

Ref. no. 130-162(88)

Lugano, 26 September 1985

[Ticino coat of arms]

IN THE NAME OF THE REPUBLIC AND THE CANTON OF TICINO

The Criminal Appeal Court

Consisting of the following Judges:

- Dr Plinio Rotalinti Judge President
- Lorenzo Anastasi (replacing Judge Verda, who is unavailable)
- Iginio Rezzonico (replacing Judge Lepori, who is unavailable)
and the Judicial Councillors: Rodolfo Daghini, Pierluigi De Filippis, Luigi
Derighetti, Marco Giannoni, Beniamino Valsecchi.

Convened in the Court for criminal proceedings in this building, together with the undersigned Registrar, to **pass sentence on:**

Franco DELLA TORRE: son of the late Carlo and Alice Grisoni, born in Mendrisio on 20 November 1942, originally from Vacallo, domiciled at Via Guisan in Balerna, married, a managing director;
Previously detained from 14.11.1984 until 31.3.1985

Vito PALAZZOLO son of the late Lodovico and Giuseppina Palazzolo, an Italian citizen, born in Terrasini (Palermo) on 31 July 1947, resident at 27 Via Polar in Breganzona, married; a businessman;
Detained from the 20 April 1984;

Enrico ROSSINI son of Amelio and Eride Frapolli, born in Sorengo on 19 October 1951, originally from Valcolla, domiciled at 13 Via Quiete in Viganello, married; a businessman;
Formerly detained from 14.11.1984 until 31.3.1985;

as they have been found guilty of:

the aggravated, continued violation of the Federal narcotics Law

given that the violation refers to a quantity of narcotics that could pose a danger to the health of a large number of people,

[Stamp: Lugano, 28 May 2003. This photocopy is certified a true copy of the original, Signed: illegible. Round stamp of the Criminal Canton Court – Lugano]

for having, in collusion among themselves and with other people, participated in the financing of the illegal trafficking of narcotics and served as intermediaries in its financing, making the necessary preparations and contributing in this way to dealing in considerable quantities of morphine base, which were shipped by sea from Turkey to Southern Italy, where it was processed into heroin, and from there sent to the USA for sale to consumers.

The accused, who had put in place a number of executive actions with the same criminal design, operated under the circumstances and the transactions described hereunder.

1. The three accused organised to take delivery and transfer money, so that they could directly or indirectly send it to both the drug suppliers as an advance payment on the purchase price of the morphine base, and to various people responsible for selling it, in order to support the expenses of their organisation, the refining process and transport costs.
2. With each of the accused acting in the capacity required to achieve the above objective, the three accused collaborated to take receipt of, transfer, hide and secretly distribute the following amounts of money:
 - 2.1 about 40 (forty) million dollars, physically taken delivery of in the USA
(C.f.r. PP report no.5 page 3)
 - 2.2 other amounts, for about 7 (seven) million dollars, which were delivered in other ways.
(C.f.r sub 5./22)
3. These amounts were destined for different links in the drug trafficking chain, namely:
 - 3.1 Musullulu Yasar Avni, 1.1.1942, alias Oksuz Attila, at the time resident at Küssnacht, and owner of a company with offices in Zurich. He in turn bought the morphine base from Turkish suppliers (led by Cantürk Behcet, 1950), at a price of 13.000 dollars/kilogram. Paul Waridel worked for Musullulu as the link between the traffickers and the accused;
 - 3.2 the Sicilian groups that bought the morphine base from Musullulu, taking delivery along the coast of Italy, and then arranging for it to be processed into heroine, and transported to the USA, to be sold on to consumers.
These groups were represented by Antonino Rotolo (3.1.1946), also known as Rudy and Carlo.

Rotolo acted on his own, but initially he acted for Nunzio La Mattina (2.6.1934), and his son-in-law Salvatore Priolo (12.10.1956); at a later stage, he acted for himself and Leonardo Greco (6.6.1938), as was also represented by Oliviero Tognoli (10.4.1951).

Rotolo, Greco and Tognoli all made contact with the three accused for this purpose, and in the circumstances and using the methods described hereunder.

4. The three accused collaborated to take delivery, transfer, hide and distribute the above amounts of money, to the following extent:

4.1 Palazzolo and Della Torre:
of all the amounts listed in these charges;

4.2 Rossini
of all the amounts listed in these charges, with the exception of:

4.2.1 the amounts taken delivery of elsewhere than in the USA (see 2.2).

4.2.2 the amounts taken delivery of in the USA after the summer of 1982 (see 26).

5. Towards the end of 1981, Palazzolo and Della Torre made available bank accounts in Chiasso (in the name of Della Torre under number Frater 215.159 and Graziano 220.250), to deposit and redistribute sums of money, which were received on instructions from Oliviero Tognoli.

The following amounts of money came into these accounts: (AI 48)

5.1 money smuggled from Italy by Antonio Ventimiglia, also called Toni (23.7.1946), who was employed by Palazzolo and Della Torre as a currency courier, which was partly credited to a bank account in Bellinzona;

5.2 a bank credit for 990.000 dollars coming from the Company "S. Marco Shipping Ltd" in Zurich on the 1.12.81, on instructions from Gaetano Giuffrida (6.2.1940) and Tommaso Spadaro (20.8.1937);

GI cpl 4,5,50,53; Report GI 45, 54; PP Report no.1 pg. 7,11 and 12; no. 4 pg. 4; no.11 pg. 4; AI 105,130;

