland.

Minutes IM 34, 138;

Minutes PP No.5 pag.3; No.8 pag.2;

13. Rossini took charge of the transfer of the American dollars from the U.S.A to Switzerland by turning to Scossa Giorgio, one of his relatives, who in 1981 had already organized the transfer of 8 suitcases on behalf of Cavalleri Antonio, April 1st, 1939, who in turn had acted on behalf of Tognoli Oliviero and Ganci Joseph, September 26, 1933, alias "Bufalo". Scossa was also assisted by Esposito Claudio, June 30, 1939, a Swiss-air employee who was part of the ground personnel at the international airport of New York.

Due to the task given to him, Esposito came into contact with Salamone. The money was taken inside the airport by Salamone and later checked in with the help of Claudio who

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informed him by phone on the time of arrival and departure of the baggage.

Minutes IM 17, 41, 43, 44, 62, 63, 97, 99, 109, 132;
Minutes PP No.1 pages 4, 5, 8 and 9; No.10 pag.6; No.30 pag.2; No.31 pag.2; No.32 pag.3;
AI 98, 152;

14. Having learned from Palazzolo the telephone number of the man in New York who was keeping the money, Rossini gave it to Scossa who in turn gave it to Esposito Claudio. The arrival of Scossa's couriers together with the money was checked by Esposito Claudio who informed Scossa on their departure accordingly. Scossa could therefore wait for the arrival of the suitcases containing the money at the Zurich airport, and deliver them to the persons in Zurich indicated by Rossini or at Traex SA in Lugano. That was the procedure of almost three transfers from the U.S.A..

Minutes IM 12, 59, 60, 62, 163, 133;
Minutes PP No.11 pages 1 and 2; No.31 pag.2;

15. Della Torre, Ventimiglia and Salamone personally transferred the money by plane from New York to Zurich, delivering it either in Zurich or in Lugano at Traex SA. On two occasions did Salamone travel with his two children wearing overcoats padded with dollars.

Minutes IM 44, 45, 46;

16. The money taken in delivery by Salamone and later transferred as specified under section 11 and 12 was primarily made of small bank notes of \$ 5.00, 10.00 and 20.00, of old issue.

Minutes IM 31;
Minutes PP No.1 pag.6; No.8 pag.1; No.11 pag.2; No.13 pag.2;
No.25 pag.4; No.28; No.29 pag.2;

17. In Lugano, at 12 Via Balestra, Rossini took delivery of the American dollars transferred from the U.S.A., and deposited at Traex SA, a financial company belonging to Rossini, in accounts registered in the name of Palazzolo, Della Torre and of their companies, such as Pageco AG belonging to Palazzolo. These funds were used by the three defendants to finance a large number of Stock-Exchange transactions which resulted in heavy losses.

Minutes IM 15, par. 139;
Minutes PP No.14 pag.1

18. In Zurich the three defendants organized the delivery of the money to Musullulu and Waridel which took place in two stages:



18.1. In the first stage, almost \$ 3 million were delivered;

18.2. In the second stage, almost other \$ 3 million were delivered together with other sums of money in other currencies, e.g. Swiss francs, Italian lire and almost DM 800 000, which were delivered by Rossini himself.

The money was delivered in a street, near the Pageko AG office premises of Palazzolo located at 12 Lowenstrasse. The money was loaded into Waridel's car with the assistance of Musullulu, on the side of Della Torre and Ventimiglia, while Palazzolo and, the second time, Rossini remained in the offices together with Rotolo.

IM parr. 68, 76 - 78, 86, 89, 90, 106;
Minutes PP No.1 pag.14; No.10 pag.6; No.11 pages 1 and 12;
No.15 pag.2; No.16; No.22 pag.2; No.23 pag.2; No.30 pag.2;
AI 41, 129;

19. At the request of Palazzolo and Della Torre, their courier Ventimiglia often took the money received from Rossini to Zurich and gave it to Waridel and Musullulu;

Minutes PP. No.1 pag.7;

20. From March 1982, Rossini made available the Traex SA account with Merrill, Lynch, Pierce, Fenner and Smith Inc. of New York, with whom he made agreements on the basis of which he had to provide cash money coming directly from New York.

Palazzolo and Della Torre, already active in the Stock Exchange through Traex SA (Lugano) accepted. As a result, Della Torre delivered the money concealed in Salamone's place to the Merrill Lynch agents. Although part of the money was initially deposited with Merrill Lynch, the remaining money was directly deposited in a bank of New York, not in the name of Della Torre, but of Merrill Lynch itself. In this way, almost \$ 4.9 million were taken in delivery by Salamone and then credited to Merrill Lynch account No. 11908122, i.e. \$ 4,908,435.

Minutes IM 22, 23, 24, 102 follow;
Minutes PP No.1 pag.10; No.4 pag.4; No.5 pag.3; No.13 pag.1;
No.17 pag.3;
AI 42; 68 pages 37-38, 115-117;

21. After breaking off relations with Merrill Lynch, Palazzolo, Della Torre and Rossini decided to transfer the above-mentioned transactions to E.F.Hutton and Co., Inc. in New York.

For this purpose an account was opened which was first registered in the name of Traex SA and later in that of Acacias Development Corporation, a financial company at the

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disposal of Palazzolo and Della Torre.
The money delivered according to the procedure already specified, amounted to approx. \$ 15.5 million.

Minutes IM 68 follow., 155 follow., par. 11;
Minutes PP No.1 pag.10; No.4 pag.4; No.8 pag.2; No.22 pag.2;
AI 119, 43, 47, 60, 68 pages 31 - 50, 115-118 (\$ 8 250 745
in the account No. W 6098662 and \$ 7 432 800 in the account
No. E 0794160).

22. Some time in the Spring of 1982,
in order to meet a demand of Rotolo,
Palazzolo came into contact with Kastl Georg (April 14,
1945, Keisten/AG) whose telephone number had been provided
by Rotolo himself. By introducing himself as Helmuth,
Palazzolo was delivered \$ 100 000-bearer chèques amounting
to \$ 1.5 million and corresponding to the money belonging to
Giuffrida Gaetano and Spadaro Tommaso, which Kastl had at
his disposal in Zurich in a bank account registered in the
name of San Marco Shipping Ltd, a company administered by
Kastl.

In Lugano Della Torre withdrew the chèques which were later
delivered through Rotolo to Musullulu and Waridel in Zurich
together with other \$ 2 million, by drawing on the money
already transferred from New York.

Minutes IM 8,9, 55 par. 5, 6, 7, 16, 17, 31, 42-48, 53-58;
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Minutes PP No.5 pages 3 and 4; No.21 pag.1; No.27 pag.7;
AI 101, 130, 136, 104, 105;

23. At the request of Palazzolo, Della Torre came into
contact with a few people in Toronto, Canada; these new
relations contributed to the transfer from New York to
Toronto of almost \$1.5 million, of which \$ 100 000 during
the first half of 1982 and the remaining money between the
end of 1982 and the beginning of 1983.

The transfer from Canada to Switzerland took place in the
following way:

23.1. Salamone transferred the money by air plane from New
York to Toronto

23.2. Della Torre deposited money in accounts at his
disposal in Switzerland (the PGK AG account with Hutton of
Geneva and other bank accounts in Chiasso).

23.3. Ventimiglia and one of Palazzolo's acquaintances (a
man from Geneva called Boris Soleyman), transferred the
remaining money from Toronto to Switzerland by air plane;

Minutes IM 34, 167, 174, par. 153;
Minutes PP No.5 pages 2 and 3; doc. PP pag.74;
AI 114 No.5 pag.2; AI 68 pag.42;

24. in September 1982,
In the fear that the investigations carried out at that time
by the FBI might have confined them in the U.S.A., Palazzolo
and Della Torre ordered Hutton to immediately transfer the

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~~existing credit balance registered in the name of Acacias Ltd. in New York into new Hutton accounts in Geneva.~~

AI 68 pag.50;

This money was used by Palazzolo and Della Torre in the following way:

~~24.1. Cheques amounting to \$ 1.5 million were given in Geneva by a friend of Palazzolo to the consignees (i.e. drug suppliers.);~~

~~24.2. \$ 3 million were credited to an Acacias Ltd. account in a bank of Chiasso, where they were used by Della Torre for the purchase of 200 kg of gold. The gold was first delivered to Palazzolo and Ventimiglia, who in turn delivered it to Tognoli Oliviero in Ponte-Chiasso.~~

Minutes IM 9 par. 147;

Minutes PP No.5 pag.4; No.6 pag.4; No.8 pag.2;

AI 88 No.1;

25. Early in December 1982, in Chiasso, Della Torre on two occasions delivered approx. \$ 800,000 in cash to Tognoli, the delivery taking place as usual in the street;

Minutes IM 37, 47;

Minutes PP No.22 pag.1; No.27 pag.2; No.27 pages 3 and 4;

26. From December 1982 to March 1983, On the basis of the decision to close their Hutton accounts, Palazzolo and Della Torre started looking for another "channel" until they made an agreement with Frigerio Enrico, alias Chico, December 21, 1982 (citizen of the Canton Ticino, but at that time resident in New York.)

26.1. Through this channel almost \$ 3 (three) million were transferred from the the U.S.A. to Switzerland in the course of almost 4 flights along the New York-Zurich leg.

26.2. In New York the money was then taken in delivery - as through the above-mentioned channels - by Salamone Philip who using the name of Luciano or Lucien, took it to an apartment made available to Frigerio in New York;

26.3. Frigerio provided his brother, Emiliano Frigerio, July 20, 1950, and Brandli Beniamino, July 30, 1950, as couriers, as they were both employed in his firm, Gestinvest SA of Chiasso, as well as Palchetti Carmelo;

26.4. The money was delivered to Della Torre for the most part in Chiasso, in the Consultfin premises, but also in Kloten where Della Torre himself carried out the operation;

Minutes IM 30, 33, 115;

Minutes PP No.3 pag.4; No.10 pag.7; No.14 pag.3; No.17 pages 3 and 4; No.25 pag.3; No.28, No.29;

27. In the period between the Spring of 1982 and the early part of 1983,

Palazzolo and Della Torre distributed part of the above money to other people involved in the traffic - in addition to those already mentioned -. In this respect, as directed by Rotolo Antonio and Tognoli Oliviero, they provided for crediting money to several bank accounts in Lugano, Chiasso and Bellinzona, accounts which were at the disposal of the following people:

- Greco Leonardo, June 6, 1938 (AI 23 enclosed 2.3.5.);
- Aiello Michelangelo, June 4, 1942 (AI 23 enclosed 2.2);
- Jounes Mohamed, January 1, 1931 (doc.PP classeur banks No.1)
- Pagnini Pietro, October 15, 1943 (doc.PP pages 197-200)
- Pagnoni Anselmo, April 1, 1950 (inc. pp 3518/84)

28. As a remuneration for the above services, the three defendants received by the group of Sicilian traffickers:

28.1. 6% commission on the American dollars transferred from the U.S.A.. Having learned about the investigation started in the summer of 1982 by the FBI on the Hutton transactions, the commission was raised to 8%;

Minutes IM 16, 32, 52, 87;
Minutes PP No.3 pag. 6; No.5 pag.5; No.13 pag.2; No.14 pages 3-and-4; No.17 pag.4;

28.2. Palazzolo, Della Torre and Rossini, without the knowledge of their principals, used the money deposited in Merril Lynch and Hutton in order to make transactions in the markets of metals and currencies. Many of these transactions resulted in heavy losses.

Minutes IM 13, 104;
Minutes PP No.1 pag. 15; No.2 pag.3; No.3 pag.6; No.4 pag.7; No.5 pag.5; No.11 pag.1;

28.3. In April 1982, in Lugano; Tognoli Oliviero and Rotolo Antonino decided to give as a present to Della Torre an all but new Porsche. As soon as Palazzolo and Della Torre learned that car corresponded to the one already used by Priolo Salvatore for dollars trafficking in conjunction with the above-mentioned Cavalleri Antonio, they decided to get rid of it and Della Torre soon bought another Porsche by selling the old one.

Minutes IM parr. 13, 67;
Minutes PP No.1 pag.11; No.2 pag.3; No.3 pag.3; No.10 pages 6 and 7; No.11 pag.3;

Events occurring in 1981, 1982, 1983, in Lugano, Chiasso, Zurich and in other Swiss and foreign places, under the circumstances of place and time already specified



~~crime provided for in art. 19 sections 1 and 2, item a. of the Federal Law on drugs of 30.10.1951;~~

~~*As better provided for in the indictment No.76/85 of June 10, 1985 passed by the Public Prosecutor of the "Monte Cenere".~~

Furthermore, making reference to the order made on July 18, 1985, by the Chairman of the Criminal Chamber on the basis of which the proceedings referred to the indictments 76/85 and 97/85 were linked.

WARIDEL Paul Eduard, son of Henri and of Janka Koletzka, born in Istanbul (Turkey), on December 7, 1941, originally coming from Prahins (VD), resident in the Zurich Canton, shopkeeper, married; held in custody from April 28, 1985

having been found guilty of successive crime and circumstance of aggravation in violation of the Federal law on drugs,

since the crime has been committed in conjunction with a gang, making a large amount of money, with the knowledge that the crime was related to a large quantity of drugs capable of jeopardizing the health of a lot of people, since he has taken part,

in complicity with Musullulu Yasar Avni, January 1, 1942, alias Karadurmus Sari Avni, alias Atila Oksuz or Attila Oksur, and with other people, and according to the procedure and functions specified hereunder, in a traffic in drugs and in the financing of this illegal traffic, acting as an intermediary in its financing, contributing to putting for sale on the market large quantities of Turkish base morphine which was refined into heroin in Sicily and then transferred to the United States to be sold to retail consumers,

in particular for being engaged under the the circumstances specified hereunder in several executive actions which were part of the same criminal design:

1. In the Spring-Summer of 1981, in Zurich, in the office premises rented by Musullulu at first 12 Zahringerstrasse and later at 3 Bahnhofplatz, working as interpreter between Musullulu on the one side as base morphine supplier and the Sicilian buyers on the other, who were first represented by La Mattina Nunzio, June 2, 1934, and his son-in-law Briolo Salvatore, October 21, 1956, and later, after the arrest and murder of La Mattina, by Rotolo Antonino, January 3, 1946, alias Carlo or Rudy. With the help of Waridely, Musullulu accepted to resume the supplying of base morphine on the basis of an agreement settling the financing of previous supplies of base morphine

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- which still had to be completely paid - and of future supplies.

2. Between the end of 1981 and the beginning of 1982, in Zurich, Waridel still worked as interpreter in the negotiations between Musullulu on the one side and Rotolo on the other. These negotiations ended with an agreement according to which Musullulu was supposed to provide the group represented by Rotolo Antonino with base morphine at the rate of \$ 13 000 per kilo.

3. During 1982 and 1983 in Zurich and Lugano, Waridel kept up relations between Musullulu and Rotolo, acting as a liaison for the despatch of instructions and the setting up of meetings. Waridel always took part in these meetings as interpreter helping establish the terms of the traffic and of the financing, in particular:

3.1. the place and time of delivery, the quantity of base morphine which Musullulu bought from a Turkish organization, and the terms of the shipment off the Southern coasts of Italy. The buyers took delivery of the supplies of base morphine sending it into Sicilian refineries where it was processed into heroin and finally sent to the U.S.A.

3.2. the terms, the time and the calculation of the money paid for the supplies of base morphine, for which Musullulu always managed to obtain advanced payments. As a whole, in the presence and with the help of Waridel, the group represented by Rotolo Antonino provided Musullulu with almost \$ 17.2 million in exchange for the provision of base morphine purchased over the years 1982 and 1983. Waridel was in no way involved in the payment of the other supplies.

4. over the years 1982 and 1983, in Lugano and Zurich, Waridel took an active part in delivering part of the above money to Musullulu according to the instructions given by Rotolo and Musullulu himself, under the circumstances hereunder specified:

4.1. in April 1982, in Lugano, Waridel accompanied Rotolo, Antonino, coming from Zurich, and a man known by the name of Solegman, a friend of Musullulu, in the office premises of Palazzolo Vito, Della Torre Franco and Rossini Enrico located at 12 Via Balestra, the meeting was attended by the above mentioned persons, by other representatives of the Sicilian group of traffickers, i.e. Greco Leonardo, June 6, 1938, and Tognoli Oliviero, April 10, 1951, and by Palazzolo's and Della Torre's couriers, i.e. Salamone Philip, February 8, 1944, and Ventimiglia Antonio, July 23, 1946.



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In the office premises there were almost \$ 5 million, of which \$ 3 million were in small notes and the remaining \$ 2 million in other currencies. The money was loaded into Waridel car, a Pontiac with a Q-plate of the Zurich Canton, and then taken to Musullulu's place in Kussnacht/ZH.

4.2. in the Spring of 1982, in Zurich, on the road, near the Pageko AG premises, a firm belonging to Palazzolo Vito, at 12 Lowenstrasse, Waridel and Musullulu, from the hands of Rotolo, Palazzolo, Della Torre and Ventimiglia, took delivery of a few suitcases which were soon loaded into Waridel car. Inside the suitcases there were:

4.2.1. almost \$ 3 million as a whole, the first time;

4.2.2. almost \$ 3 million together with other currencies, e.g. Swiss francs, Italian lire and almost DM-800 000, the second time.

5. Over the years 1982 and 1983, in Zurich, in Musullulu offices, Waridel took part as interpreter in the meetings during which Rotolo gave Musullulu, on three different occasions: (Minutes PP No. 1 pag. 5)

5.1. a sum of \$ 1.7 million in cash;

5.2. a sum of \$ 1 million in cash;

5.3. 15 bearer cheques of \$ 100,000 each, issued by a bank of Lugano according to instructions given by Giuffrida Gaetano, February 6, 1940, and Spadaro Tommaso, March 20, 1937.

(cf. AI 36, AI 102)

6. over the years 1982 and 1983, in Zurich, Waridel, by himself or with Musullulu, took charge of changing the above money into other currencies, after which he gave part of it in cash to Musullulu, and deposited the other part - almost \$ 500,000 - in his personal account in Zurich, from where he could withdraw the money any time Musullulu would ask him to do so.

(cf. AI 24, Minutes PP No. 3 pag. 3)

7. in June and July 1982, in Zurich, five of the above bearer cheques of \$ 100 000 passed from the hands of Rotolo, to Musullulu's and finally to Waridel's, after which they were cashed in two banks of Zurich from where Waridel could withdraw the equivalent money at the request of Musullulu.

(cf. Minutes IM pages 17 and 27 and AI 9 pag. 69)

events occurring under the above circumstances from 1981 and 1983, in Lugano, Zurich and other Swiss and foreign places;

crimes provided for in art.19 section 1 and 2 of the Federal Law on drugs of 30.10.1951;

"As better provided for in the indictment No.76/85 of June 12, 1985 passed by the Public Prosecutor of the "Monte Cenere".

Attending:

The Public Prosecutor of Monte Cenere attorney Paolo Bernasconi.

The defendants:

- Franco Della Torre, assisted by the counsel for the defense appointed by the Court, attorney Renzo Galfetti;

- Vito Palazzolo, assisted by the counsel for the defense, attorney Mario Postizzi;

- Enrico Rossini, assisted by the counsel for the defense, attorney Daniele Timbal;

- Waridel Paul Eduard, assisted by the counsel for the defense, attorney Roberto Macconi.

Hearings taking place on 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, and 26, of September 1985.

After having heard

The Public Prosecutor, after confirming the indictment, with the exception of items 5, 7 and 22, demands that :

- Paul Eduard Waridel be sentenced:

- to 15 years' imprisonment
- to pay a fine of fr.300 000.--

- Vito Palazzolo be sentenced:

- to 12 years' imprisonment
- to expulsion from Switzerland for 15 years
- to the devolution to the State of fr. 50 000.--
- jointly and severally with Della Torre Franco
- to pay a fine of fr. 100 000.--

- Franco Della Torre be sentenced:

- to 12 years' imprisonment
- to the devolution to the State of fr.50 000.--
- jointly and severally with Palazzolo.
- to pay a fine of fr. 50 000.--



- Enrico Rossini be sentenced:

- to 8 years' imprisonment
- to the devolution to the State of fr. 50 000.--
- to pay a fine of fr. 300 000.--

The attorney Mario Postizzi, counsel for the defense of Palazzolo, stresses the personality, character and previous life of his client,

- contests that the receiving of stolen goods be punishable in accordance with art.19, section 1 par. 5 Fed.Law on drugs.
- contests the crime of receiving stolen goods as such;
- contests the crime of financing as provided for in art.19 section 1 par.7 Fed.Law on drugs.
- underlines that the preparatory act of financing is not punishable according to the Fed.Law on drugs.
- points out that his client had a clear record until 1982.

In conclusion, he points out that Palazzolo did not violate the Fed.Law on drugs, neither objectively, nor subjectively, and therefore asks for the acquittal of the crime provided for in art.19, section 1 and 2, item a) of the Federal Law on drugs of 30.10.1951.

The attorney Renzo Galfetti, counsel for the defense of Della Torre, points out the previous life of his client,

- underlines that the statement rendered by the defendant Waridel cannot be considered as a summons of co-defendant;
- contests all the charges included in the indictment
- asks for the acquittal of the crime provided for in art.19 section 1 and 2 item a) of the Federal Law on drugs of 30.10.1951.

The attorney Roberto Macconi, counsel for the defense of Waridel, after making a preliminary examination of the indictment,

- contests the complicity, admitting the possibility of cooperation. However, this type of cooperation cannot be punished since it is unintentional
- points out that his client has acted without obtaining any remuneration
- also points out that his client has cooperated with the U.S. anti-drugs authorities, the Police of Greece, and of Zurich, acting as an informant
- in conclusion, he asks for the acquittal of the crime provided for in art.19 section 1 and 2 item a) of the Federal Law on drugs of 30.10.1951.

The attorney Daniele Timbal, counsel for the defense of Rossini, points out the personality, character and previous life of his client,

- contests the crime of receiving of stolen goods
- underlines the absence of common purpose with the

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defendants Palazzolo and Della Torre specifies that his client had given up cooperating with the other defendants even before suspecting the possibility of such a traffic

- in conclusion, asks for the acquittal of the crime provided for in art.19 section 1 and 2 item a) of the Federal Law on drugs of 30.10.1951, as well as the reimbursement of the bail paid at the time of the conditional discharge.

The Public Prosecutor in the reply confirms his previous conclusions.

The defense of Waridel in the reply confirms his previous conclusions.

The defense of Palazzolo, in the reply, confirms his previous conclusions.

The defense of Rossini in the reply confirms his previous conclusions.

The defense of Della Torre, in the reply, confirms the previous conclusions of his address.

With the agreement of the Parties, the Chairman asked the following:

QUESTIONS

1. Is Paul Eduard Waridel (questions 1-8) guilty of violation of the Federal Law on drugs, as a co-actor, for :
 - 1.1. taking part in putting for sale on the market large quantities of base morphine coming from Turkey and bound to the U.S.A., after having been refined into heroin in Italy
 - 1.1.1. acting as interpreter and/or liaison during the negotiations between Musullulu and the Italian buyers (La Mattina, Priolo and Rotolo)
 - 1.1.2. delivering to Musullulu sums of money originating in the sale of drugs in the U.S.A. and/or to be used for the purchase of drugs and/or for putting for sale on the market drugs
 - 1.2. making provisions for putting for sale on the market large quantities of drugs under the circumstances specified under 1.1.
 - 1.3. directly financing or acting as intermediary in an illegal traffic in drugs under the circumstances specified under 1.1.

in the affirmative case, when and which were the costs and/or quantities
2. Is it a successive crime?



3. Is it an aggravated crime because

3.1. it was committed in cooperation with a gang

3.2. it refers to considerable quantities of drugs

3.3. it was committed by professionals and led to a considerable turn-over?

4. Was he an accomplice?

5. Did he act as an officer (art.23 par.2 Fed.Law on drugs) or in accordance with the law (art.32 Criminal Code)?

6. Is he a persistent offender?

7. Is there the possibility of applying a fine, and in the affirmative which is the amount?

8. Is there the possibility of ordering a conditional stay of sentence of detention?

9. Is Vito Palazzolo (questions 9-18) guilty of violation of the Federal Law on drugs, as a co-actor, for :

9.1. taking part in putting for sale on the market large quantities of base morphine coming from Turkey and bound to the U.S.A., after having been refined into heroin in Italy, organizing the delivery, transfer, concealment in the U.S.A. and in Switzerland and the disbursement to the drug dealers of sums of money coming from the U.S.A. and/or otherwise used for putting for sale on the market drugs. The money being derived from:

9.1.1. the sale of drugs

9.1.2. other sources and/or to be used for trading

9.2. making provisions for putting for sale on the market large quantities of base morphine under the circumstances specified under question 9.1.

9.3. directly financing or acting as intermediary in an illegal traffic in drugs under the circumstances specified under 9.1.

in the affirmative case, when and which were the costs and/or quantities

10. Is it a successive crime?

11. Is it an aggravated crime because



11.1. it was committed in cooperation with a gang

11.2. it refers to large quantities of drugs

11.3. it was committed by professionals and led to a considerable turn-over?

12. Was he an accomplice, under which circumstances?

13. or for the same facts, he is guilty of receiving stolen goods (art.144 Criminal Code)?

14. or for the same facts, he is guilty of an action of negligence (art.19 section 3 Fed.Law on drugs)?

15. Did he act in a state of financial distress (art.64 par.3 Criminal Code) after September 1982?

16. Is there the possibility of applying a fine, and in the affirmative which is the amount?

17. Is there the possibility of ordering the devolution to the State of illegal profits (art.24 Fed.Law on drugs), and in the affirmative which is the amount?

18. Is there the possibility of ordering a conditional stay of the

18.1. sentence of detention

18.2. accessory penalty of expulsion from the Swiss territory?

19. Is Franco Della Torre (questions 19-28) guilty of violation of the Federal Law on drugs, as co-actor, for:

19.1. taking part in putting for sale on the market large quantities of base morphine coming from Turkey and bound to the U.S.A., after having been refined into heroin in Italy, organizing the delivery, transfer, concealment in the U.S.A. and in Switzerland and the disbursement to the drug dealers of sums of money coming from the U.S.A. and/or otherwise used for putting for sale on the market drugs. The money being derived from:

19.1.1. the sale of drugs

19.1.2. other sources
and/or to be used for trading

19.2. making provisions for putting for sale on the market large quantities of drugs under the circumstances specified under 9.1.



19.3. directly financing or acting as intermediary in an illegal traffic in drugs under the circumstances specified under 19.1.

in the affirmative case, when and which were the costs and/or quantities

20. Is it a successive crime?

21. Is it an aggravated crime because:

21.1. it was committed in cooperation with a gang

21.2. it refers to large quantities of drugs

21.3. it was committed by professionals and led to a considerable turn-over?

22. Was he an accomplice, under which circumstances?

23. or for the same facts, he is guilty of receiving stolen goods (art.144 Criminal Code)?

24. or for the same facts, he is guilty of an action of negligence (art.19 section 3 Fed.Law on drugs)?

25. Did he act in a state of financial distress (art.64 par.3 Criminal Code) after September 1982?

26. Is there the possibility of applying a fine, and in the affirmative which is the amount?

27. Is there the possibility of ordering the devolution to the State of illegal profits (art.24 Fed.Law on drugs), and in the affirmative which is the amount?

28. Is there the possibility of ordering a conditional stay of sentence of detention?

29. Is Enrico Rossini (questions 29-37) guilty of violation of the Federal Law on drugs, as co-actor, for:

29.1. taking part in putting for sale on the market large quantities of base morphine coming from Turkey and bound to the U.S.A., after having been refined into heroin in Italy, organizing the delivery, transfer, concealment in the U.S.A. and in Switzerland and the disbursement to the drug dealers of sums of money coming from the U.S.A. and/or otherwise used for putting for sale on the market drugs. The money being derived from:

29.1.1. the sale of drugs



QUESTIONS OF FACT AND OF LAW

1. PREMISES

1.1. On the 10 of June 1985, the Public Prosecutor transmitted the charge of Della Torre, Palazzolo and Rossini. Palazzolo had been held in custody since April 20, 1984 (over 15 months), while Della Torre and Rossini had been released on bail i.e. Rossini with a bail of fr.100,000, on March 21, 1985, after an imprisonment of 4 months and a half.

Late in June, after notifying the charge and while the early acts of the trial for the composition of the Court were under way, the three counsels for the defense reported procedural anomalies with special reference to the closure of the formal inquisition and demanded to take into consideration the examination of additional pieces of evidence (including documents and witnesses coming from abroad). On July 5, 1985, the Parties reached an agreement in particular as to the examination of additional pieces of evidence (Waridel was already summoned as a witness on the part of the Prosecution) thus rendering it possible for the Chairman of the Criminal Courtroom to order the examination of all the documents and writs of summons deemed necessary in conformity with the principle of oral character and promptness upon which the criminal procedure of the Ticin Canton is based. In this relation, it should be borne in mind that the members of the jury who were supposed to make decisions as to questions of fact and of law, were not technically prepared for the trial. They took note of the content of the accusation only at the time of the public trial. Therefore, at the end of the inquiry, the Parties acquiesced in the presentation of tables and schemes.

1.2. Through a decree issued on 18.7.1985, the Chairman of the Criminal Courtroom ordered to join the trial against Waridel. The Public Prosecutor had transmitted the charge of 12.7.1985 reporting that Waridel had taken part in the same drug traffic and in the same financing operations by coming into contact with the same persons. The Parties acquiesced in joining the trial so as to provide further economy of judgment and an easier understanding of the facts on condition that the examination of the additional pieces of evidence took place within the delay envisaged for the trial.

In the meanwhile, Greek witnesses were heard by the Investigating Magistrate, while the rogatory letter for the writ of summons of the two witnesses held in custody in Italy (i.e. Salamone and Rotolo), gave negative results due to the Parties' disagreement to being temporarily transferred to Lugano.

Some time before the public trial, Palazzolo's property (i.e. PGK holding, S.A., Pageko S.A. and Kapan System S.A.)

was released from sequestration through the Union des Banques Suisses and the Cr dit Suisse in Lugano (Palbian Lines S.A.), together with the safe deposit box No.718, and Rossini's property through the Soci t  de Banque Suisse in Lugano.

1.3. In order to better understand the procedural formalities of this trial, attention should be attached to the fact that the following items shall have to be taken into due account in the trial: i.e., the Minutes of the Public Prosecutor and those of the Investigating Magistrate, the acts exhibited before the Court during the preliminary hearings, the formal investigation, the pre-trial and the trial itself. In addition to the acts publicly exhibited before the Court, the acts exhibited before the defendants or the counsels for their defense, for which the Parties have the right of reference during the trial, shall have to be taken into due account as to the result of the trial "upon which the Court takes a resolution on the basis of its own will" as provided for in art.208 of the Code of Criminal Procedure.

1.4. Security measures had to be taken during the pre-trial also on the part of the foreign Authorities for the protection of the defendants and witnesses, some of whom had to be heard in chambers as well. In this particular instance the Press was not allowed to attend the trial or to be acquainted with the charge before the reading. No exception has been raised by the Parties in this relation, inasmuch as the trial took place in accordance with the principles of publicity, oral character and promptness imposed by the old Code of Criminal Procedure of the Ticin Canton which incidentally imposes on the first-instance judge the obligation to give formal notice of the sentence within a delay of 10 days from the judgment, in this case within less than three months from the transmission of the first charge.

2. THE DEFENDANTS

The general and fundamental rule (art.63 Criminal Code) imposing on the judge the task of examining the personality and personal condition of each defendant, is referred to in the Section about the proportioning of the sentence as a final step of the judgment itself. From the very start such an examination can be used by the judge to ascertain the truth of a confession or the reliability of the writ of summons of a co-defendant (which are important pieces of evidence in similar trials), or to evaluate the way of thinking of the individual defendant through his conduct - quite complex in this case - to which the charge is referred. Therefore, after taking note that during the trials the conduct of the four defendants was lawful and correct, the Court also considered the previous life of each defendant, both in terms of their family and occupation, their criminal records, if any, and the type of activity



first undertaken with the persons involved since 1981 in the events upon which the charge is based.