- 5.3 1.700.000 dollars through three bank credits in December 1981, coming from accounts in Lugano held by: Pasquale Cunterra (17.5.1930) and Alfonso Caruana (1.1.1946);
GI cpl 8, 125; AI 108,122, 125, 162;
- 5.4 650.000 dollars through two bank credits in April and May 1982, from an account held by Alfonso Caruana;
GI cpl 126; AI 162;
- 5.5 12 cheques for 2.237.000 dollars in total, issued on a Canadian Bank by Alfonso Caruana;
AI 146; GI cpl 126-128;
- 5.6 Various amounts credited from a bank in Geneva;
AI 103;
6. In Lugano in the spring of 1982, Rossini made available some offices next to the offices of the financing company that he directed called Traex SA at 12 Via Balestra, to Consultfin SA, a financing company used by Palazzolo and Della Torre.
Specifically, Rossini also made available his money counting machine.
PP Report no.6 pg.3;
7. In Lugano in March 1982, at the offices at 12 Via Balestra, Palazzolo and Della Torre received a delivery of dollars that were in a bad condition with an unpleasant odour. After trying in vain to deposit these in local banks, Della Torre personally took them by plane to New York, where he deposited them with Merrill Lynch, in an account held by Traex SA, according to the instructions he had been given by Rossini;
GI Report 177; PP Report no. 6 pg 4; no. 13 pg.1; AI 74 pg.2;
8. In Lugano in April 1982, Palazzolo, Della Torre and Rossini met at Rossini's offices at 12 Via Balestra, with Oliviero Tognoli and Leonardo Greco. Also present were Philip Salamone and Antonio Ventimiglia. Rossini's courier delivered three million dollars that had been brought over by plane from New York.
Other amounts in different currencies, which Della Torre withdrew from different bank accounts that Rossini held, were added to this amount;
GI Report 42 cpl 140; PP Report no.1 pg.5,6 and 7; no. 4 pg.2; no.6 pg.3 and 4; no.10 pg.4 and 5; no.13 pg.3; no.25 pg.5; no.27 pg. 5 and 6; AI 114 no. 3 and 4;

9. In Lugano in April 1982, on the same day or the day after the meeting indicated above, all the above people met with Antonio Rotolo and Paul Waridel, to whom they handed over all the above amounts for a total of about five million dollars. The money was loaded into a Pontiac registered with the Canton of Zurich belonging to Waridel, in the underground parking of the building at 12 Via Balestra.
GI cpl 65,70, 71-75, 80, 98 -105, 114-116; AI 145, 149, 141 pg.9;
10. Palazzolo appointed Philip Salamone (8.2.1944), a US citizen, gardener, and his friend coming from the same area, to take delivery of the US dollars.
Palazzolo and Della Torre provided Salamone's name, including his telephone and passport number, so that Oliviero Tognoli could contact him for the delivery of the dollars, and Rossini could contact him for exporting the dollars from the USA;
GI Report 85,180; PP report no.1 pg.4; no.4 pg.6; no.17 pg.1; AI 44,88,166;
11. In the USA, Philip Salamone took delivery of dollars in cash from different people, who called themselves "Joe" and "Henry"; one of them corresponding to Philip Matassa (18.6.1954), a cousin of Oliviero Tognoli's wife, while a second one called "Sal" corresponded to Salvatore Greco (3.4.1933), all of whom were in contact with Joseph Ganci (26.9.1933). The delivery took place on the street in New York, where Salamone picked up bags and boxes containing dollars without even counting them, from cars that he had been pointed out to him by those responsible for the delivery.
GI Report 37; PP Report no.1 pg.8; no.25 pg.3; no.27 pg.4; AI 110, 26 no.3 35; AI 68 pg 39-57; AI 23 annexure 2.3.5 sheet 5; doc PP pg 772, 778, 942, 991, 1006- 1024;
12. Philip Salamone hid the dollars in his house, in the cellar or in a hole behind the fireplace, with the help of his wife and two children, and separated the bank notes out according to denominations. Della Torre or his courier Ventimiglia would come to the house to pick up the bags that were to be transported in person by air to Zurich, choosing the bags where Salamone had tried to put the bank notes in higher denominations.
Once Della Torre also received money order type cheques from Salamone, which he then transferred to Switzerland in person.
GI Report 34; 138; PP Report no.5 pg.3; no.8 pg.2;
13. Rossini took responsibility for organising the transport of the dollars from the USA to Switzerland, making use of his relation, Giorgio Scossa. Rossini chose him because Scossa had already organised the transportation of 8 suitcases in 1981 on behalf of Antonio Cavalleri (1.4.1939), who was acting on instructions from Oliviero Tognoli and

Joseph Ganci (26.9.1933), also called "Buffalo". Scossa engaged the help of Claudio Esposito (30.6.1939), who was employed by Swissair as ground staff at the intercontinental airport in New York.

To carry out the assignment he had received, Esposito would make contact with Salamone, who would drive his car right up to the plane and load the bags right inside, facilitated by the presence of Esposito, who was there checking the loading of baggage, and would advise on the arrival and departure times of the suitcases by telephone.

GI Report 17,41, 43,44,62,63,97,99,109, 132; PP Report no.1 pg 4,5,8 and 9; no.10 pg.6; no.30 pg.2; no.31 pg.2; no.32 pg.3; AI 98, 152;

14. Palazzolo would provide Rossini with the telephone number of the person in New York holding the dollars, and would pass this on to his man Scossa, who in turn would pass this on to Claudio Esposito. He would check on the arrival of Scossa's couriers' with the dollars, and advise Scossa once they had left.

Scossa would then be at the airport in Zurich, where he would take delivery of the bags containing the dollars, and pass them on to the people that Rossini had indicated in Zurich, or else deliver them to Traex SA in Lugano.

About three trips were made in this way from the USA.

GI Report 12,59,60,62,163,133; PP Report no.11 pg. 1-2, no.31 pg.2;

15. Della Torre, his courier Ventimiglia, and Salamone all personally transported dollars by plane from New York to Zurich, sometimes delivering them in Zurich, and sometimes in Lugano at the offices of Traex SA.

On one occasion, Salamone travelled with his two children, who wore coats padded with dollars.

GI Report 44, 45, 46;

16. The dollars that Salamone took delivery of and subsequently transferred as described in points 11 and 12, were mainly in small denominations, namely 5, 10 and 20 used dollar bank notes;

GI Report 31; PP Report no. 1 pg.6; no. 8 pg.1; no.11 pg.2; no.13 pg.2; no.25 pg.4; no.28; no.29 pg.2;

17. Rossini took delivery of the dollars that had been physically brought over from the USA, in his office at 12 Via Balestra in Lugano, and deposited them with Traex SA, a financing company belonging to Rossini, in accounts held by Palazzolo and Della Torre and their companies, like Palazzolo's Pageko AG.

The three accused used these funds to effect numerous stock market transactions, which closed with significant losses.