2.1. Paul Eduard Waridel, Swiss citizen, originally coming from Prahins (VD), was born in Istanbul where he went to school. In 1964 he moved to Switzerland where he became engaged in market and accounting data processing. He got married in 1970, as second marriage, with a Greek citizen, the daughter of an alleged well-to-do policeman who was on good terms with high-ranking police officials and provided his daughter with a marriage settlement of more than Swiss fr. 2 million. In 1976, while dealing in art-works, he met Musullulu in a restaurant of Munich patronized by Turks. The two men considered the possibility of trafficking in vegetal drugs. It was through Musullulu, owner of an office located in Zurich, that Waridel got to know Canturk, a well-to-do Kurdish man, who in 1981 found himself in Zurich involved in the trade of ships, inasmuch as Waridel, also active in the trade of off-shore motorboats, took to Monfalcone Musullulu and Canturk, the two men who used to supply base morphine by crossing the Greek seas.

However, much earlier, in 1977, when Waridel was in contact only with Musullulu, the defendant was arrested and sent to trial in Rome on grounds that 3 kilos of heroin had been found in his secondary house at Fregene, where he used to live with his family. During the trial, which was held in Rome, Waridel stated that he was unaware of the deposit of drugs in his garden, but was sentenced to 7 years' imprisonment, of which a penalty of 3 years had to be taken; what is quite important however is that during his detention, which ended in 1980, Waridel met Giuseppe Ferrara, Ciccio Lo Nigro and Nunzio La Mattina; the latter informed him that he had been involved in drug trafficking with Musullulu (at the time when the latter was still known by the name of Karadurmus) and gave him the Zurich address at 12 Zeeringerstrasse. He also invited Waridel to contact him, which indeed happened in the Spring-Summer of 1981. It was through Musullulu that Waridel met Priolo and some body known as Carlo, who was actually Antonino Rotolo.

After serving three years in prison for the facts of Fregene and after the facts which are the object of this accusation, Waridel was assigned in 1983 a confidential job consisting in the purchase of a ship on the part of Ferrara. Again in 1984 Waridel came into contact with Daputo in relation to a project of drug refinery in Pakistan. Therefore, from 1977 to April 1985, the time of his imprisonment, Waridel always remained in contact with drug traffickers without ever being mistaken as trustee of the above people. In fact, it should be borne in mind that in the meanwhile, La Mattina and Lo Nigro, i.e. Rotolo's predecessors in the relations with Musullulu mediated by Waridel, got murdered.

In addition to the recent sentence passed for the facts of Fregene and its consequences, attention should be attached to the fact that already in 1969 Waridel had been sentenced by the Cantonal Court of Argovia to 12 months' imprisonment

- a sentence suspended with the conditional after 47 days of preventive detention - on grounds of forgery instigation and

repeated fraud. These crimes were committed at the time he was divorcing from his first wife. Two other sentences are reported : in 1975 in San Gallo and in Zurich for failing to pay the military tax and for drunken driving, 8 days' imprisonment and a fine of fr.1 000 respectively. Therefore Waridel proved to set up his own business unscrupulously and in violation of the law, already in the period prior to the above-mentioned relations. In the prime of his intellectual maturity and experience, Waridel proved to possess self-control and lucidity also during the trial during which he never contradicted himself, at least in public, as to playing his double game of police informant and traffickers' trustee. It is worth noting that as soon as he was put under arrest on April 28, 1985, Waridel made a prompt confession to the Public Prosecutor already in the records of 29.4.1985 at 4:00 p.m., at the time when the judge was already acknowledged with the results and the admissions of the other three defendants already heard by the Investigating Magistrate in the inquiry conducted up to March and in the supplementary inquiry opened on 16.4.1985.

Given his adventurous life in the international network of drug trafficking, as shipowner and trader, and given his acquaintances in Turkey, Greece, Germany and in Zurich, as well as his apparently lawful and correct conduct during the inquiry before the Court, Waridel is certainly to be considered an intelligent, enigmatic and also ambiguous man, perfectly capable of playing his double game between the Police agents - first in Greece, later in Switzerland and finally in the U.S.A. - , on the one side, and Musullulu and Rotolo on the other, with whom, quite intelligently, he never tried to know more than the necessary. However, it remains to be known whether in 1982 Waridel provided the anti-drug Authorities with a serious, genuine and effective cooperation, or whether he only cooperated to make up his own alibi. This is a fundamental question that the Court has referred to the final part of the trial, after being acknowledged with the punishable facts.

2.2. Palazzolo-Vito, born on July 31, 1947 in Terrasini (Palermo), as a teen-ager lived with his parents, one brother and three sisters. In September 1962 he migrated to Aarau where he adjusted himself to humble works, studied German and followed a designing course. Back in Sicily he attended a hotel school and in 1964 he was again in Switzerland working as a "commis de cuisine". In Rome he attended a specialization course in simultaneous translation. When he boarded a ship in Coblenza as chef de cuisine, the languages he mastered were Italian, English, French and German. During a cruise on the Rhine he met his future wife. On January 27, 1966 Christian was born, and in May of that same year the wedding was celebrated in Sicily. Later he worked in a shop, then started a trade in electric household appliances and finally was employed in a stone



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quarry. At that time his second child, Peter, was born. In April 1967, at the age of twenty, he was back in Germany, in Hamburg, where he was employed at the Deutsche Bank while running at the same time a small restaurant. In less than one year he saved DM 120 000.-- and left the bank and the restaurant in order to work as tour guide during two seasons. Later, he got involved in the 'Campobello' tour project, by setting up a company in Palermo together with tour agencies and German builders. A land of almost 115 000 square meter near the Campobello beach was bought, for which the planning permission was soon withdrawn, thus originating bribes and debates. The "Deutsche Samps GmbH", a company involved in the market of Sicily's precious marbles, was set up with a view to help deregulate the Campobello planning permission. On May 5, 1972, the "Cassa del Mezzogiorno" ordered the financing of lire 2.517 billion in favour of the Campobello project. In the meanwhile, the land-surveyor responsible for the Campobello project died in the Alitalia DC8 accident near Palermo. Construction works were first started and then stopped due to archeological surveys. On September 28, 1973, his father died in a car accident. In 1974 the Campobello project was sold to another company for lire 600 million, of which 100 remained in the hands of Palazzolo who also cashed other DM 250 000.-- derived from the dissolution of the marbles company. Towards the end of 1974, Palazzolo brought all his property to Switzerland and met Myriana Konopliz, the daughter of the "emerald king". In 1975 Palazzolo acted on behalf of Konopliz S.A. and made his first trip to the States. In his professional activity he had also contacted Zoltan Zucker of Pforzheim, in Germany, a precious stones wholesale trader. By means of Myriana Konopliz, Palazzolo purchased the Obelisc A.G., with its head office in Zug, which was later converted into Pageko A.G. (Palazzolo, Gems, Konopliz). After a few trips and negotiations in the Far East, Palazzolo turned Pageko into a wholesaling company. In the meanwhile, his brother worked as gemmologist and diamonds selector in Antwerp (Belgium). Mr. Knoblock, the owner of an air-conditioning and water systems company, and Mr. Kock, the owner of Gems Ltd. of Singapore, became shareholders of Pageko, to the extent that the company capital was increased to fr. 500 000.-- and another Pageko Bau was set up in Germany. They purchased shares from Alain Delon Diffusion for an amount of fr. 500 000.--, as well as apartments and storehouses in Montecarlo for \$ 650,000.--, and a new PGK Holding was set up in Zug as a means for carrying out real investments in the States. In the Summer of 1979, Palazzolo met Rosario della Plata, an Italian motorway project engineer willing to migrate to Arizona (U.S.A.), where he could take the opportunity of buying a ranch provided with 550 cows, at the price of more than \$ 1 million, of which \$ 800 000.-- through a mortgage. Pageko, by means of Palazzolo, disbursed \$ 100 000.-- in favour of Tucson; then ordinary financial problems arose, to

to the extent that at Easter of 1981 Palazzolo had to travel to the States putting in jeopardy the health of his wife.

Palazzolo was given by Della Plata promissory notes secured by mortgage on the ranch and on his person amounting to \$ 370 000.-- until Della Plata negotiated with Pageko his own property of the ranch. In the meanwhile, Pageko had sold A. Delon shares with a profit of fr. 350 000.-- as well as its apartments in Montecarlo for \$ 700 000, keeping only the two storehouses (restaurants) which proved highly productive. Pageko Bau in Germany was wound up.

In the Summer of 1981, by means of a friend in Geneva, Palazzolo came into contact with Finagest S.A. of Lugano, in particular with the director Ernesto Parli and with the manager Franco Della Torre. They suggested him to purchase Algerian currency in order to buy diamonds in Angola or in Sierra Leone, but the negotiation did not take place. There were however telephone contacts between Palazzolo and Della Torre who met on the occasion of the Aarau-Chiaso soccer match when Della Torre got the idea of setting up a management company somewhat like Finagest. As a result Consultfin was set up coming in the open only when Palazzolo had already carried out negotiations with both Della Torre and Rossini. Palazzolo had promised to involve Consultfin in the trade of precious stones carried out with Italy, as well as in the management of the considerable estate bequeathed by Zoltann-Zucker in Switzerland. In October-November 1981 he turned to Della Torre to find South African rands to settle an undeclared payment in Switzerland of a stock of diamonds. Della Torre, through Mombelli of the Crédit Suisse of Chiasso, obtained almost rands 300 000. This was the first interaction between Palazzolo and Della Torre in which Rossini of Traex S.A. took a part. Well before the Christmas of 1981, Palazzolo was invited by Della Torre to buy some gold, in particular through Traex he bought 1000 ounces in a three-month futures market in Hong Kong. It was on this occasion that Palazzolo personally met Rossini who between Christmas and the New Year of 1981 explained that for the futures trading it was not necessary to pay 20% rate. Although without fully understanding the real reason, Palazzolo found the transaction interesting. It was also on that occasion, late in 1981, that Rossini gave part of his office in exchange for a remuneration of fr. 1 500.-- per month, which Palazzolo considered inadequate because the rent of the Reuter equipment installed in those premises alone cost fr. 8 000.-- per month. However, in 1982, when Della Torre left Finagest, Consultfin moved to the office premises located on Via Balestra in Lugano where Della Torre used to carry out his professional activity, while Palazzolo still had his residence in Constance and could be seen in the office only every now and then. Consultfin was financed in the following way: with a loan of fr. 200 000.-- granted by Pageko through which the PGK Holding social capital was increased and then shared between Palazzolo and Della Torre; the latter became member of the Board of Directors, while

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both paid the interests to Pageko.

So Stock-Exchange transactions preceded the formal setting up of Consultfin S.A.. According to Palazzolo, coming to Lugano only every now and then, it had been certainly Cristoforetti, a man working in the cigarette market of Lugano, who promised Della Torre two of his Lebanese clients who were eventually seen in Lugano at the Consultfin premises around the Good Friday of 1982.

As to Palazzolo's acquaintances and personal relations, there was Filippo Salamone, son of Damiano and Maria born Palazzolo, originally coming from Terrasini who later migrated to the States. Palazzolo had joined him in the States during his second trip made with Myriana Konopliz. In 1979-1980 he had helped him in Costance and in 1981 had introduced him to Della Torre so that the latter could find him a job in one of the Finagest building sites in the States. Judging from the records and from the American investigation, Filippo Salamone appears to be the closest person to those who delivered the "narco-dollars" in New York, e.g. Ganci and Matassa among the others. Antonio Ventimiglia took a part in the enterprise through Palazzolo: he had to close his garage to move to the Ticin Canton and to work as a courier for Consultfin earning a salary fixed up also with the agreement of Della Torre. Ventimiglia, who had been on friendly terms with Palazzolo - indeed, it was Ventimiglia himself who recommended the well-off client from Brescia to Consultfin - had later been assigned the task of collecting the money as an ordinary courier. Palazzolo stated that Ventimiglia acted also according to the instructions of Oliviero Tognoli, who passed himself off as Pino or Pinetto and disappeared after taking part in the affair in which he must have been involved through Leonardo Greco.

Vito Palazzolo, recently residing in Breganzona with his wife and children, was already arrested in Lugano on April 4, 1984 upon request of the Italian authorities. He was expecting his extradition when, on October 10, 1984, he confessed having established previous relations with Ventimiglia and Della Torre, from the end of 1981, when they were still in relationship with Finagest which was later replaced by Rossini's Traex. At the trial and before the Investigating Magistrate, Palazzolo basically confirmed his records, making it clearer the chronological sequence of the events, in particular the exact time when he learned the real identity of the people involved with him not only from the side of Tognoli, but also from that of Rotolo.

In one of his early records, considering as natural the Swiss Judge, he applied, as later happened during the public examination, for being judged not so much on the basis of his origin, but of his conduct. He derives from an aristocratic family of Palermo who was not directly involved in the Mafia. Even the Prosecutor did not consider Palazzolo as one member of the Mafia, but as a trader who on account of his international trade in precious stones and currency

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and in trusteeship of other people's property, certainly

came into contact with drug traffickers. However, there are no significant criminal records on his account. Indeed, in 1966 on grounds of culpable personal injuries he was fined with DM 30.-- in 1977 he was held in custody for 7 days and was fined on grounds of violation of the rules of compulsory insurance on cars and boats. On the basis of his behaviour during the inquiry and the trial, and of his precise, elaborate and quick answers, Palazzolo proved to be not only an excellent business man, but also an expert at defending himself before every body in a lawful and respectful manner. His fear particularly due to his breaking off with Rotolo was evident during the procedural questioning. After paying damages in favour of Rotolo by drawing on his remaining property, Palazzolo still finds himself in a difficult financial situation both for himself and for his family.

2.3. Della Torre Franco, grew up in Chiasso where he attended the compulsory school before moving to Zug and Lucerne where he first learned the language and later acquired experience in every field especially in the banking sector. Back in Chiasso he started working for the BSI, at the paper money department, and later undertook a management activity in a plastic firm. After 4 years he was working at the Crédit Suisse, at the exchange department in Chiasso and at the cash office of the Coldrerio branch, this happened exactly when there was a flight of Italian capita to Switzerland. In 1977 he joined Finagest and was assigned to the opening of new branches throughout Europe. He travelled a great deal and met Palazzolo in 1981. However, in the summer of 1980 he had already been introduced to an Italian client who needed to transfer American dollars out of the States. That man was Amendolito, who was travelling with Oliviero Tognolo - and his currency courier Adriano Corti - one of the clients of Cavalleri Coopfinanz and of the Crédit Suisse of Bellinzona. Proceedings are still pending at the the Public Prosecutor's Office of Bellinzona against the management of Coopfinanz which Tognoli abandoned turning to Rossini Traex, where Della Torre and Palazzolo had been clients well before the setting up of their Consultfin, having its head office in Lugano at 12 Via Balestra, near Traex.

Della Torre who appears to have a clear record, during the inquiry took on the attitude of currency transporter, with the mentality of the expert smuggler who appears to be rather indifferent in the face of the risks taken during his frequent trips. According to his report, what he needed was to act rather than to work out the way of smuggling money, although the money in question was American, for which he had no personal experience.

It is likely by judging from his external attitude that his partnership with Palazzolo, which first gave rise to Consultfin, derived from Pageko, was mainly due to his



~~personal disposition to carry out smuggling operations.~~
 Added to this there is the fact that Palazzolo appears
 before the Court with a clear record.

2.4. Rossini Enrico, was a bit over the thirties at the time of these events; he was married with a child and lived at Viganello. After attending the compulsory schools and training in the accounting, he was employed in a bank. In 1971, he underwent the aftermaths of a serious accident. He learned German and English and after the military service he worked again in a bank of Lugano and in Germany until the setting up in 1976 of Traex S.A., a trading company. He also set up Confimex in Losanna as well as several other companies for commercial mediations and real investments. In the meanwhile, his Traex took on parabanking dimensions, in particular for its futures trading it was provided with modern equipment as well as with an account at the Crédit Suisse of Chiasso opened in 1978.

Rossini had met Palazzolo by means of Della Torre, whom he met in December 1981, through Francesco Mombelli who at that time was the Attorney of the Crédit Suisse of Chiasso.

In a first stage Rossini had made some purchases as one of Della Torre clients, when he was still part of Finagest but already on the verge of setting up Consultfin. A new account was opened within Traex, in the name of Pageko A.G. of Zug whose owners were Della Torre and Palazzolo. The purpose of this account was to undertake Stock-Exchange transactions which banks could not carry out due to the different time zones and lack of correspondence between their working hours and the opening of markets. Attention should be attached to the fact that Della Torre was already working with former clients of Finagest at the time he knew Rossini's Traex.