GI Report 15 cpl139; PP Report no.14 pg.1;

18. In Zurich, the three co-accused organised the delivery of money to Musullulu and Waridel on two occasions.

18.1 On the first occasion, they delivered about three million dollars in total;

18.2 The second time, about another three million dollars in total, as well as amounts in other currencies (Swiss francs, Italian lire and about 800.000 German marks), which were given to Rossini in person.

The delivery was made on the street at 12 Löwenstrasse, where Palazzolo's company Pageko AG was situated. The money was loaded by Della Torre and Ventimiglia into Waridel's motor car, who was accompanied by Musullulu; while Palazzolo and on the second occasion, Rossini remained in the office with the abovementioned Rotolo.

GI cpl 68, 76-78, 86, 89,90, 106; PP Report no.1 pg.14; no.10 og.6; no.11 pg.1 and 12; no.15 pg.2; no.16; no.22 pg. 2; no.23 pg.2; no.30 pg.2; AI 41, 129;

19. Ventimiglia was assigned as courier by Palazzolo and Della Torre, and on different occasions transported money to Zurich that had been delivered to Rossini, handing it over to Waridel and Musullulu;

PP report no.1 pg.7;

20. As from March 1982, Rossini made available Traex SA's account with Merrill Lynch, Pierce Fenner and Smith Inc in New York, with whom he agreed that he would be depositing money in cash directly in New York.

Palazzolo and Della Torre who were already operating on the stock market through Traex SPA in Lugano, accepted. Consequently, Della Torre handed the dollars that had been hidden at Salamone's house to the staff at Merrill Lynch. After the initial delivery at Merrill Lynch's offices, subsequent deliveries were made directly to a bank in New York in the name of Merrill Lynch and not Della Torre. Using this procedure, Salamone took delivery of about 4.9 million dollars in total that were then entrusted to Merrill Lynch. (4.908.435 dollars on account no. 11908122).

GI Report 22,23,24,102 and following; PP Report no.1 pg.10; no.4 pg.4; np.5 pg.3; no.13 pg.1; no.17 pg.3; AI 42, 68 pg.37-38, 115-117;

21. Once they had severed relations with Merrill Lynch, Palazzolo, Della Torre and Rossini decided to transfer the above transactions to E.F. Hutton and Co. Inc. in New York. To this end, an account was opened in the name of Traex SA, and subsequently in the name of Acacias Development Corporation, a financing company belonging to Palazzolo and Della Torre. The deliveries made, following similar procedures to those indicated above, amounted to about 15.5 million dollars.
GI Report 68 following, 155 following, cpl 11; PP Report no.1 pg.10; no.4 pg.4; no.8 pg.2; no.22 pg.2; AI 119, 43, 47, 60, 68 pg.31-50; 115-118 (8.250.745 dollars on account W 6098662 and 7.432.800 dollars on account E0794160).
22. On an unspecified date in the spring of 1982, and in order to satisfy a request made by Rotolo, Palazzolo contacted Georg Kastl (14.4.1945, Keisten AG), whose telephone number he had received from Rotolo. Introducing himself as "Helmuth", Palazzolo took delivery of 1.5 million dollars in bearer cheques of 100.000 dollars each. This related to a corresponding amount belonging to Gaetano Giuffrida and Tommaso Spadaro, which Kastl was holding on a Zurich bank account held by the abovementioned San Marco Shipping Ltd, managed by Kastl. Della Torre collected the cheques in Lugano, which were then delivered through Rotolo to Musullulu and Waridel in Zurich, together with another two million dollars, which was added to the money that had already come from New York.
GI Report 8,9,55 cpl 5,6,7,16,17,31, 42-48, 53-58, 69; PP Report no.5 pg. 3 and 4; no.21 pg.1; no.27 pg. 7; AI 101,130,136,104,105;
23. On instructions from Palazzolo, Della Torre also made contact in Toronto, Canada, following which about 1.5 million dollars were transferred from New York to Toronto, of which 100.000 dollars were transferred during the first half of 1982 and the remainder at the end of 1982- beginning of 1983.
The transfer from Canada to Switzerland was carried out as follows:
- 23.1 Salamone transferred the dollars by plane from New York to Toronto.
- 23.2 Della Torre made deposits in accounts that he held in Switzerland (PGK account with Hutton in Geneva, and bank accounts in Chiasso).
- 23.3 Ventimiglia and an acquaintance of Palazzolo (a certain Boris Soleyman from Geneva) personally carried the remainder from Toronto to Switzerland by plane;

GI Report 34,167,174, cpl 153; PP Report no.5 pg.2 and 3; PP document pg.74; AI 114 no.5 pg.2; AI 68 pg.42;

24. In September 1982, following concerns that they would be stopped in the USA following FBI investigations, Palazzolo and Della Torre ordered Hutton to immediately transfer the active balance being held in New York to the accounts held by Acacias Ltd, getting this credited at Hutton in Geneva.

AI pg.50;

Palazzolo and Della Torre then disposed of this amount as follows:

- 24.1 1.5 million dollars was delivered by a friend of Palazzolo's in Geneva to the beneficiaries (drug suppliers), in the form of cheques;
- 24.2 3 million dollars was transferred to a bank account in Chiasso, in favour of Acacias Ltd, where it was used by Della Torre to purchase 200 kg of gold. This gold was then handed over to Palazzolo and Ventimiglia, who delivered it to Oliviero Tognoli in Ponte-Chiasso; GI Report 9 cpl 147; PP Report no.5 pg.4; no.6 pg.4; no.8 pg.2; AI 88 no.1;
25. In Chiasso, on two occasions at the beginning of December 1982, Della Torre delivered about 800.000 dollars in total in cash, into the hands of Oliviero Tognoli, who each time, he organised to meet along the road; GI Report 37, 47; PP Report no.22, pg.1; no.27 pg.2; no.27 pg.3-4;
26. From December 1982 until March 1983, as Palazzolo and Della Torre had decided to liquidate all the accounts they held at Hutton, they looked for another channel, until they reached an agreement with Enrico Frigerio (also called "Chico", 21.12.1942) (a Ticino citizen, living in New York at the time).
- 26.1 Using this channel, about 3 (three) million dollars in total was transferred from the USA to Switzerland, over about 4 trips by air on the New York – Zurich route.
- 26.2 Using the channels indicated above, the money was taken delivery of in New York by Philip Salamone, who had taken on the cover name of Luciano or Lucien, and who kept the money in an apartment in New York at the disposal of Frigerio;

- 26.3 Frigerio used his brother Emiliano Frigerio (20.7.1950) and Beniamino Brändli (30.7.1950) who were both employed by his company Gestinvest SA in Chiasso as couriers, as well as Carmelo Palchetti;
- 26.4 The money was mainly delivered to Della Torre in Chiasso at his offices at Consultfin, and also at Kloten, where Della Torre would come in person;
GI Report 30,33, 115; PP Report no.3 pg.4; no.10 pg.7; no.14 pg.3; no.17 pg.3-4; no.25 pg.3; no.28; no.29.
27. During the period from the spring of 1982 until the beginning of 1983, Palazzolo and Della Torre redistributed parts of the above monies to other people belonging to the organisation of the traffickers – besides those mentioned above. On instructions given by Antonio Rotolo and Oliviero Tognoli, they ordered that different amounts were to be credited in favour of bank accounts held in Lugano, Chiasso and Bellinzona, which were held by the following people:
- Leonardo Greco (6.6.1938) (AI 23 annex 2.3.5)
 - Michelangelo Aiello (4.6.1942) (AI 23 annex 2.2)
 - Mohamed Jounes (1.1.1931) (PP document file no.1)
 - Pietro Pagnini (15.10.1943) (PP Report pg.197-200)
 - Anselmo Pagnini (1.4.1950) (inc. pp.3518/84).
28. By way of remuneration for the services rendered above, the Sicilian trafficking group provided the three accused with the following:
- 28.1 a commission equal to 6% of the value of the dollars transferred. Once news was received that the FBI enquiry had initiated an enquiry in the summer of 1982 relating to the above transactions with Hutton, the commission was increased to 8%;
GI Report 16,32,52,87; PP Report no.3 pg.6; no.5 pg.5; no.13 pg.2; no.14 pg. 3-4; no.17 pg.4;
- 28.2 Unbeknown to their principals, Palazzolo, Della Torre and Rossini used the dollars deposited with Merrill Lynch and Hutton to speculate on the metals and the currency markets. Many of these transactions ended with significant losses.
GI Report 13,104; PP Report no.1 pg.15; no.2 pg.3; no.3 pg.6; no.4 pg.7; no.5 pg.5; no.11 pg.1;

28.3 In Lugano in April 1982, Oliviero Tognoli and Antonino Rotolo decided to give Della Torre a Porsche that was almost new, as a gift. When Palazzolo and Della Torre learnt that this Porsche had already belonged to Salvatore Priolo, who had conducted the same trafficking in dollars in the past together with the abovementioned Antonio Cavallieri, they decided to get to get rid of it, and Della Torre bought another Porsche, giving back Priolo's.

GI Report cpl 13,67; PP Report no.1 pg.11; no.2 pg.3; no.3 pg.3; no.10 pg.6-7; no.11 pg.3;

All these facts occurred during 1981, 1982 and 1983, in Lugano, Chiasso, Zurich and other places in Switzerland and abroad, in the places and time periods indicated above;

Crime provided for by article 19 number 2, paragraph a) of the Federal Law on narcotics dated 30.10.1951;

And better specified under charge sheet 76/85 dated 10 June 1985 issued by the Public Prosecutor hereunder.

Recourse is also made to the order handed down by the President of the Criminal Chamber, where the proceedings 76/85 and 97/85 relating to the charge were combined:

Paul Eduard WARIDEL, son of the late Henri and Janka Koletzka, born in Istanbul (Turkey) on 7 December 1941, originally from Prahins, resident in the Canton of Zurich, a businessman, married;

Detained from the 28 April 1985;

Given that he was found guilty of:

The continued aggravated violation of Federal Law on narcotics

Given that this was committed with band of criminals, realising a large amount of business, and knowing that the violation referred to a quantity of narcotics that could pose a danger to the health of several people,

For having, in collusion with Musullulu Yasar Avni (1.1.1942) (alias Karadurmus Sari Avni, alias Atila Oksüz or Attila Oksur) and other persons, participated in the manner and capacity indicated above, both in the trafficking of narcotics, as well as the financing of this trafficking, and serving as intermediary in its financing, making the necessary preparations and contributing in this way to

dealing in considerable quantities of morphine base from Turkey, which were then processed into heroin in Sicilian laboratories, and finally transported to the USA for retail sale, And specifically for having acted in the circumstances detailed hereunder, in executive actions that had the same criminal design:

1. In Zurich in the spring- summer of 1982, initially at the offices at 12 Zähringerstrasse, and then at 3 Bahnhofplatz, which were rented by Musullulu, where he acted as interpreter between Musullulu as the supplier of the morphine base on the one hand, and the Sicilian buyers on the other, who were initially represented by Nunzio La Mattina (2.6.1934) and his son-in-law Salvatore Priolo (21.10.1956), and subsequently after the arrest and murder of La Mattina, by Antonino Rotolo (3.1.1946), also known as Carlo or Rudy. Again through Waridel's contribution, Musullulu accepted re-instating the supply of the morphine base, having come to an agreement with regard to financing on previous shipments that had not been paid in full, and regarding the shipments that were to be made in the future.
2. In Zurich, between the end of 1981 and the beginning of 1982, Waridel continued to act as interpreter in the negotiations between Musullulu and Rotolo. These negotiations were concluded with the agreement that Musullulu would supply the morphine base to a group represented by Antonino Rotolo, at a price of 13.000 dollars/kg.
3. In Zurich and Lugano during 1982 and 1983, Waridel maintained contact between Musullulu and Rotolo, acting as a go-between to communicate their respective instructions and arrange their meetings. He always participated as an interpreter in these meetings, during which Musullulu and Rotolo decided the trafficking procedures and financing, and more specifically:
 - 3.1 the locations and delivery times, as well as the quantities of morphine-base that Musullulu bought from a Turkish organisation, arranging for transport by sea up to the coast of Southern Italy, where the buyers then took delivery, processing this into heroine in the laboratories in Sicily, to finally send on to the USA.
 - 3.2 the procedures, the times as well as the calculation of the money from the shipments of morphine base for delivery, where Musullulu always demanded and obtained payment in advance. In total, in the presence and with the contribution of Waridel, during 1982 and 1983 the group represented by Antonino Rotolo paid Musullulu about 17.2 million dollars

for shipments of the morphine base. Sums of money for other shipments were also made without any contribution on Waridel's part.