Both Della Torre and Rossini underwent preventive detention for 4 months and a half, until March 21, 1985. During the conditional discharge and till the end of the trial questioning, Rossini had a lawful and correct behaviour, bringing before the Court, by means of Ruffi, one of the witnesses, the accounting records of Traex referring to the period 1982-1983, which helped establish the type, extent and in particular chronological sequence of the transactions made through Traex accounts. Rossini appears before the Court with a clear record, save two serious motoring offences dating back to November 1971 and January 1973, with two sentences in Lugano of 5 and 10 days' imprisonment respectively, for which the registration in the criminal records was already cancelled out.



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3. FACTS IN RELATION TO AN INTERNATIONAL DRUG TRAFFIC

On the basis of the countless documents coming from Greece, Turkey, Italy (e.g. Rome, Palermo and Florence) and from the United States, and collected by the Public Prosecutor and the Investigating Magistrate, when in Italy the Judge, Chinnici, and the Police Vice-Superintendent, Cassarà, taking part in the investigation, were murdered, together with the confessions rendered by the defendants, led to the conclusion that it is true that from 1981 a sizable traffic in drugs was under way. The base morphine, imported from Turkey - where Behcet and Goldagi were at work - was sold by Musullulu, who by means of transshipments on Sicilian fishing-boats crossing the Greek sea, was in charge of taking it to Sicily where it underwent refining, before being smuggled and sold to an Italo-American organization under the leadership of Catalano, Badalamenti, Castronovo, Ganci, Matassa, Greco Salvatore and Philip Salamone. Philip Salamone is the one who took an important part in the relationship between the illegal organization and the four defendants. The drug traffic was carried out at least in three stages:

- a. the sale and transportation of the base morphine;
- b. the purchase and refining taking place in Sicily;
- c. the re-sale to the Italo-American organization who distributed drugs cashing first and then paying for the raw material imported through Musullulu, and for the transportation and refining expenses supported by the Sicilian traffickers.

With the exception of Waridel, who admitted to having directly participated in the drug traffic, the other defendants prove to be involved in the drug traffic, not only for having dealt in base morphine or in refined morphine, but also for having favoured through their acts the drug trade. They are accused of taking in delivery the American money which was smuggled not only to base morphine suppliers, but also to Sicilian refiners and re-salers. In particular, they are charged with taking in delivery, transferring, concealing, and distributing almost \$ 40 million which were cashed in the States, in addition to other \$ 7 million otherwise cashed. On the basis of their accusation, Palazzolo, Della Torre and Rossini were not only involved in the drug traffic itself, but in the traffic of dollars, the so-called "narco-dollars", necessary for the payment of drug. Because of their financing activity, they came into contact with Waridel, who acted as an agent of Musullulu, and with Tognoli, Rotolo and Greco. As shown later on, there are enough evidences to believe that the real amount of drugs and of "narco-dollars" are lower than those reported in the investigations conducted by the foreign Authorities in relation to the international

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traffic, but also lower than those reported in the charge as to the matter of this Swiss trial.

Before investigating how these contacts took place on the basis of the facts reported in the two charges, it is important to take into account the question of law, therefore to assume the possibility that each defendant committed a crime, and to re-evaluate the real facts which are deemed to be indictable under the Swiss law, in particular as provided for under art. 19, section 1 para. 7 Fed.Law on drugs.

4. QUESTIONS OF LAW

4.1. Punishability of the facts according to the Public Prosecutor.

The possibilities of crime assumed by the Public Prosecutor are translated into the questions put forth and accepted by the Court and by all the Parties as provided for in art.202 of the Code of Criminal Procedure. Therefore, the possibilities of crime committed by each defendant which were exhibited before the Court are the following:

- the drug trade (art.19 section 1 par. 1-5 Fed.Law on drugs)
- the preparatory acts for the illegal drug traffic (art.19 section 1 para.6 Fed.Law on drugs).
- the financing of a drug traffic (art.19 section 1 para 7 Fed.Law on drugs)
- the violation for negligence of art.19 section 1 Fed.Law on drug (art.19 section 3 Fed.Law on drugs)
- the receiving of stolen goods (art.144 Criminal Code).

The constitutive elements of the crime related to the drug trade have been identified with no hindrance. As to the crime provided for in art. 19 section 1 para. 6 Fed.Law on drugs (referred to as preparatory acts), the Court has first of all considered that according to the general Swiss Criminal Code, preliminary acts are not punishable. However, art.19-section-1 par.6 provides for an exception to this principle, establishing that "whoever performs preparatory acts for this purpose" is liable to the same penalty as the one who manufactures, puts on the market, imports, sells etc. drugs. However, on the basis of the doctrine (cf.Schutz, pags.126 and 133, Delachaux, pag.158 and Hug-Beehli, pag.46, ZH 1983) preparatory acts related to the financing of an illegal traffic in drugs are not punishable. This can be easily inferred not only from the content but also from the principles of the law. Therefore, the possibility of this crime was ruled out by this Court as a question of law.

As to the crime of negligence, the Court pointed out that on the basis of the doctrine (cf. Delachaux, Tesi Losanna 1977, pag. 159 and Schutz, ZH 1980, pag. 131) the crimes provided for in parr. 1-7 of section 1 of art. 19 Fed. Law on drugs related to negligence, can be committed only by people liable to official controls (people in the fulfillment of a medical duty, or in charge of the refining of drugs, etc.). As to the financing, in particular the financing intermediation in the illegal drug traffic, attention should be attached to the fact, that in this particular case, neither Rossini, nor Palazzolo and Della Torre as owners of a management company, were supposed to take the same steps expected for example from a banker in agreement with the Convention of Diligence of 1977. Therefore, the possibility of a negligence crime should be excluded as a question of law. However, the Court deemed it necessary to resume the examination of the question of fact of this minor crime on a separate basis for each defendant.

Under art. 144 of the Criminal Code, the crime of receiving stolen goods is committed by whoever buys, receives as a gift or as a pledge, conceals or helps smuggle something which he knows is obtained through illegal means. The prevailing doctrine (cf. Stratenwerth, Bes. Teil I, pag. 270 and foll., Schultz, Germann, Thormann-Overbeck, Trechsel) as well as jurisprudence (cf. RO 101 IV 405) led the Court to believe that the object of the handling should originate from a property crime, as provided for in the Criminal Code, which rules out the possibility of punishing the crime of receiving stolen goods in the instance in which the stolen goods originate from an illegal traffic in drugs. According to the Court, the different opinion of authoritative commentators as Häfner, Schwander and Logoz becomes outdated in the light of the development of the doctrine and jurisprudence of the last decades, with particular reference to drug crimes.

4.2. Punishability in relation to the different matters provided for in art. 19 Fed. Law on drugs

With the exclusion, also as a matter of law, of the application of art. 144 Criminal Code, the Court gave particular importance to the question of punishability in relation to the rules provided for in the Fed. Law on drugs, and in particular to the seventh paragraph introduced with the new piece of law enforced on August 1st, 1975. The Federal Council in the statement delivered on March 20, 1978 (cf. FF 1968 pag. 977 and foll.) specified in relation to the revision:

* As provided for in art. 36, No. 2, item a), Section ii of the single Convention, the Parties shall also have to be subject to criminal penalties envisaged in relation to illegal financing activities undertaken for the setting up



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~~of illegal traffics in drugs. It is true that similar activities are often liable to punishment as they correspond to acts of participation. However, there exists the possibility of carrying out financing activities even after the setting up of an illegal drug traffic, therefore liable to punishment as such...~~

As to the punishability of the financing, the Court also attached special attention to Delachaux's view (op.cit.pag.127), according to which the financing of an illegal traffic, in the repression Convention of 1936, is conceived as a special case of participation. Instead, as to the single Convention of 1961, the financial activities connected with illegal traffics - intentionally undertaken, are considered at the standard of separate crimes. Such indictment which was introduced at the request of OIPC-Interpol at the Conference for the working out of a single convention, provides for the prosecution and extradition on grounds of alleged or real financing even when occurring in the absence of or after the traffic. According to Schultz, as quoted by J.Weiss in RPS 102 (1985) on page 192 and foll., the following actions are punished at the same standard as financing (par.7 of art.19), or participating in the traffic:

actions such as the direct payment for the purchase of drugs, even when occurring after the delivery; the preparatory acts, such as the preparation of the money in the currency required by the seller, the provision of cash money and of credit money designed to prepare or facilitate the trade in drugs; credit transfers used for paying people taking part in the drug traffic, for example for paying for the expenses and indemnities supported by drug transporters; the deposit of money in accounts which are always available, on condition that the permanent availability of these funds for the use of drug traffic can be ascertained. According to the same author all the actions or efforts designed to put into contact people willing to cooperate or already involved in a drug traffic by putting personal funds at the disposal of the traffic itself, shall be considered as financing intermediations.

In the absence of a specific jurisprudence, it is necessary to consider the punishability of the financing in relation to the usual procedure of art.35 parr. 1 and 64, par.2 LAIMP, as to the double punishability envisaged by the recent legislation in the matter of extradition for people involved in the facts referred to in the charge. Through a resolution taken on September 27, 1984, the Federal Police Office had extradited Palazzolo. In the observations delivered to the Federal Court on November 16, 1984, the above Office stated that the charges brought against the Petitioner in relation to the recycling and financing of the drug traffic, are envisaged by art.19 Fed.Law on drugs. Extradiction was not granted, only because a criminal

procedure was opened in Lugano in relation to the same facts. As to the procedure of extradition of Edmond Beck, Colmegna, Calmasini and Just (procedures connected with Spadaro's and Giuffrida's funds as well as with the sequestration of 82 kg. of heroin in Florence - cf. section.5:2 and 22 of the present indictment -); the Federal Court, through the sentence of 26.11.1984, 30.8.1985, and 2.9.1985 granted the extraditions on grounds that financing is punishable in Switzerland as well. Within the framework of these procedures and remitting to the sentence of the Federal Court in the case of Beck, in relation to Catalano and Castronovo funds (rogatory letter of 12.6.1985 in re De Carli), through a letter delivered on July 30, 1985, the Federal Police Office stated that " whoever recycles the money derived from drug trafficking, is punishable for participating in the traffic itself".

On the basis of these premises and in relation to the judicial problem of this difficult case, the Court drew the following conclusions with a view to establish the objective and subjective premises of the financing crime.

As provided for in art. 19 Fed.Law on drugs, all conducts which favour or to any extent make it possible the consumption of drugs are punishable. Therefore, not only the activities directly aiming at providing the consumer with drugs (e.g. production, transport, deposit, processing, sale, purchase, ownership etc.), but also the activities indirectly connected with the illegal drug traffic (e.g. on the one side the preparatory acts of the above operations, and on the other the financing of the illegal drug traffic) are punishable.

The direct participation in the drug traffic can be envisaged either in an operation aiming at transferring drugs from the producer to the consumer, or in an operation aiming at transferring the profit of the traffic from the consumer to the producer. In this respect, it should be borne in mind that in terms of the sale, the trade cycle, as envisaged by the law, is made up of a concatenation of individual and independent crimes, as to the formalities of execution: the trafficker (buyer, seller) who gets into the distribution cycle of drugs between the producer and the consumer, commits a crime both at the time he buys and at the time he sells drugs. The former crime becomes perfect when the last step of the bilateral legal transaction is taken, that is when drugs are delivered to the buyer, if payment has been made in advance, or when payment is made to the seller, if drugs are sold on credit. It is possible for Third Parties to take part in the sale until the crime, considered as separate from the trade cycle, is committed, that is until drugs are delivered to the buyer, or until the price is given to the seller. The intermediaries involved in the payment participate in the crime of sale as co-actors and accomplices (art.19 section.1 parr.4 and 5 Fed.Law on drugs) to the extent that they know (possible malice) that



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the money transferred from the buyer to the seller is connected with a provision of drugs which has been already delivered or still has to be delivered (cf. DTF 106 IV 295 foll.). In this connection it is important to point out that the participation of third parties in the sale, during the transfer of the money from the buyer to the seller is confined to the completion of the legal transaction as such, and is not extended to the crime committed by the seller in getting drugs. In terms of the completion of the crime, it is unimportant to know whether through the proceeds of the sale the seller recovers the money invested in getting drugs. The participation in the drug transfer from the producer to the consumer and in the transfer of the proceeds from the consumer to the producer, can be directly identified through the above supplies, but can also be indirectly inferred at least in relation to the economic terms of the traffic. As provided for in art. 19 section 1, par. 7 Fed. Law on drugs, the financing of an illegal drug traffic is punished both when the traffic is carried out by the people directly involved and by the intermediaries. The financing of an illegal drug traffic is not related to the source of the money invested in the trade cycle. It is important, in terms of the completion of the crime as envisaged under art. 19 section 1 par. 7 Fed. Law on drugs, whether the funds designed to support the cost of the economic process from the producer to the consumer are knowingly provided to the trafficker (producer, wholesaler or retailer) (cf. Weiss, RPS 1985, 199). It is also important for the trafficker to be provided with funds for the production and trade of drugs, regardless of whether these funds are eventually used in a real drug traffic or not (cf. DTF 11.1.85 in re L. c/ Staatsanwaltschaft Zurich, consid. 3: "der Nachweis des Zustandekommens bestimmter Drogengeschäfte ist nicht Voraussetzung einer Bestrafung gemäss Art. 19 Ziff. 1 Abs 7 BetrG; die Finanzierung oder Vermittlung der Finanzierung unter Inkaufnahme der Gelverwendung für Betaubungsmittelkaufe genügt"; DTF 11.1.85 in re (?) X. c/ Staatsanwaltschaft Zurich, consid. 4a: "Financer un trafic illicite de stupéfiants, au sens de l'art. 19 ch. 1 al 7 Fed. Law on drugs., c'est fournir les moyens financier d'offrir, de transporter ou d'écouler des stupéfiants. L'infraction est généralement intentionnelle - en pleine connaissance des buts de l'opération financée - ou avec dol éventuel - impliquant l'acceptation d'un probable trafic. Mais - une simple négligence peut suffire, art. 19 ch. 3 Fed. Law on drugs.").

In other words, the crime of financing a drug traffic is committed when anyone who provides funds (e.g. money or other wealth) to third parties, is aware, takes into account or accepts the possibility that these funds will be used by the receiver to support an activity connected with a traffic in drugs, regardless of the time and completion of the operation." The crime envisaged in art.19 section 1 and par.7 Fed.Law on drugs becomes already perfect when funds are placed at the disposal of people involved in the traffic in drugs, rather than the time the investment of these funds is made by the drug dealer in relation to one of the activities specified under art.19 section 1 par.1-5 Fed.Law on drugs (cf.Obergericht Zurich 14.3.1984 in re L. consid.2 and in relation to dolus superveniens, Schultz, I vol.p.200). Art.19 section 1 Fed.Law on drugs, with the purpose to put restraints on any activity directly or indirectly connected with the illegal traffic in drugs, provides for punishment in the cases specified under paras. 1 and 5 (manufacturing, processing, transport, purchase, sale, etc.), but also in case of preparatory acts designed to carry out the above activities (cf.art.19 section 1 par.6 Fed.Law on drugs), i.e. all those activities which precede the attempt stage. On the basis of the principles envisaged by the law, it is possible to draw the conclusion that the preparatory acts which are liable to punishment, as to art.19 section 1 par.6 Fed.Law on drugs, must refer to activities specified under the first five pars., with the exclusion of financing dealings, which instead are punishable only from the attempt stage.



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5. ASSESSMENT OF MATERIAL FACTS WITH REGARD TO CHARGES

It is necessary to inform the reader that at the foot of each article of accusation, mention is made of the proofs or pieces of evidence (in particular admissions and documents) which the Court has taken into account.