4. In Lugano and Zurich during 1982 and 1983, Waridel contributed to delivering some of the above money to Musullulu, carrying out the instructions that he had received in this regard both from Musullulu and Rotolo, in the circumstances detailed hereunder:

- 4.1 In Lugano in April 1982, Waridel accompanied Antonino Rotolo who was coming from Zurich and a friend of Musullulu identified only as Soleyman to the offices occupied by Vito Palazzolo, Franco Della Torre and Enrico Rossini at 12 Via Balestra. Also present at the meeting besides those listed above, were members of the Sicilian buying group (namely, Leonardo Greco 6.6.1938 and Oliviero Tognoli 10.4.1951), as well as Palazzolo and Della Torre's couriers (namely, Philip Salamone 8.2.1944 and Antonio Ventimiglia 23.7.1946).

There was about five million dollars at the above offices (of which about three million were in small denomination bank notes, and the remaining two million in other denominations), which was loaded into Waridel's car, a Pontiac registered with Zurich number plates, who then transported this to Musullulu's house in Küsnacht/ Zurich.

- 4.2 In Zurich in the spring of 1982, out on the road in front of a company belonging to Palazzolo (Pageko AG) in Löwenstrasse 12, Waridel and Musullulu took delivery of some suitcases from Rotolo, Palazzolo, Della Torre and Ventimiglia, which they loaded into Waridel's car. These contained:

- 4.2.1 on the first occasion, about three million dollars in total;

- 4.2.2 a second time, about three million dollars, as well as other currencies (Swiss francs, Italian Lire and about 800.000 German marks).

5. In Zurich, during 1982 and 1982, on three separate occasions, Waridel participated at Musullulu's offices as an interpreter in the meetings where Rotolo delivered the following to Musullulu (PP Report no.1 pg.5):

- 5.1 1.7 million dollars in cash;

- 5.2 one million dollars in cash;

- 5.3 15 bearer cheques of 100.000 dollars each, issued from a Bank in Lugano on the instructions of Gaetano Giuffrida (6.2.1940) and Tommaso Spadaro (20.3.1937) (cfr. AI 36, Ai 102).
6. In Zurich during 1982 and 1983, sometimes acting alone and sometimes with Musullulu, Waridel arranged for the above funds to be exchanged into other currencies, which were then partly delivered in cash to Musullulu, and partly deposited into Waridel's personal bank account in Zurich, in the amount of about 500.00 dollars, and which was then gradually handed over to Musullulu as he requested it. (cfr. AI 24, PP report no.3 pg.3)
7. In Zurich in June and July 1982, Waridel received five of the above cheques for 100.000 dollars each from Musullulu, who had in turn just received them from Rotolo, which Waridel cashed at two banks in Zurich, delivering the corresponding amount to Musullulu as per his instructions. (cfr. GI Report pg.17 and 27, and AI 9 pg.69)

These facts occurred during the above circumstances from 1981 to 1983, in Lugano, Zurich and other places in Switzerland and abroad;

Crimes provided for by article 19 numbers 1 and 2 of the Federal Law on narcotics dated 30.10.1951;

And better specified under charge sheet 76/85 dated 10 June 1985 issued by the Public Prosecutor.

Those present:

The Public Prosecutor Paolo Bernasconi;

The accused:

- Franco Della Torre, assisted by Court appointed defence counsel Renzo Galfetti;
- Vito Palazzolo, assisted by defence counsel Mario Postizzi;
- Enrico Rossini, assisted by defence counsel Daniele Timbali;
- Paul Eduard Waridel, assisted by defence counsel Roberto Macconi.

Having concluded the public debate over the: 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25 and 26 September 1985.

Having heard:

The Honourable Public Prosecutor who confirmed the charges, with the exception of those under points 5, 7 and 22, and concluded by asking that:

- Paul Eduard Waridel be condemned to:

- 15 years imprisonment
- the payment of a fine of 300.000 francs.

- Vito Palazzolo is condemned to:

- 12 years imprisonment
- exclusion order from Switzerland for a period of 15 years
- make payment together with Franco Della Torre of 50.000 francs to the State,
- the payment of a fine of 100.000 francs.

- Franco Della Torre is condemned to:

- 12 years imprisonment
- make payment together with Palazzolo of 50.000 francs to the State,
- the payment of a fine of 50.000 francs.

- Enrico Rossini is condemned to:
- 8 years imprisonment
- make payment of 50.000 francs to the State
- the payment of a fine of 300.000 francs.

Attorney Mario Postizzi, defence counsel for Palazzolo, who made reference to his client's personality, character and previous life, and

- argued whether money laundering was also punishable under article 19, number 1 para.5 of the Federal Law on narcotics [LFStup].
- argued the crime of money laundering as such
- argued against the crime of financing under article 19 number 1 para.7 of the Federal Law on narcotics.
- pointed out that his client had a clean record until 1982.

In summary, defence counsel reiterated that Palazzolo had not either objectively or subjectively violated the Federal Law on narcotics, and concluded by asking for his acquittal from the crime set down under article 19, numbers 1 and 2 paragraph a) of the Federal Law on narcotics dated 30.10.1951.

Attorney Renzo Galfetti, defence counsel for Della Torre, made reference to his client's previous life,

- underlined that the statement made by Waridel could not be considered as that of an accomplice;
- argued against all the charges contained in the charge sheet;
- concluded by asking for his acquittal from the crime set down under article 19, numbers 1 and 2 paragraph a) of the Federal Law on narcotics dated 30.10.1951.

Attorney Roberto Macconi, defence counsel for Waridel, who initially analysed the charges,

- argued against collusion, admitting complicity at most. This complicity could however not be punished as it was not intentional.

- underlined that his client had acted without obtaining any reward.
- emphasising also that he had assisted the American anti-narcotics authorities, the Greek Police as well as the Zurich Police, acting as an infiltrator.
- concluded by asking for his acquittal from the crime set down under article 19, numbers 1 and 2 paragraph a) of the Federal Law on narcotics dated 30.10.1951.

Attorney Daniele Timbali, defence counsel for Rossini, made reference to his client's personality, character and previous life, and

- argued against the crime of money laundering
- underlined the absence of mutual intent with regard to clients Palazzolo and Della Torre
- specified that his client stopped acting for the above clients before the first signs of any suspected trafficking
- concluded by asking for his acquittal from the crime set down under article 19, numbers 1 and 2 paragraph a) of the Federal Law on narcotics dated 30.10.1951, as well as the reimbursement of bail paid at the time of his conditional release.

In reply, the Public Prosecutor confirmed his previous conclusions.

Waridel's defence counsel, likewise, confirmed his previous conclusions.

Palazzolo's defence counsel, likewise, confirmed his previous conclusions.

Rossini's defence counsel, likewise, confirmed his previous conclusions.

Della Torre's defence counsel, likewise, confirmed his previous conclusions offered in defence.

With the agreement of the Parties, the following questions were considered by the Judge President:

QUESTIONS

1. Is Paul Eduard Waridel (questions 1 – 8) guilty of the violation of the Federal Law on narcotics, as co-author, for having:
 - 1.1 participated in dealing in considerable quantities of morphine base from Turkey, destined for the USA, after it had been processed into heroin in Italian laboratories,
 - 1.1.1 acted as an interpreter and/or go-between in the negotiations between Musullulu and the Italian buyers (La Mattina, Priolo and Rotolo)
 - 1.1.2 having delivered to Musullulu amounts of money originating from the sale of narcotics in the USA and/or destined to the purchase of narcotics and/or destined to dealing in narcotics
 - 1.2 made preparations in view of the sales of significant quantities of narcotics in the circumstances described under point 1.1.
 - 1.3 financed whether directly or as an intermediary, an illegal traffic of narcotics in the circumstances described under point 1.1.

and if that is the case, when, in what amounts and/or quantities.
2. Was the violation continued?
3. Was the violation aggravated, such that it was:
 - 3.1 committed in a gang
 - 3.2 referred to significant quantities of narcotics
 - 3.3 committed in the line of work and referred to a large amount of business?
4. Did he act as an accomplice?

5. Did he act as a functionary (art.23 para.2 Federal Law on narcotics) or legally (art. 32 Criminal Code) ?
6. Is he a habitual criminal?
7. Should a monetary penalty be fixed, and if so, to what extent?
8. Should the conditional suspension of the imprisonment penalty be ordered?
9. Is Vito Palazzolo (questions 9 – 18) guilty of the violation of the Federal Law on narcotics, as co-author, for having:
 - 9.1 participated in dealing in considerable quantities of morphine base from Turkey, destined for the USA, after it had been processed into heroin in Italian laboratories, organising the receipt, transfer, hiding in the USA and Switzerland, and the payment to sellers of sums of money originating from the USA and/or otherwise destined to dealing in narcotics, originating from:
 - 9.1.1 the sale of narcotics
 - 9.1.2 other sourcesand/or destined to be marketed.
 - 9.2 made preparations for dealing in significant quantities of morphine base in the circumstances described under question 9.1.
 - 9.3 financed whether directly or as an intermediary, an illegal traffic of narcotics in the circumstances described under point 9.1.

and if that is the case, when, in what amounts and/or quantities?
10. Was the violation continued?
11. Was the violation aggravated, such that it was:
 - 11.1 committed in a gang

-
- 11.2 referred to significant quantities of narcotics
- 11.3 committed in the line of work and referred to a large amount of business?
12. Did he act as an accomplice, and under what circumstances?
13. Or is he guilty of money laundering based on the same facts (art. 144 Criminal Code) ?
14. Or is he guilty of a violation committed by negligence, based on the same facts (article 19, number 3 Federal Law on narcotics)?
15. Did he act in a state of extreme anguish (article 64 para. 3 Criminal Code) after September 1982?
16. Should a monetary penalty be fixed, and if so, to what extent?
17. Should any illicit monetary gains be ordered returned to the State (article 24 Federal Law on narcotics) and to what extent?
18. Should the conditional suspension be ordered with regard to:
- 18.1 the imprisonment penalty?
- 18.2 the secondary expulsion penalty from Switzerland?
19. Is Franco Della Torre (questions 19 – 28) guilty of the violation of the Federal Law on narcotics, as co-author, for having:
- 9.1 participated in dealing in considerable quantities of morphine base from Turkey, destined for the USA, after it had been processed into heroin in Italian laboratories, organising the receipt, transfer, hiding in the USA and Switzerland, and the payment to sellers of sums of money originating from the USA and/or otherwise destined to dealing in narcotics, originating from:
- 19.1.1 the sale of narcotics

19.1.2 other sources

and/or destined to be marketed.

19.2 made preparations for dealing in significant quantities of morphine base in the circumstances described under question 19.1.

19.3 financed whether directly or as an intermediary, an illegal traffic of narcotics in the circumstances described under point 19.1.

and if that is the case, when, in what amounts and/or quantities?

20. Was the violation continued?

21. Was the violation aggravated, such that it was:

21.1 committed in a gang

21.2 referred to significant quantities of narcotics

21.3 committed in the line of work and referred to a large amount of business?

22. Did he act as an accomplice, and under what circumstances?

23. Or is he guilty of money laundering based on the same facts (art. 144 Criminal Code) ?

24. Or is he guilty of a violation committed by negligence, based on the same facts (article 19, number 3 Federal Law on narcotics)?

25. Did he act in a state of extreme anguish (article 64 para. 3 Criminal Code) after September 1982?

26. Should a monetary penalty be fixed, and if so, to what extent?

27. Should the return to the State be ordered, of any illicit monetary gains (article 24 Federal Law on narcotics) and to what extent?