5.1. Facts related to Waridel (indictment of 12.7.1985) ad.1. These facts did occur in the Spring-Summer of 1981 in Zurich, and are related to the Waridel activity as interpreter between Musullulu and La Mattina. Waridel only worked as interpreter for the settlement of traffics already undertaken and did not directly influence Musullulu in favour of La Mattina. However, as an intermediary, he contributed to the agreement achieved by Musullulu and Rotolo. Waridel himself admitted that through his intermediation Rotolo agreed to deal in other supplies of base morphine on condition that they were paid in advance and that a large sum of money was paid on account of previous traffics. Waridel's contribution to resume the traffic in drugs does not bear on the economy of the judgement. These circumstances are unimportant, as specified hereunder, due to the punishability of Waridel's.

ad.2. Not at the end of 1981 but in March 1982, Waridel worked as interpreter between Musullulu and Rotolo, and thanks to his contribution the negotiation between Musullulu and Rotolo was settled in the sense that the latter accepted the payment of \$ 13 000 per kilo of base morphine. In addition to the agreement on the terms of the payment, the previous dispute between La Mattina and Musullulu was also settled, with advanced payment for the supplying of 400 kg of base morphine, as well as with other advanced payments for other possible supplies.

ad.3. during 1982-1983, Waridel acted as a liaison between Musullulu and Rotolo in two ways:

- effectively as to the terms of the supply and the quantities of the drug, as well as to the organization of the transport by sea and the drug transshipment; and also effectively as to the advanced payment of the various supplies. The terms of payment in relation to the various supplies were set up by Rotolo with the contribution of Waridel - who was acting as a liaison - for at least \$ 13.5 million.

ad.4. during 1982 in Lugano and in Zurich, Waridel contributed to collect the money on the part of Musullulu.

Waridel carried out these operations at the request of Musullulu who was in agreement with Rotolo who in turn took Waridel to Lugano at the time when, in the absence of Musullulu, he was accompanied by Soleymann. However, there is no evidence that Waridel was actually directed by Rotolo.

4.1. On Good Friday, April 9, 1982, Waridel together with Soleymann (son-in-law and friend of Musullulu) took Rotolo in the office premises of Via Palestra. The meeting was

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attended by Greco - Leonardo, Tognoli - Oliviero, Salamone Philip, and Ventimiglia Antonio, as well as by the two defendants Palazzolo and Della Torre, with the participation of another defendant, Rossini. To Waridel the purpose of the meeting was to be delivered \$ 5 million, of which \$ 3 million in small denomination notes and the remaining money in other currencies. Waridel cashed the money, took it to Zurich, in the company of Soleyman, and delivered it to Musullulu at his address in Kussnacht.

4.2. Late in the Spring of 1982, in Zurich, in the street near 12 Lowestrasse, Waridel, who was in the company of Musullulu, was delivered by Rotolo, Palazzolo, Della Torre and Ventimiglia several suitcases containing almost \$ 3 million in small notes.

Later on, this time not in Zurich but in Thalwil, at the Alexandra Hotel, Waridel cashed other \$ 3 million, several Swiss and Italian bank-notes and DM 800 000 in bank-notes as well.

ad 5, 6, 7.

During 1982 Waridel visited Musullulu office only on few occasions; the latter was delivered by Rotolo 15 cheques (each of them for an amount of \$ 100 000.--). Waridel did not know anything about the destination of 10 cheques; as to 5 of them, he learned that Musullulu had cashed 2 to meet his personal expenses for his trip to England, while the other 3 were delivered to him by Musullulu himself with the instructions of cashing them in his bank, and keeping the equivalent value at Musullulu's disposal in his personal account. Waridel witnessed the payment of two cheques as he took Musullulu to his bank, and cashed the equivalent value of the other three, keeping the liquid assets in his account.

5.2. Facts related to the other defendants (indictment of 10.6.1985).

Now it is necessary to point out that in addition to the cash money movements in which Waridel took a part in Lugano, Zurich, Thalwil and again Zurich, the other defendants participated in other capital movements through the channel of Stock-Exchange transactions at the time when Rossini was still working on the transaction between Merrill Lynch and Hutton, and later on through the channel of the Canadian money, and again through the channel reporting to Enrico Frigerio.

On the basis of the summary referred to capital movements and exhibited by the Prosecutor during the judicial inquiry, the following figures are reported:

- \$ 13.5 million cash passing from Waridel to Musullulu;
- \$ 39.4 million cash passing through the other channels on the part of Palazzolo and Della Torre;

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- \$ 24.5 million transferred by Rossini partially in cash and through the Stock-Exchange channel (for an amount of \$ - 11.5 million).

The Prosecutor has not considered the movements specified under item 5 of the indictment (channel Caruana/Giuffrida), item 7 (in relation to 1 million of malodorous dollars) and item 22 (in relation to \$ 2 million through the Kastl channel).

Before proceeding to the specific verification of the facts related to the indictment of June 10, 1985, the Court took account of the following:

- that it was an international drug trade coming from Turkey, through Sicily, up to the United States, and, as to the capital movements from the United States to Switzerland:
- it is important to point out the report made by each defendant not only in relation to their co-defendants, but also to those involved in the capital movements;
- it is also important to ascertain the instruments through which the defendants acted, that is the use of the different channels for each individual movement.

As to the following articles of accusation it is important to point out that:

ad.5. this is to prove that the facts specified hereunder are the results of information retrievals on the basis of which starting from late 1981 Palazzolo and Della Torre were in partnership for the setting up of a financial trust activity for which they had placed at their clients' disposal two accounts of the Crédit Suisse of Chiasso registered in the name of Della Torre alone. This is also to certify that in the above accounts were deposited the money referred to under item 5.1-6 of the accusation.

ad 6. On June 21, 1982, Palazzolo and Della Torre had officially set up Consultfin-S.A., a holding company with its head office in Lugano. Even before the setting up of the above company, Rossini had placed at the disposal of Palazzolo e Della Torre the office premises adjacent to the office of his Traex located at No.12 Via Balestra in Lugano. Although being independent, the premises rented by Rossini to Palazzolo and Della Torre were located on the same floor as Traex. It is quite certain that Rossini, even before the Good Friday of 1982, placed at the disposal of Palazzolo and Della Torre his money-counting machine. Even before April 1982, not only Palazzolo on his own, but also Palazzolo together with Della Torre had clientèle relations with Rossini; i.e. they had been two of Traex clients.

ad 7. It is Palazzolo who confesses the facts, which are quite credible since Della Torre replied that he had only taken the American money back to the States. Indeed, the money was given back to Ventimiglia.

ad 8. There actually was a meeting on the Good Friday of 1982. But before then Rotolo, together with Tognoli, had withdrawn from Gestinvest and entrusted Palazzolo and Della Torre with the transfer of the money. At that time Rotolo urgently demanded the liquidity for the payment of \$ 5 million. It was for this reason that the meeting with Tognoli, Greco, Rotolo and Ventimiglia, on the one side, and Waridel and Soleyman on the other took place. At the meeting Palazzolo, Della Torre, and at the beginning and on a few occasions also Rossini, were in charge of providing the necessary money in view of Waridel payment. Three million dollars in cash were brought by Rossini's courier, i.e. Scossà, to the office, although they had been available on the day before. Therefore, Della Torre withdrew from a few bank accounts the remaining 2 million dollars necessary to complete the payment, which was made possible through a loan of \$ 200,000. -- given by Rossini to Palazzolo and Della Torre who promised to give the money back as soon as possible.

ad 9. Therefore Palazzolo, Della Torre, and Rossini carried out Rotolo and Tognoli instructions in terms of the \$ 5 million delivered to Waridel and transferred by the latter to Kussnacht in order to be finally delivered to Musullulu. At this time Rossini had already made some Stock-Exchange investments on behalf of Palazzolo and Della Torre, which had already resulted in a few losses. That was the reason why it was quite difficult to collect 5 million, with the \$ 200 000. -- loan granted by Rossini.

It was Palazzolo who, due to his management duties, had given instructions to Rossini to carry out transactions in the futures markets of commodities and metals. This is quite possible, since in this respect Palazzolo admitted that his instructions to carry out Stock-Exchange transactions had been given without the knowledge of his clients who, without knowing the type of transaction, could not be aware of the existing losses.

ad 10. These facts and those referred to under the following items are connected with the movements of cash capital, i.e. these by air. It was Palazzolo who entrusted Salamone with the delivery of the dollars in the United States and it was Palazzolo and Della Torre who gave both Tognoli and Rossini the address of Salamone. Rossini had accepted Salamone address because he was the person in charge of taking in delivery the dollars in the United States.

ad 11. Salamone executed the task given to him by Palazzolo, to the extent that he did receive the dollars from a few



people, such as Philip Matassa, the cousin of Oliviero Tognoli's wife, and from Salvatore Greco, both in contact with Joseph Ganci. The Court believes that the relation between Salamone and the suppliers of dollars is true on the basis of the results of the American inquiry confirmed during the hearing of the witness Rooney. It is important to point out in this respect that the relations maintained by Salamone are confirmed by telephone contacts intervening between the above people and Palazzolo.

ad 12. It is worth noting that Della Torre and Ventimiglia had had the opportunity of seeing Salamone's place where small-denomination bank-notes used to be collected and concealed.

ad 13. Rossini was in charge of organizing the transfer of the dollars by means of Scossa and in the same way as a previous transfer undertaken by Cavalleri upon request of Oliviero Tognoli and Joseph Ganci. The latter transfer undertaken by Cavalleri is the object of an investigation which is still pending at the Public Prosecutor's Office of "Monte-Cenerino" and so far has not been turned into any accusation. Scossa and Esposito, in contact with Salamone, did carry the suitcases by air-plane as they had already done at the request of Cavalleri.

ad 14 - 17. Although these circumstances are confirmed, it is necessary to point out that since the first transfer, Rossini gave Salamone's address in the States to his employees, Scossa and Esposito, inasmuch as the latter were capable of bringing the suitcases to Traex in Lugano or to the people indicated by Rossini. The money was then deposited by Rossini with Traex in accounts registered in the name of Palazzolo and Della Torre, as well as of Pageko A.G., a company owned by Palazzolo. It is worth noting that Della Torre did confess to having carried out several transfers.

A few Stock-Exchange transactions were carried out, although resulting in heavy losses from the start. Other transactions carried out with other money had already resulted in heavy losses.

ad 18. The present article of accusation refers to the participation of the defendants in the money delivered to Waridel and Musullulu, which occurred on two occasions in Zurich and in Thalwil, as already shown in the examination of the facts related to Waridel. The first delivery which occurred in Lowenstrasse was witnessed by Della Torre, while Palazzolo was in the Pageko offices. Rossini was not out in the street, but in the Pageko offices. In the opinion of the Court, Rossini personally delivered \$ 2 million in the above offices. Since the delivery was entered, it is unlikely that it took place in the street, that is exactly in the same way Salamone used to carry out his deliveries in the States.

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ad 19. It is absolutely certain that Ventimiglia took to Zurich the money that he had been delivered by Rossini.

ad 20. Now facts have to be put in chronological order, with the following premises:

Palazzolo had already carried out futures on the U.S. commodity and metals markets on behalf of his clients.

these transaction were carried out through Traex, which was provided with the technical instruments required to work directly with the broker on the New York market.

as a result of these transactions, Palazzolo clients suffered heavy losses well before the cash payment made to the first U.S. broker, Merrill Lynch,

and, as a result of these losses suffered as to transactions already under way, the U.S. broker applied for the payment of margin calls to Traex, which instead turned to Palazzolo for the same payment. In the absence of such a payment, the above transactions were to be closed with the total loss of all the funds invested in the transactions.

Rossini insisted on covering these margin calls for which he was directly responsible vis-à-vis the broker. Therefore, it was certainly at this time that Palazzolo mentioned the possibility of placing at the disposal of the broker the money needed for paying the margin calls (in cash in New York). Rossini, under the pressure of his responsibilities, contacted the broker in order to make it possible to place at his disposal the cash money in New York - as appears from the conversation held with Camozzi -. The Merrill Lynch representative in Lugano ensured Rossini that the suggested procedure was acceptable, and pointed out that every cash payment exceeding \$ 10,000.-- in N.Y. was bound to be notified to the Federal Reserve - as laid down by the U.S. law.

The above procedure was then applied, thus keeping the above futures in force.

It is worth noting that the cash payment made by means of funds delivered by Della Torre to the broker or to his bank, were credited to Traex account. The name of Della Torre acting as a paying agent did not appear and was not revealed.

It is also worth noting that, in the event that the futures did not result in losses, the cash payments made in New York would allow transactors to withdraw their funds through the normal banking channels in Switzerland as well. Indeed, the bill delivered in New York could be withdrawn as U.S. currency by the assignees through the normal banking channels in Switzerland.

According to the Court the reason for passing to Hutton in July 1982 was not so much connected with credit procedures



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of cash payments, but with technical problems such as the prompt execution and communication of the transactions, with cost differences and with the possibility of increasing the volume of transactions; this in the optimistic view that Palazzolo, that is Rossini's client, could soon recover from the heavy losses which he had suffered. Indeed, Palazzolo had supported the idea of increasing the volume of the futures being the most interested in the recovery from the losses. He knew that he was in the position to cover the growth of transactions - through cash money in New York -. It is also clear that neither the broker nor Traex were concerned with the outcome of the transactions, save in case of risking the loss of the client.

As far as Rossini is concerned, it is likely that he supported the idea of increasing the transactions by augmenting the futures also on account of the subsequent increase in the profits made through the commissions.

ad 21. It was Rossini who decided, on behalf of Palazzolo, to transfer the transactions registered in the name of Traex from Merrill Lynch to Hutton. Instead, Rossini was not involved in the setting up of Acacias Corporation and in the transactions made by the latter with Hutton. The purpose of Acacias Co., a financing company set up through the advice of Phelan, was to allow Palazzolo and Della Torre to save the sub-commissions first deposited with Traex. This is an important circumstance connected with the financial distress and difficulties suffered by Palazzolo and Della Torre. It is certain that the transactions undertaken between Traex and Hutton from April 27 to July 2, 1982 - with the exception of those registered in the Acacias account - amounted to 11.5 million deposits.

The activity undertaken through the Acacias account from July 6 to September 1982 amounting to \$ 8.25 million, corresponded to the time when Rossini left the scene. Rossini had met the director of the Crédit Suisse of Chiasso, Mr. Perucchi, in order to get some information on two of his clients, Palazzolo and Della Torre, as he was concerned about the volume of transactions undertaken by them. As a result of this conversation held on August 5, 1982, Rossini decided to settle and therefore break off all relations between Traex and Palazzolo and Della Torre.

In the meanwhile Mr. Phelan, the Hutton director, had informed one of his colleagues, Mr. Riedener, Foreign Services Director in Geneva, that the FBI was carrying out an investigation in relation to cash payments made by Della Torre in New York. From the Bahamas Riedener called Palazzolo by phone presumably before the restrictive injunction of the Grand Jury preventing Hutton from giving any information about the investigation. At that time Palazzolo was in Zurich, at Nova Park, from where, he got in

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touch with Della Torre the day after. As a result, Della Torre met Palazzolo in Zug where the former was caught by surprise at hearing the news. After being informed by Riedener, Palazzolo became concerned about the remaining \$ 3 million kept uninvested by Salamone, and about the liquid assets deposited in the Acacias account. Then there was a meeting with Rotolo in Zug, the event of the diary destruction and that related to the Porsche.

It is quite likely that Palazzolo met Rotolo in Zug also by himself soon after being informed. However, the Zug meeting was attended by Palazzolo, Della Torre, Rotolo and presumably by Ventimiglia. On this occasion, Rotolo threatened Palazzolo and warned him to recover the funds placed at his disposal in the States, which by that time had been shared between the Acacias account and Salamone's place. The threat had been preceded by the question made by Palazzolo to Rotolo about whom the funds belonged to. Rotolo answered that instead of being so much interested in the identity of those people, he had had better think about how to get those funds back. As a result of this meeting, Palazzolo decided to get rid of Della Torre diary in which all the capital movements were registered, to sell the Porsche which Tognoli had given to Della Torre after being owned by someone suspected (Priolo) according to Ventimiglia - and to ask Rossini to destroy all the accounting records in relation to the capital movements through Traex. The diary of Della Torre was destroyed, the Porsche was sold to the Beretta garage of Chiasso on October 12, 1982, but Rossini did not agree to the destruction of the records.

In relation to the circumstances of fact mentioned in this article of accusation, it is worth noting that in the meanwhile the commission to be drawn on the transfer increased from 6 to 8 %. It is therefore important to look at the time sequence of the transactions. Late in September 1982 the transactions carried out through the Acacias account were closed with a balance of \$ 4.5 million, of which a cheque of \$ 1.5 million issued by Geneva Hutton was given to Tognoli/Rotolo intermediaries (cf. Min.P.A.5, pag.4), while the remaining \$ 3 million were used to buy 200 kg. of gold which Della Torre, by means of Ventimiglia, delivered to Tognoli in Italy, as specified under item 24 of the indictment.

ad. 26 In December 1982 \$ 3 million in cash were still in Salamone's place in the States. Palazzolo and Della Torre tried to look for another channel by means of which this money could be sent to Switzerland, in particular at the disposal of Tognoli and Rotolo. They reached an agreement with Frigerio, who, with the help of Brandli and of his brother, transferred the cash money to Switzerland. The money was then taken in delivery by Della Torre and delivered to the Tognoli/Rotolo group on several occasions,



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among which there was the delivery of \$ 800 000.-- to Tognoli which occurred in Chiasso by means of Della Torre .