28. Should the conditional suspension be ordered with regard to the imprisonment penalty?
29. Is Enrico Rossini (questions 29 – 37) guilty of the violation of the Federal Law on narcotics, as co-author, for having:
- 29.1 participated in dealing in considerable quantities of morphine base from Turkey, destined for the USA, after it had been processed into heroin in Italian laboratories, organising the receipt, transfer, hiding in the USA and Switzerland, and the payment to sellers of sums of money originating from the USA and/or otherwise destined to dealing in narcotics, originating from:
- 29.1.1 the sale of narcotics
- 29.1.2 other sources
- and/or destined to be marketed.
- 29.2 made preparations for dealing in significant quantities of morphine base in the circumstances described under question 29.1.
- 29.3 financed whether directly or as an intermediary, an illegal traffic of narcotics in the circumstances described under point 29.1.
- and if that is the case, when, to what amounts and/or quantities?
30. Was the violation continued?
31. Was the violation aggravated, such that it was:
- 31.1 committed in a gang
- 31.2 referred to significant quantities of narcotics
- 31.3 committed in the line of work and referred to a large amount of business?
32. Did he act as an accomplice, and under what circumstances?

33. Or is he guilty of money laundering based on the same facts (art. 144 Criminal Code) ?
34. Or is he guilty of a violation committed by negligence, based on the same facts (article 19, number 3 Federal Law on narcotics)?
35. Should a monetary penalty be fixed, and if so, to what extent?
36. Should the return to the State be ordered, of any illicit monetary gains (article 24 Federal Law on narcotics) and to what extent?
37. Should the conditional suspension be ordered with regard to the imprisonment penalty?

CONSIDERATIONS IN FACT AND IN LAW

1. PREMISE

- 1.1 On 10 June 1985, the Public Prosecutor served the charge sheet relating to Della Torre, Palazzolo and Rossini. Palazzolo was already in detention from the 20.4.1984 (more than 15 months), while Della Torre and Rossini had been provisionally released (the latter on bail of 100.000 francs) from the 21.3.1985, after 4 months imprisonment.

At the end of June, while the initial proceedings to constitute the Court were still underway and the charges had been served, the three Defence Counsels complained of procedural irregularities with regard especially to the closure of the formal inquest, asking for clarification with regard to the admittance of further elements of proof (documentation and summons of witnesses, including some from abroad).

On 5 July 1985, the agreement between the Parties relating especially to the admittance of further elements of proof (Waridel had already been identified as a witness by the Prosecution), allowed the Judge President of the Criminal Court to order all documents to be handed in, and all the witnesses considered essential to comply with the oral principles and immediacy on which Criminal Procedure in Ticino is based. It should be noted that the Judicial Councillors, who had the responsibility of deciding on the questions in fact and in law, appeared at the hearing without any specific preparation. They only took cognisance of the substance of the charge at the public hearing: therefore at the end of the preliminary investigations (inquest), the Parties agreed that tables and summarised schedules would be prepared.

- 1.2 With an order handed down on 18.7.1985, the Judge President of the Criminal Court ordered that the combining of the proceedings against Waridel. The Public Prosecutor had forwarded the charge sheet dated 12.7.1985, in which it was found that Waridel had participated in the same trafficking of narcotics, and the same financial transactions through contact with the same persons. The Parties accepted that the cases be joined, in order to significantly reduce the load on the judiciary, and gain a clearer understanding of the facts, provided that the admittance of the outstanding elements of proof could still take place within the time period already set down for the hearing.
- In the meantime, Greek witnesses were still being heard by the Judge in the Preliminary Investigations, while the rogatory application for the summoning of the two witnesses being held in Italy (Salamone and Rotolo) had been unsuccessful due to the fact that the interested parties would not consent to being temporarily transferred to Lugano.
- Palazzolo's assets were sequestered (PGK Holding SA, Pageko SA and Kipan System SA) at the Union of Swiss Banks and Credito Svizzero in Lugano (Palbian Lines SA), even before the public hearing, together with safety deposit box number 718, as were the assets of Rossini held at the Società di Banca Svizzera in Lugano.
- 1.3 We also need to add in the premise, for the purposes of clarification in the procedural regulations, that the following documents are validly constituted for the purposes of this trial: the reports by the Public Prosecutor and Judge for the Preliminary Investigations, all the documents acquired during the preliminary information proceedings and during the formal preliminary investigations, and all the documents filed with the Court during the pre-hearing stage, as well as during the hearing. Besides the documents that were read out during the public hearing, the documents that were proposed or brought to the attention of the accused or their defence counsel that the Parties reserve the right to read or to quote from during the proceedings are also considered as records of the trial on which the "Court can decide according to its own free conviction" in accordance with article 208 of the Criminal Procedure Code.
- 1.4 Already during the pre-hearing stage, security measures had to be put in place in the public hearings, including those with regard to foreign Authorities, to protect the accused and the witnesses, some of whom had to be heard behind closed doors, thus also avoiding the presence of journalists, to whom in these exceptional circumstances and for the same reasons, the charge sheet had not been distributed before it was read. No objections were raised by the Parties in this regard, so that the hearings were conducted in compliance with the Old Criminal Procedural Code of the Canton of Ticino, with regard to the principles of making the hearings public, the oral testimony and immediacy. The

Code also ordered the first Judge in the first instance, that notification of the motivated sentence be made within ten days from judgment: in this case at a little more than three months from the transmission of the first charge sheet.

2. THE ACCUSED

The general and basic rule (article 63 Criminal Code) that compels the Judge to examine the personality and personal situation of each of the accused, forms part of the chapter on the sentencing of the accused as the final action of the Judge. But this examination also allows the Judge to consider the truthfulness of a confession or the reliability of an accomplice's statement (quite important elements of proof in this judgment) right from the beginning, or to evaluate the way that the individual accused has thought out his actions, which link together in a series of facts (quite complex in this case), on which the charge is based. The Court therefore notes firstly, that the conduct of the four accused during the hearing was correct and dignified. In each one's case, the Court examined their prior life from a family and professional viewpoint, their criminal record, and the way in which they first made acquaintance among themselves, and with the other people, who from 1981 took part in the events on which the charges are based.