The delivery took place in the street since Palazzolo had advised Della Torre not to let Tognoli inside the office premises.

ad 27. The present item of accusation, although generally referring to redistribution, in particular relates to all the movements of dollars. It is worth noting that redistribution took place according to the instructions given by Rotolo and Tognoli, through Ventimiglia. It suffices to note that some of the holders of the bank accounts to which the dollars were credited, were very close to the drug dealers responsible for the international traffic in drugs.

ad 28. The circumstances of fact referred to under the present item of accusation were considered under previous circumstances which the Court examined in chronological order.

5.3. Relevant facts for the judgment of possible intentional crimes.

After the analysis of the facts reported in the two accusations, the Court deemed it necessary, given the need for passing a single judgement, to summarize the facts that have been ascertained, and therefore proved to be relevant for the judgement. Quite concisely, given the complexity of the dual matter in question, they have been listed as follows:

a) the traffics between Waridel and Musullulu which involved the trade of 480-kg. of base morphine in return for the payment of almost \$ 5 million and the disbursement to Musullulu of other \$ 6 million, to be used for other traffics in drugs;

b) the payment of over \$ 10 million made in Lugano, Zurich and Thalwil by Palazzolo, Della Torre and to a limited extent by Rossini, in favour of Waridel;

c) the cash transfer of almost \$ 7.5 million from the U.S.A. to Switzerland, and in particular:
- \$ 3 million transfer from Scossa early in April 1982 to Rotolo/Tognoli and to Waridel;
- \$ 1.5 million transfer from Della Torre to Salamone, through Canada, early in August 1982;
- \$ 3 million transfer from Frigerio after September 1982 and later delivered to the Tognoli/Rotolo group.

d) the cash payment of almost \$ 20 million in favour of the U.S. brokers, in particular:

- \$ 4.9 million in the Traex account with Merrill Lynch of New York between March 24, 1982 and April 23, 1982;
- \$ 6.8 million in the Traex account with Hutton of New York between April 27, 1982 and July 2, 1982;
- \$ 9 million in the Acacias account with Hutton of New York between July 6, 1982 and September 27, 1982.

e) the breaking off of the relations between Rossini and Palazzolo/Della Torre early in July 1982.

f) the telephone conversation between Riedener and Palazzolo in relation to the FBI investigation early in October 1982.

g) the conduct of Palazzolo and Della Torre as a result of the above telephone conversation, in particular:

- the Zug meeting with Rotolo and the threats made by the latter against Palazzolo.
- the destruction of the diary of Della Torre
- the sale of the Porsche
- the demand made by Palazzolo and Della Torre to Rossini for the destruction of the accounting records related to the Traex/PGK-reports
- the increased commission on transfers

h) the delivery to the Rotolo/Tognoli group of the credit balance of the Acacias account with Hutton (i.e. \$4.5 million) and of \$ 3 million in cash kept uninvested in Salamone's place.

Assessment excluding negligent crime.

These assessments refer to the defendants Palazzolo and Della Torre, as to the actions performed by them until the end of September 1982, and by Rossini over the entire period in which he took a part in the traffic, i.e. from March to July 1982. The question is now to assess whether under the real circumstances it was possible for Palazzolo and Della Torre, on the one side, and Rossini on the other, to assume that the money delivered by them to the Rotolo/Tognoli group, partially through Waridel, was destined to finance a traffic in drugs. First of all it is worth noting that most of the money deposited in the Merrill Lynch and Hutton accounts, therefore "uninvested" before being delivered to the Rotolo/Tognoli group, was used to finance a traffic in drugs, in particular it corresponded to a reserve fund through which Rotolo and Tognoli could finance future traffics (cf. Weiss in RPS, 1985 pag.199). This Court in consideration of the circumstances under which the defendants have acted and of the law in force in the matter of traffic in currency - delivery of the dollars under questionable circumstances, on the part of questionable people, such as Salamone, second delivery of the dollars to



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people such as Rotolo, Tognoli and Waridel, whose identity was unclear to Palazzolo and Della Torre - believes that Palazzolo and Della Torre did not take the necessary precautions that other transactors, presumably more honest and lawful, would have taken so as to establish the destination and the use of these funds on the part of the receiver. Therefore the Court deems that Palazzolo and Della Torre did not envisage the consequences of their actions after the request of information made by Phelan to Della Torre (cf. AI 119). However this offence is covered by the intentional crime.

As far as Rossini is concerned, the situation is not the same, since Palazzolo and Della Torre were two of his clients, who in turn were engaged in taking care of third parties's business. Therefore, having nothing to do with the traffics intervening between Palazzolo/Della Torre and Tognoli/Waridel, Rossini could not be expected to take special precautions to ascertain the identity of the money receivers or the activity in which they were involved, with particular reference to the premises of art.19 section 1 par.7 Fed.Law on drugs in relation to the destination of funds. Therefore, as to Rossini the negligent crime as provided for under section 3 of art.19 Fed.Law on drugs shall be excluded not only on account of the above-mentioned questions of law, but also of the questions of fact, since in the opinion of this Court his conduct, although somewhat lacking in foresight in the circumstances already specified, does not amount to a punishable crime.

6. JUDGMENT OF MALICE

Before coming to the object of this chapter, it is necessary to point out that the Court while examining the law to be enforced in this case, drew the following conclusions.

The direct participation in a drug traffic is liable to punishment when it is possible to demonstrate the relationship between the transaction and the drug supply, i.e. the real drug trade.

On the contrary, as to the enforcement of art.19 par.7 Fed.Law on drugs on the financing or financing intermediation, it is only necessary to demonstrate the relationship between the transaction consisting in the disbursement of funds in favour of the drug dealer and the possibility for the these funds to be used in a drug traffic (which has already occurred or still has to occur). In this case, it is not necessary to demonstrate that these funds have actually been used in an real drug traffic.

6.1. The malice committed by Waridel can be associated with two forms of crime.

First of all, it is necessary to point out that Waridel performed acts which have to be divided into the following

sub-groups in view of the enforcement of art.19 Fed.Law on drugs:

- acts connected with the payment in advance for the supply of 400 kg. of base morphine. This payment amounting to \$ 5 million is connected with the person of Musullulu whom Waridel knew to be the drug seller, and was made by Rotolo, whom Waridel knew to be the drug buyer. These facts amount to the case envisaged in art.19 section 1 par.2 Fed.Law on drugs;

- acts connected with the payment of the remaining \$ 8.5 million (of which at least \$ 7.5 million have been ascertained) amounting to the case envisaged in art. 19 section 1 par.7 Fed.Law on drugs, since Waridel was aware of the possibility that these funds were used to finance a traffic in drugs given the type of activity undertaken by Musullulu.

Before taking into account the evidence of malice, the Court attached particular importance to the objective factors, thus considering Waridel as an accomplice rather than a co-actor of Musullulu, not only in relation to the acts performed by him and liable to punishment as provided for in art.19 section 1 par.2 Fed.Law on drugs, but also to those provided for in art.19 section 1 par. 7 Fed.Law on drugs. The subjective and objective participation of Waridel in terms of the many payments - e.g. that of 5 million - for which he acted as an intermediary, is not considered to be substantial enough to correspond to complicity. As to the evidence of malice committed by Waridel, it is important to point out that during the execution and payment of the first 5 million he was acquainted with and wanted to take part in the setting up of a drug trade: 400 kg. of base morphine for a total value of \$ 5 million. In this case, the crime committed by Waridel corresponds to direct malice. As to Waridel's conduct in the payment of at least other \$ 7.5 million, Waridel acted as an assistant who was perfectly aware of the facts and objects of the drug payment operations. Therefore, also in this case, as envisaged in par.7, Waridel committed a crime with direct malice, since his conduct was intentional and conscious.

As to the justifications presented by Waridel for his conduct, it is necessary to point out that he cannot be considered as an officer in conformity with art. 110 of the Criminal Code and that his conduct was active, and not passive, in relation to the drug trade. He did not receive, but distributed drugs, in terms of participating in the drug trade. In conformity with art.32 of the Criminal Code, it has been ascertained that Waridel did not perform acts provided for by the law or by official duties, but he intentionally performed indictable acts which cannot be justified by any Swiss or foreign law. Not only was not he



to be considered an officer, but the information that he gave to the Greek authorities were irrelevant and unsubstantial. He was careful not to provide the Greeks with substantial information at his disposal on the people involved in the traffic, i.e. Musullulu, Rotolo and the others; information which could have certainly helped dismantle the traffic very soon. In addition, Waridel was careful not to report the facts to the Swiss authorities, who more than anybody else could have intervened in a positive way. Indeed, Waridel informed the Swiss authorities only partially and after the conclusion of the traffics with Musullulu. In order to come to a judgment, it is important to consider that Waridel himself had admitted that his compensation for the information was to be calculated on the basis of the advantage taken by the Greek authorities.

In order to come to the final judgment on the actions and malice committed by Waridel, it is also important to consider that although acting as an accomplice, thus limiting the degree of his offence, the drug trade in which he took a part was quite large, that he was fully aware of its huge turn-over, and of participating as a member of an organized gang engaged in the setting up of an international drug traffic. Therefore, the Court did not refrain from considering all the aggravating circumstances provided for under section 2 of art.19 Fed.Law on drugs, although it was not necessary to carry out a cumulative judgment for each of them.

6.2. On the malice of the other defendants.

In the first place it is necessary to make a difference between the subjective element referred to the crime provided for under art.19 section 1 par. 1-4 Fed.Law on drugs (trade) and the subjective element referred to art.19 section 1 par.7 (financing).

6.2.1. As to the drug trade, the Court ascertained that the only transaction in drugs was the delivery of 400 kg. of base morphine (in the March-April 1982) made to Waridel-Musullulu in exchange for \$ 5 million.

As to the question whether Rossini did know, suppose or accept that the money was destined to support a drug trade, the Court has given a negative response on grounds that the payment took place through two of his clients, e.g. Palazzolo and Della Torre, who had already deposited a lot of money in a few Traex accounts and had already operated with Merrill Lynch. It is imperative to consider that for Rossini the trust company owned by Palazzolo and Della Torre was a good client to whom he provided services.

As to the same question referred to Della Torre, the Court has given a negative response on grounds that, as far as

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this defendant knew, the money given to Waridel (who was unknown to Della Torre) belonged to Tognoli, an entrepreneur engaged in the iron industry. The Court did not envisage enough objective results, so as to draw the conclusion that Della Torre, with his mentality of "currency courier" had the suspicion that the payment was in exchange for a drug supply. In this connection, it is necessary to underline, as to the relationship between Della Torre and Palazzolo, that as the latter supplied the brain and the former supplied the brawn, Della Torre was therefore willing to perform Palazzolo's instructions without questioning too much for its job. The Court also considered as a probative evidence the summons of co-defendant of Waridel admitting that in his opinion every body should have known that the payment referred to drugs. While proceeding with caution, the Court deemed that Waridel's impression was not a sufficient evidence, since it was not corroborated by other concurrent evidences. It is also necessary to consider the possibility that while for Waridel the payment could naturally refer to drugs, for the others, in particular for Rossini and Della Torre, it might have looked like one of the many business payments.

As to the same question referred to Palazzolo, the response given by the Court took into account the following factors. Early in April 1982, it was Palazzolo who gave instructions to Della Torre, his partner, and to Rossini. In his turn, Della Torre certainly carried out operations as directed by his principals who are still to be identified. Therefore the question can be raised as to whether Palazzolo could consider his principals as people having nothing to do with the drug traffic and it is necessary to point out that at the beginning Palazzolo was not well acquainted with the identity of his principals. Furthermore, even though Palazzolo's participation in the Mafia were to be taken for granted, a circumstance which was excluded by the Prosecutor, it is not reasonable to draw the conclusion from this circumstance that early in April 1982 he acted with the awareness and determination to take part in a drug traffic. It is also possible that Palazzolo was exploited at that time and therefore acted without thinking of the drug. Finally, the relation between Palazzolo and his principals cannot be considered as a proof in itself, but rather as an evidence upon which his possible malice can be ascertained. It was not possible for Palazzolo to identify his principals - presumably corresponding to Tognoli and Rotolo - with some drug dealers engaged in the Mafia, since Orlando Tognoli, on the basis of the hearings, was wellknown to Palazzolo as an entrepreneur of Brescia engaged in the iron industry.

Finally, as to the malice of the three defendants in relation to the transaction of 400 kg. of base morphine the Court could not ascertain for any of them neither the



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direct, nor the possible malice, therefore the enforcement of art.19 section 1 par.4 Fed.Law on drugs is to be ruled out. For the same reason, the enforcement of art.19 section 1 par.6 Fed.Law on drugs is to be excluded in relation to the preparatory acts performed by Rossini, Della Torre and Palazzolo, since the preparatory acts of a drug trade are indictable only when provided with the criminal subjective element, which the law envisages for the principal crime.

6.2.2. As to the charge of financing a drug traffic as provided for under art.19 section 1 par.7 Fed.Law on drugs, the Court deemed it necessary to ascertain the subjective elements in relation to the chronological order of the events which can be summed up as follows:

1. cash payments to Merrill Lynch from March 24, 1982 to April 23, 1982:

- a) March 24, 1982 \$ 1.110 million.--
- b) March 25, 1982 \$ 1.310 million.--
- c) March 26, 1982 \$ 689 910.--
- d) April 22, 1982 \$ 499 960.--
- e) April 23, 1982 \$ 1 408 455.--

for a total of \$4 908 335.--

to which have to be added from April 27, 1982 to July 6, 1982 \$6 806 260.--

2. cash delivery, presumably on April 9, 1982, to Tognoli, Rotolo and Waridel, of almost \$ 5 million

3. from April 27 to July 2, 1982 deposit in Traex accounts at Hutton of almost \$ 5 million of which almost \$ 3 million transferred in cash from the U.S.A.

4. cash transfer via Toronto by Della Torre and Salamone of almost \$ 1.5 million (in accordance with AI 68 pag.42 No.180, on August 1, 1982)

5. cash deposits in Hutton accounts at Acacias for \$ 8.25 million from July 7, 1982 to September 27, 1982, when the balance amounted to almost 4.5 million.

6. delivery to the Rotolo/Tognoli group from October 1982 of - \$ 1.5 million from the Acacia account at Hutton, by means of cheques

- \$ 3 million deposited in the Acacia account and converted into 200 kg. of gold

- \$ 3 million through the channel of Frigerio, transferred in cash from the U.S.A.

Because from April 1982 there is no evidence of drug supplies through Musullulu-Waridel, the question is whether the transfers undertaken through the channels of Merrill Lynch and Hutton, the subsequent disinvestment, and the consequent money delivery to the Tognoli-Rotolo group in the

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period between April and late September of 1982, can be considered as part of the financing operation of the drug traffic in accordance with art.19 section 1 par.7 Fed.Law on drugs. For this purpose it is necessary to establish whether Rossini, Della Torre and Palazzolo did consider and accept the possibility that the money delivered to the Rotolo/Tognolo group. (the drug dealers) was or could be used to support a drug traffic. In this respect, it is also necessary to consider that Rossini left the scene on July 2, 1982 and that the investment with the brokers were carried out without the knowledge of the principals, that is Tognoli and Rotolo.

As to the cash deposits in the Hutton accounts of New York it is necessary to note that the Prosecutor deems that those deposits amount to \$ 15.5 million. Instead, on the basis of the documents submitted by the defense counsel and confirmed by the statements of account enclosed in the file, the above deposits amount to \$ 6 806 260.--. Such a figure corresponds to the money deposited in the Traex accounts at Hutton which was later confirmed in the FBI investigation - e.g. AI 68 pag.39 and foll., nri 151, 154, 155, 1158, 162, 163, 165, 169, 171 and 172).

In order to assess the awareness of the defendants Rossini, Della Torre, and Palazzolo - it is necessary to make the following considerations:

Rossini was essentially interested in making money through futures commissions, Palazzolo and Della Torre were seriously interested in pouring as many funds as possible in their accounts in order to cover the losses suffered with other clients, a real question of survival,

in real terms the channel of the Commodities Exchange was the least adequate means to funnel funds from the U.S.A. and place them at the disposal of Rotolo and Tognoli in Switzerland, since those futures involved an extremely high risk of loss, especially in case of sudden disinvestment.

It is true that in the records there is a statement rendered by Palazzolo before the Public Prosecutor in which he had revealed his doubts as to the source of those funds as well as that Della Torre who many times had wondered about the source and destination of those funds. However, in spite of a number of evidences - e.g. large amounts of cash money, in small denominations, delivered to Della Torre by a suspected person, under suspected circumstances - the Court deems that if Palazzolo and Della Torre had indeed considered the possibility for those funds to come from a drug traffic and to be reinvested in the same traffic, they would not have decided to invest those funds in the Commodities Exchange. The Court is persuaded that the transfers of dollars from the U.S.A to Switzerland through the channel of Merrill Lynch and Hutton, with the Rotolo/Tognoli group as their



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destination, were not set up by Palazzolo and Della Torre, and least of all by Rossini who followed their instructions; that on their part there was no awareness and determination to finance a drug traffic, that they did not consider or accept the possibility that the money given to Rotolo-Tognoli was re-invested in another drug traffic.

After the exit of Rossini, early in July 1982, which was due to Palazzolo and Della Torre desire to act according to Phelan's suggestions, almost \$ 9 million (cf. AI 68 pag.41 and foll., No.173, 175, 176, 177, 179, 182, 215, 218, 219, 224) were deposited in the Acacias account at Hutton between July 6, 1982 and September 27, 1982. On August 1, 1982 \$ 1.5 million (cf. AI 68 pag.42 No.180 and Min. PP of Palazzolo No. 5 pag.3) were transferred in cash from the U.S.A to Europe through Canada, through Salamone and Della Torre, and deposited in accounts at the disposal of Palazzolo and Della Torre.

As to the malice of the defendants, the Court deemed that the situation prior to the exit of Rossini remained unchanged, exception made for the replacement of Traex with Acacias, and therefore Palazzolo and Della Torre, in spite of their doubts, did not consider the possibility that the money transferred to Europe and delivered to Rotolo and Tognoli was used to finance a drug traffic.

Late in September 1982 the situation was basically as follows:

- Rossini had left the scene early in July;
- the relations with Merrill Lynch via Traex had been broken off after a deposit of almost \$ 4.9 million,
- the relations with Hutton via Traex had been broken-off after a deposit of almost \$ 6.8 million,
- the relations with Hutton via Acacias was still open after a deposit of almost \$ 9 million,
- \$ 3 million had been transferred to Switzerland by air-plane and delivered to Waridel, together with the other 2 million collected in Switzerland on the Good Friday of April 9, 1982;
- in addition to the above 3 million, Waridel was delivered almost \$ 6 million derived from dis-investments made in the Merrill Lynch and Hutton accounts,
- the Acacias account, from which were subtracted the loss and dis-investment, amounted to \$ 4.5 million,
- in Salamone's place there were other \$ 3 million in cash,
- Palazzolo was perplexed as to the source and destination of the money and had appointed Ventimiglia to investigate,
- Della Torre had wondered "hundreds of times" about the source and destination of those funds and had never accepted the justification given by Tognoli - his comment on the justification given by Tognoli in relation to invest in the iron market had been "ghem scia poc"-.

On the 5th or 6th of October 1982 Riedener called Palazzolo by phone to inform him that the FBI was leading an investigation on the cash deposits made by the U.S. brokers (Traex and Acacias accounts). Palazzolo after informing Della Torre met with Rotolo in Zug in order to get information as to the source and destination of the money. Rotolo answered that instead of investigating the source and destination of the funds, he had better be concerned with giving him the money credited to Acacias and delivered to Salamone. Palazzolo took his words as a threat, feared for his health and demonstrated that he wanted to get rid of Rotolo by annulling his bank signatures and taking back Befra A.G. which he had previously transferred to him. It is likely that Palazzolo did not report this threat to Della Torre, as the latter kept being in contact with Rotolo until early in 1984.

It appears credible that Rotolo threatened Palazzolo because if the latter had transferred the money from the U.S.A. to Europe through the brokers in concert and agreement with Rotolo, he could have blamed him for the loss due to untimely and sudden disinvestment.

The conduct of Palazzolo and Della Torre after the Zug meeting with Rotolo leads to believe that at that time they both had taken into serious account the possibility that the money was connected with drug traffics. Indeed, Palazzolo asked Della Torre to destroy his diary and to sell his Porsche, while both Palazzolo and Della Torre asked Rossini to destroy the Traex accounting records in which they were interested. Palazzolo himself, during the trial admitted to having considered that this money was connected with a drug traffic, as he had already admitted before the Public Prosecutor during the pre-trial investigation.

According to the Court, even though Della Torre was not acquainted with Rotolo threats, he must have certainly considered the possibility of a drug traffic.

Due to the many questions that Della Torre had asked himself in relation to the source and destination of the money, to the inconsistency of the justification given by Tognolo and to the absolute shortage of evidence permitting him to rule out the possibility that the money was actually connected with traffics in other than drugs, and due to the professional experience acquired in relation to the matters of fact, and finally to the investigation conducted by the FBI about which even Della Torre was informed, it is unlikely that Della Torre did not think of a traffic in drugs. The fact that Della Torre remained in contact with Rotolo until 1984 is an evidence that he easily accepted to be in contact and work for somebody involved in drug traffics. It is also necessary to take into account the experience that Della Torre acquired in the States in relation to the concealment of the money in Salamone's place and the few deliveries made under questionable circumstances. This experience in addition to the

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information given by Riedener must have induced him to believe that the money was connected with a drug traffic. As a result, the Court has deemed that both Palazzolo and Della Torre did consider and accept the possibility that the money delivered to the Rotolo/Tognoli group after October 1982, was destined to finance a drug traffic by means of funds provided to people involved in drug traffics.

Starting from October 1982 Della Torre and Palazzolo conducted the following transactions:

- remittance of \$ 1.5 million cheques in favour of Acacias account at Hutton, Geneva,
- remittance to Tognoli of 200 kg. of gold (equivalent value of almost \$ 3 million) and
- transfer of almost \$ 3 million through Frigerio via Canada.

As to the remittance of \$ 1.5 million cheques in favour of Acacias account at Hutton, it is important to note that this money was already due to the Rotolo/Tognoli group and therefore Palazzolo and Della Torre had ~~no alternative~~ ^{but} to close the transactions with Rotolo. Therefore in this transaction the Court does not envisage the action of financing a drug traffic. On the contrary, the situation is quite different in relation to the \$ 3 million withdrawn from the Acacias account and converted into gold to be smuggled in Italy and later delivered to Tognoli. In this respect, Palazzolo and Della Torre did not only endorse the balance to Tognoli and Rotolo, but they also made another transaction in favour of the group of drug dealers.

In this transaction the Court envisaged the evidence of a financial intermediation in a drug traffic, since the transaction was made in favour of people that in the opinion of Palazzolo and Della Torre could not be completely stranger to drug traffics (cf. Weiss, in RPS 1985, pags. 198 and 199).

The last transaction made by Rotolo and Tognoli appears to be certainly more significant, since it consisted in the transfer of \$ 3 million still deposited in Salamone's place, from the U.S.A. to Europe through Frigerio. Palazzolo and Della Torre could have well asked Salamone to give the money back to the forwarder, instead they took a considerable part in delivering the money to people in Switzerland involved in drug traffics, insomuch as the above \$ 3 million could be used to finance drug traffics.

In consideration of the above premises, the Court deemed that Palazzolo and Della Torre perpetrated the crime of financial intermediation with possible malice (for an amount of \$ 3 million) and financing (for other \$ 3

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million) of a drug traffic in conformity with art.19 section 1 par.7 Fed.Law on Drugs.

7. CONCLUSIONS ON GUILT

While acquitting Enrico Rossini of all charges against him, the Court drew the following conclusions as for the other defendoants:

7.1. As to Waridel it is to be considered first of all that the delivery of \$ 5 million to Musullulu was clearly related to the supplying of 400 kg of base morphine put for sale on the market.

Furthermore, there were more deliveries amounting to \$ 6 million which could not be linked to actual drugs supplies. However, the availability of these funds in favour of Musullulu envisages the crime of illegal financing of drug trafficking, since Waridel knew that Musullulu was a drug dealer and also knew that the above funds could very well be destined to drug trafficking.

The justifications provided by Waridel referring to his cooperation with anti-drug Greek services were considered unsubstantial since - as is already known - Waridel never produced any useful information, nor did he timely apply to the Swiss Police which, better than others, could intervene.

7.2. As to Palazzolo and Della Torre the Court held as decisive the evaluation of the subjective factors and came to the conclusion that the doubts as to source of the money and its destination became concrete after the telephone call made by Riedener and after the Zug's meeting with Rotolo, that is to say starting from October 1982. From this date onwards, both defendants took into consideration and accepted the possibility that the money paid to the Tognoli/Rotolo group could be destined to drug trafficking.

It follows that the money transfers made before that date cannot envisage the crime of illegal sale of drugs, nor the crime of financing illegal traffics in drugs. Such a conclusion is strengthened by the fact that the transfer made through Ventimiglia on futures markets and carried out by Palazzolo and Della Torre, without their principals' knowledge, in order to make up for the losses of other clients as well, was the least adequate means which could be implemented to funnel money from the U.S.A. to Europe, all the more so having considered the risk involved in such investments.

On the contrary the remittance to Rotolo and Tognoli of \$ '3 million drawn from the balance of the Acacias account and converted into 200 kg of gold, and the transfer from the U.S.A. of the remaining \$ 3 million through the Fregerio "channel", represent behaviours that are prosecutable under art.19 section 1 par.7 Fed.Law on drugs.

According to this Court, Palazzolo and Della Torre have considered and accepted the possibility that Rotolo and



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Tognoli could be drug dealers. Furthermore, they have considered and accepted the possibility that the funds made available to Rotolo and Tognoli could be destined to the traffic in drugs.

7.3. As to Rossini it must be stressed once again that, the Court excluded that the defendant, who left the scene at the beginning of July 1982, could have considered and accepted the possibility that the money transferred from the U.S.A. to Switzerland could be linked to traffics in drugs. All the more so that as regards Rossini the principals were Palazzolo and Della Torre, who in turn were active as fiduciaries. Thus the Court has decided to acquit Rossini of all charges.

8. PROPORTIONING OF SENTENCES

8.1. The fundamental criterion for the proportioning of sentences is represented by art. 63 of the Criminal Code according to which the sentence must be proportional to the guilt of the offender, and due consideration is to be given to his reasons to commit the crime, his previous life and his personal conditions.

After having established the degree of participation in a specific crime (the fact of being accomplice or accessory to a crime), and having made clear whether it is the case of a simple offence or an aggravated crime, it is then necessary to apply the specific aggravating or mitigating circumstances as provided for by arts.67 and 64 of the Criminal Code.

In case of concurrence of crimes, when the offender incurs in more privative penalties, that deprive him of his personal freedom, it is necessary to establish the sentence for the most serious crime and then the sentence must be increased in accordance with secondary crimes, but not by more than half the maximum penalty inflicted. This rule of the Swiss Criminal Code which already since 1937 avoids the summing up of the terms of imprisonment shall be taken into consideration especially as regards those penalties inflicted abroad for similar cases, and most of all when - as in this case - the aim is to punish the participation in the traffic of drugs at international level.

8.2 In practice the sentences inflicted are those envisaged by art.19 of the Law on drugs dated October 3, 1951, and its amendments which, as has been seen, were last enforced on August 1st, 1975.

For all intentional crimes, as per section 1., the sentence inflicted is imprisonment (three days to three years) or a fine. But with a serious case (envisaging one of the reasons as per section 2, as is the actual case with each defendant) the sentence inflicted is a term of imprisonment (one to twenty years) or a term of imprisonment corresponding to

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not less than one year, to which a fine can be added up to fr. 1-000 000.

If the crimes, as per section 1, are committed due to negligence the sentence inflicted is a term of imprisonment up to one year, arrest or fine.

In practice only intentional and aggravated cases are to be punished by inflicting privative penalties, that deprive the subjects concerned of their freedom with terms of imprisonment ranging from one to twenty years. There are crimes that are committed with direct malice, as is the case with Waridel (for which the Swiss Judge and the Ticino Canton Judge have already inflicted heavy terms of imprisonment of about 10 years, though the quantities of drug were lower than the ones presently concerned and though as a consequence they represented a lesser jeopardy to public health) and there are also intentional crimes as in the case of Palazzolo and Della Torre, that are committed with possible malice or with a much lower degree of subjective participation, which is indicative of the lower degree of dangerousness of the actor against the property or public health, both at national and international level.

On the basis of observations that are recurrent in our jurisprudence, it is at least possible to believe that among crimes committed intentionally, those that are liable to punishment only due to possible malice belong to the group of crimes falling within the lower limits of punishability, that is with a penalty ranging from one to five or more years, so that the penalty is by all means markedly heavier than the maximum punishment inflicted for a crime of negligence. Furthermore, it is necessary to note that the guilt of a subject acting with possible malice and also only as the intermediary of a financing operation, shows an even lesser degree of dangerousness. In other words, it is possible to say (though the crime as per par. 7, refers to the same punishment ranging from one to twenty years) that anyone who acts as the intermediary of a financing operation (this action in itself is to be considered as an action liable to punishment and committed by an accomplice) must be inflicted a punishment that is less heavy than the punishment established for a subject who, with possible malice commits the crime of drug dealing as per par. 1-5.

In such a case, which is exceptional in the ordinary dealings of our Courts (both in terms of the quantities of drug dealt with, and in terms of the international scope of the traffic), the overall penalties to inflict to each defendant must also be equitable, both when proportioning the penalties among them and when proportioning the penalties with other penalties already enforced with previous recent cases of drug dealing that took place locally or within the domestic territory.

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8.3. Thus, when proportioning the three privative se that deprive the offender of his personal freedom, the Court considered first of all that:

- Waridel is directly involved, though only as an accomplice in the wide-scope drug trafficking of Musullulu, and for this reason his punishment shall be quite different from the punishment inflicted to Palazzolo and Della Torre;
- Palazzolo and Della Torre have at any rate given an important contribution to the drug dealers as concerns the quantity of money provided by the intermediaries, and they found themselves in a peculiar situation which influenced their choices; this is especially true of Palazzolo who was threatened by Rotolo;
- between Palazzolo and Della Torre it is necessary to draw distinctive line and separate the decisional action of Palazzolo, from the operational action of Della Torre, and at the same time, it is to be considered that the difference is not counterbalanced by the situation of severe distress suffered by Palazzolo.

The relapse of Waridel is to be referred to a previous, similar and serious crime committed in 1977. As a consequence, an increased punishment is to be inflicted as provided for by art.67 of the Criminal Code, so much so as if we consider that exactly when he had finished serving his three years' sentence the object of Waridel was to re-establish his contacts with well-known drug dealers. Under those circumstances, Waridel did not hesitate: once again he impudently and unscrupulously sided with the drug dealers. That is, he did not take all the necessary precautions that any correct collaborator of the anti-drug services would have used. On the contrary, his intention was to re-enter into dirty business and to ensure himself by all means a very good remuneration.

As to Palazzolo and his conduct, it appears that over the last years his record is clean and that he was never involved in drug crimes. Not only did he actually commit a crime for the first time, but he also committed the crime ascertained by this Court only after October 1982, under the known circumstances falling within the mitigating circumstances envisaged by art.64 of the Criminal Code. He continued to finance, either directly or as an intermediary, an illegal traffic in drugs after having received Rotolo's threats that were considered by this Court as quite serious. Furthermore, he committed the crime because he wanted to accept also the worst of the possibilities that were already looming as of October 1982, just as Della Torre, when his choices were limited, as if his decision to accept the criminal action were not completely free of influences,

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which was obviously the case of his associate Della Torre, who from the decisional point of view was his subordinate at that time.

8.4. For the equitable proportioning of sentences it is also necessary to consider within what limits the sentences are actually integrated with fines proportional to the financial and economic situation of each condemned. In other words it is necessary to consider that the fine, combined with the imprisonment sentence, makes it possible due to its effectiveness going beyond the serving of the sentence, to limit - to some extent - the privative punishment. In both cases (e.g. detention and fine) the Court considered the personal situation of each condemned and took into consideration the fact that while Waridel still disposes of a conspicuous portion of wealth in Zurich and in Spain, on the contrary Palazzolo and Della Torre in the very end of this trial find themselves in a situation that, on the basis of judicial results, appears to be quite close to the lack of all properties and wealth. Also due to this reason, even before this trial, the money deposited in the bank of Palazzolo was released from sequestration so to enable his wife and children to face most urgent expenses.

It is also necessary to consider that the Court acknowledged as likely the justification of Palazzolo, in the sense that a good share of his previous wealth had already been destined to compensate for the losses that his principal, Rotolo, had suffered as a consequence of the Stock-Exchange transactions carried on by Palazzolo himself at the beginning through Rossini's Traex and again in a later stage. Thus it is possible to understand why there is a considerable difference between the amount of the fine to be paid by Waridel and the fine inflicted to the other two defendants, still bearing in mind that the amounts suggested by the Prosecutor were considered by the Court openly excessive with reference to the financial situation of each defendant.

8.5. As to the enforcement of the measure imposing the obligation to transfer to the State the unlawful profits or money gains deposited in Switzerland (as provided for by art.24 Fed.Law on drugs, art.58 and successive articles of the Criminal Code), in view of a possible confiscation the Court only noticed that nothing appears to be under sequestration, since the wealth deposited in the bank accounts of Palazzolo could not be considered (on the basis of the investigation) as a result, profit or object of a crime, nor could it be considered as funds used for or destined to committing a crime (cf. petition dated August 12, 1985, and letter dated August 23, 1985, addressed by the P.P. to attorney Postizzi).

On the other side, the Court also had to acknowledge that as a matter of fact Palazzolo and Della Torre, just as Waridel did not obtain any concrete profits or economic advantages.



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The transactions that were carried out by Palazzolo and Della Torre after the month of September 1982, as a matter of fact resulted in actual losses, still to this date, they do not have the possibility of allocating to other drug traffics possible profits (as is the case when normally enforcing-art.59 of the Criminal Code).

8.6. When judging costs; under art.284 and foll.of the Criminal Code, the Court first of all considered the result of the trial, that is on the one hand the double sentence inflicted to Waridel for having committed the crimes of dealing in drug and of unlawful financing, and, on the other, the only partial sentence inflicted to Palazzolo and Delle Torre for having committed the crime of unlawful financing, while Rossini was completely acquitted.

According to art.285 of the Code of Criminal Procedure, the defendant who is being judged for more crimes, and then is condemned for having committed only some of them, cannot be obliged to pay the cost entailed by the judgment which as a matter of fact releases him of all charges. Thus, it seemed right and equitable to charge more than half of the overall costs to Waridel and to charge Palazzolo with a part of costs higher than those to be charged to Della Torre. While the share of costs pertaining to the judgment of Rossini - who has been acquitted - is to be borne by the State, as provided for by the last paragraph of art.284 of the Code of Criminal Procedure. The above fractioning of costs seemed right also due to the facts that the two proceedings are linked, and to the conduct held by the two defendants while in-prison.

8.7. As to preventive detention, the Court had to consider the anomalous situation of each of the three minor defendants.

As it results, Palazzolo is being imprisoned for more than 17 months, that is since April 20, 1984. Only on November 14, 1984, had he to take note of the opening of the present criminal proceedings (cf.Minutes Criminal Proceedings) held on grounds of the acts and judicial proceedings received by the P.P. and of the declarations already rendered. (cf. Minutes No.1, 2, and 3) in the framework of the judicial investigation for which he was under custody with pending extradition, which as a matter of fact was never granted. Thus the Court considered that it was possible to calculate only the period of preventive detention served starting from the formal opening of the present proceedings. With reference to this it is necessary to recall the fact that when proportioning the sentence which was reduced to three years (and which remained within the limits of a relevant difference, as compared to the sentence inflicted to Waridel) the Court also took into consideration the collaboration provided by Palazzolo, already during the first months of detention due to the requirements of extradition

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and it has already considered this peculiar circumstance which led to the impossibility to acknowledge (in accordance with the jurisprudence) the calculation of almost seven months of preventive detention served. In other words it is to be acknowledged that had the Court decided to calculate the entire period of preventive detention served by Palazzolo in Switzerland (inclusive of the one following the application for extradition), his punishment would have corresponded to more than three years.

Della Torre was held under preventive detention from November 14, 1984, to March 24, 1985. After four months and one week he was then released on bail together with Rossini. From the end of March until today, Della Torre showed a lawful conduct. Even after the sentence his conditional discharge has not been repealed considering also that a further penalty must be established by the competent authority only when a judgment - which must be of this nature - will be passed or controlled, especially as to its judicial aspects, by superior courts.

This is of some relief also for first-instance Judges since - given the nature of the judgment - they had to do their utmost to unravel the question of fact.

Rossini, who appears to be acquitted of all charges served - just as Della Torre - 4 months and one week of preventive detention, and was released on March 21, 1985 on a bail of fr.100 000.--. The result of the judgment first of all enabled the Court to order the immediate acknowledgement of the bail. Immediately after the notice of the sentence, the Counsel for the Defense of Rossini asked, and was granted, a term of 15 days to file a request for compensation for unfair imprisonment (art.267 and foll. of the Code of Criminal Procedure). Should the request be filed, the Court shall re-convene to hear the Parties and immediately issue a decision.

Considering that the judgment as to the costs (which releases Rossini who has been acquitted...) must not compromise, at any rate, the fact of knowing whether imprisonment was unfair or not, all the more so if we consider that only at the end of the proceedings, that is after his conditional discharge, Rossini produced the binding evidence which enabled the Court to declare his innocence.

B.B. In view of a realistic conclusion (as part of the last considerations on the consequences of three sentences), in accordance with the principle establishing that the administration of criminal justice must be first of all prompt for everyone, but especially with the aim to respect the condemned, who must then serve the terms, it remains to be observed that the first indictment is dated June 10, 1985, (while the one concerning Waridel is dated July 12, 1985) and that this first-instance judgment could be issued

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on September 26, 1985, in accordance with all the proceedings of the old code of the Canton which, at the time, was certainly not made to meet the requirements of proceedings of such importance.

The promptness of the judgment was mostly due to the active and correct cooperation of all Parties during the investigation and pre-trial, as well as during the prolonged hearings and to the experienced financial contribution given by the Jury to the three Judges.

After the examination of the matters of fact and of law, the Court

R E S P O N D S

positively to the following question:
1.1., 1.3., 2, 3, 4, 6, 7, 9.3., 10, 11.2., 15, 16, 19.3., 20, 21.2., 26.;

negatively to the following questions:
5., 9.1., 9.2., 12., 13., 14., 17., 18., 19.1., 19.2., 22., 23., 24., 25., 27., 28., 29., 33., 34.;

the remaining questions being invalidated;

in conformity with arts.:
21, 32, 35, 41, 48, 50, 55, 58, 59, 63, 64, 65, 67, 68, 69, 144 (Criminal Code);
19 sections 1, 2, 3; 23 para. 2 and 24 Fed. Law on Drugs;
art. 284 (CCP) and 39 TG in relation to expenses;

D E C L A R E S

1. PAUL WARIDEL
guilty of aggravated crime in violation of the Federal Law on drugs, for acting as an accomplice, for participating in the trade of at least 400 kg. of base morphine, for working as an interpreter, and as a liaison at the negotiations between Musullulu and the Italian buyers, for contributing to deliver the money of the sale - \$ 5 million - to Musullulu, and for financing an illegal traffic in drugs, by delivering to Musullulu almost \$ 6 million destined to finance other traffics, over the period between the Spring of 1981 and the beginning of 1983, in Zurich and in Lugano.

2. VITO PALAZZOLO
guilty of aggravated crime in violation of the Federal Law on drugs, for acting as a co-actor, for financing, directly or as an intermediary, an illegal traffic in drugs, for delivering to drug dealers \$ 6 million, partially converted into 200 kg. of gold and funds destined to finance other drug traffics; funds which were taken in delivery, and concealed in the U.S.A., and later transferred to Switzerland after September 1982.

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3. FRANCO DELLA TORRE

guilty of aggravated crime in violation of the Federal Law on drugs, for acting as a co-actor, for financing, directly or as an intermediary, an illegal traffic in drugs, for delivering to drug dealers \$ 6 million, partially converted into 200 kg. of gold and funds destined to finance other drug traffics; funds which were taken in delivery, and concealed in the U.S.A., and later transferred to Switzerland after September 1982.

4. ENRICO ROSSINI

acquitted of all charges

5. PAUL EDUARD WARIDEL, VITO PALAZZOLO AND FRANCO DELLA TORRE

acquitted of any additional charge

consequently, in the enforcement of the penalty, having acknowledged that Paul Eduard Waridel is a persistent offender and that Vito Palazzolo acted under the pressure of financial distress after September 1982

S-E N-T E-N-C E S

1. PAUL EDUARD WARIDEL to :

- thirteen years' imprisonment to which the preventive detention served from April 28, 1985, is to be deducted
- a fine of fr. 150 000 (hundredfifty thousand).

2. VITO PALAZZOLO to:

- three years' imprisonment to which the preventive detention served from November 14, 1984 is to be deducted
- ten years' expulsion from the Swiss territory
- a fine of fr. 20 000.-- (twenty thousand).

3. FRANCO DELLA TORRE to:

- two years' imprisonment to which the preventive detention served from November 14, 1984 to March 21, 1985 is to be deducted
- a fine of fr. 10 000.-- (ten thousand).



4. WARIDEL, PALAZZOLO AND DELLA TORRE jointly and severally to the payment of the law duties of fr. 15 000.-- (fifteenthousand) and of the law expenses, i.e. 6/10 charged to Waridel, 2/10 to Palazzolo and 1/10 to Della Torre, and the remaining 1/10 to the State.

The Parties have been informed of the right to appeal to the Supreme Court and to judicial review within a delay of ten days from the intimation of the complete sentence.

LIST OF EXPENSES

law duties	fr.	15 000.--
preliminary inquiry	fr.	13 326 25
chambers	fr.	2 927 10
witnesses	fr.	577 60
Photocopies, telex, interpreters, sentence- binding, stamps, telephone, any other business postage	fr.	2 018.--
	fr.	30.--

t o t a l fr. 33 878 95

Fines:

charged to Waridel	fr.	150 000.--
charged to Palazzolo	fr.	20 000.--
charged to Della Torre	fr.	10 000.--

t o t a l fr. 213 878 95

Counsel for the defense
of Della Torre appointed
by the Court, Renzo Galfetti

fr. 43 315.--

t o t a l fr. 257 193 95

=====

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Divisions

Share to be charged to Paul
E. Waridel
6/10 law duties and expenses fr. 20 327 40
fine fr. 150 000.--

total fr. 170 327.40
=====

Share to be charged to Vito
Palazzolo
2/10 law duties and expenses fr. 6 775 80
fine fr. 20 000.--

total fr. 26 775 80
=====

Share to be charged to Franco
Della Torre
1/10 law duties and expenses fr. 3 387 90
fine fr. 10 000.--

Counsel for the Defense
appointed by the Court fr. 43 315.--

total fr. 56 702 90
=====

Share to be charged to the
State 1/10 law duties
and expenses fr. 3 387 90
=====

Intimation:
Waridel Paul Eduard, c/o Lugano Canton
Penitentiary;
Palazzolo Vito, c/o Lugano Canton
Penitentiary;
Della Torre Franco, Via Guisan 6828,
Balerna;
Rossini Enrico, Via Quiete 13,, 6962,
Viganello;
attorney Roberto Macconi, Via Pioda 6,
Lugano;
attorney Mario Postizzi, Via Balestra
27 Lugano



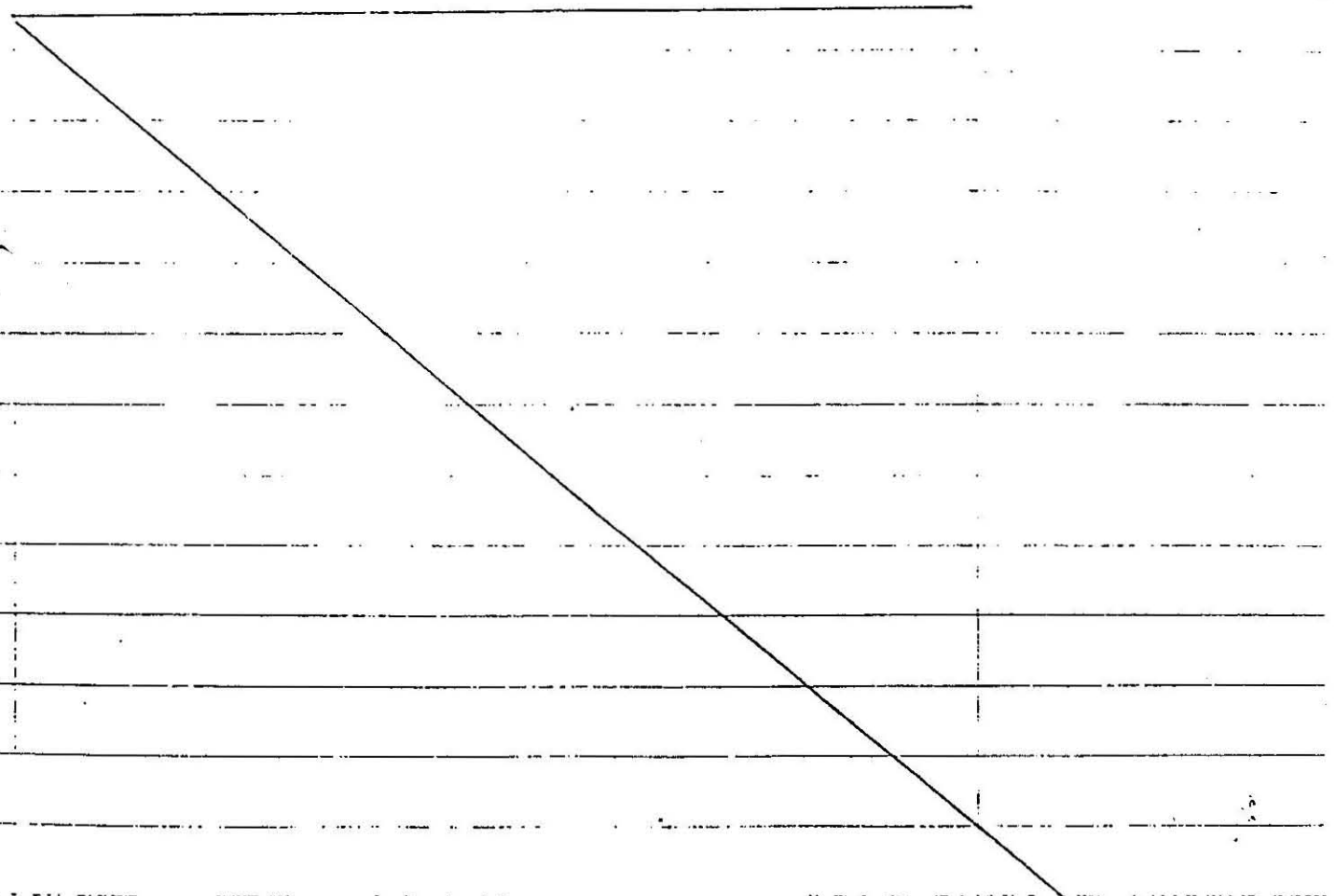
27, Lugano

- attorney Renzo Galfetti, Via Valdani 1, Chiasso;
- lawyer Daniele Timbal, Piazza Cioccaro, 7, Lugano;
- Public Prosecutor Monte Cenere, attorney Paolo Bernasconi, Lugano;
- Public Prosecutor Monte Cenere, Bellinzona;
- Police Officer, Lugano
- Canton Police Headquarters, Bellinzona
- Justice Department, Bellinzona
- Management of the Lugano Canton Penitentiary;
- Judicial Office of Traffic, Camorino;
- Ministry of Public Confederation, Bern;
- Central Police Office, Drug Division, Bern, Switzerland.

FOR THE COURT OF CRIMINAL ASSIZE

The Chairman
(signature)

The Secretary
(signature)



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