- 2.1 Paul Eduard Waridel, a Swiss citizen, originally from Prahins (VD), was born in Istanbul, where he attended school. In 1964, he arrived in Switzerland and was involved in computers in business and accounting. He married in 1970 for the second time with a Greek citizen, whose father, according to him, was a policeman who had contacts with high ranking police officials, and was well moneyed, given that he settled a dowry of over 2 million Swiss francs on his daughter. In 1976, while he was also involved in the sale of art, he met Musullulu at a restaurant in Monaco that was frequented by many Turks. The two looked at the possibility of selling drugs. Through Musullulu who had offices in Zurich, Waridel met Canturk, a Kurdish businessman who was also in Zurich at the time with regard to some ships, and given that Waridel was also involved in the sale of shipping vessels, he accompanied Musullulu and Canturk to Monfalcone: these two would then be the suppliers of the morphine base that was brought in through the Greek sea. But even before, in 1977, when Waridel only had contact with Musullulu, the accused was arrested and tried in Rome, because 3 kg of heroin was found at his holiday home in Fregene, where he was living with his family. During the proceedings that were conducted in Rome, Waridel denied having any knowledge of the drugs stored in his

garden; but he was sentenced to 7 years imprisonment, of which 3 had to be served. What is more important here is that during the time he was serving his sentence until 1980, Waridel came to know Giuseppe Ferrera, Ciccio Lo Nigro and Nunzio La Mattina, who let him know that he had been involved with Musullulu (when he went by the name of Karadumus) in drug trafficking, and gave Waridel his address at 12 Zeeringstrasse in Zurich, encouraging him to make contact, and this is what transpired during the spring-summer of 1981. It was also through Musullulu that Waridel met Priolo and later a certain Carlo, who then turned out to be Antonino Rotolo.

After serving his sentence for the events in Fregene, and also after the events that form the subject of the charges under evaluation, or in 1983, Waridel obtained a commission for the purchase of ship by Ferrera. And again in 1984, Waridel made contact with Dapuetto regarding the drug refinery project in Pakistan. Therefore from 1977 until his arrest at the end of April 1985, Waridel remained in contact with the drug traffickers probably without ever losing their confidence, since we need to take into consideration that La Mattina and Lo Nigro (Rotolo's predecessors in Waridel's relations with Musullulu as an intermediary), had been killed in the interim.

But besides the recent charges for the events in Fregene, with the outcome indicated above, it should be noted that already in 1969 Waridel had been tried by the Canton Court of Argovia on a charge for instigating false documents and for repeated fraud, securing a sentence of twelve months (conditionally suspended after 47 days of precautionary imprisonment). He committed the above while he was divorcing his first wife. There are another two charges, in 1975 in San Gallo and in Zurich, for the failure to pay his military tax and driving under the influence of alcohol: 8 days under arrest for the first, and a fine of 1,000 francs for the second. The absence of scruples on Waridel's part in organising his affairs by violating the law is therefore already evident in the time period prior to the contacts referred to above. In his intellectual capacity and with his life experiences, Waridel was self-controlled during the hearing, answering without contradicting himself, even in this public forum, regarding his double role as a police informer or someone trusted by the drug traffickers. We also need to take into account that on his arrest on 28 April 1985, he immediately made a confession to the Public Prosecutor in a statement on the 29.4.1985 at 16h00, when the magistrate was already aware of the results and admissions made by the other three accused, which had been put together by the Judge in the Preliminary Investigations that were conducted up until March, and in the additional investigations that were underway from the 16.4.1985.

Given his adventurous life in the context of international trafficking as an arms dealer and general businessman, and given his contacts in Turkey, Greece as well as Germany and Zurich, and further based on Waridel's correct and dignified exterior demeanour during

the preliminary investigations and before the Court, he can be considered an intelligent, enigmatic and ambiguous person, who is undoubtedly capable of artfully playing a double role between the police (initially the Greeks and then the Swiss and American) on the one hand, and on the other hand Musullulu and Rotolo, where he cleverly manoeuvred without wanting to know more than was needed. Whether he provided a serious, sincere and effective collaboration with the narcotics police in 1982, or whether he collaborated for the sole purpose of creating an alibi, is a basic question that the Court referred to the concluding stages of judgment, after having ascertained exactly which punishable facts can be attributed to him.

2.2 Vito Palazzolo, born on 31 July 1947 in Terrasini (Palermo) reached his teens growing up with his family, consisting of his parents, a brother and three sisters. In September 1962 he had already emigrated to Aarau, where he took on menial jobs, studied German and attended a course for designers. He returned to Sicily to attend hotel school, and in 1964 went back to Switzerland as a chef's assistant. At the same time, he took a translator's course in Rome, with his knowledge of four languages (Italian, English, French and German), when he joined a ship as a chef in Koblenz. While sailing on the Rhine, he met his future wife. Christian was born on 27 January 1966, and the marriage took place in Sicily in May of the same year. He then worked as an apprentice, a salesman for electrical appliances, and a labourer in a stone quarry, when his second son Peter was born. In April 1967, before he had reached twenty one years of age, he returned to Hamburg in Germany, where he was employed by Deutsche Bank, and at the same time managed a small restaurant. In little more than a year, he managed to save DM 120.000, and left both the Bank and restaurant to work as a tourist guide over two seasons. He then involved himself in the Campobello tourist project, forming a company in Palermo, together with tourist agencies and German constructors. A stand of about 115.000 square metres was bought next to the beach in Campobello: but the building was stopped due to difficulties with builder licence, bribes and controversy. A company called "Deutsche Samps GmbH was established, for "valuable Sicilian marble", which was supposed to unblock the Campobello delays. On the 5 May 1972, the "Cassa del Mezzogiorno" allocated financing for two billion 517 million lire in favour of Campobello, when the Alitalia DC8 aeroplane carrying the surveyor responsible for the project, crashed into the mountains of Palermo. The work did however begin, only to be stopped again for an archaeological assessment. On 28.9.1973 Palazzolo's father was killed in a car accident. In 1974, the Campobello project was sold to another company for 600 million lire, of which 100 was paid over to Palazzolo, and he also receiving DM 250.000 from the winding up of the marble company. Towards the end of 1974 Palazzolo transferred all his

assets to Switzerland, and met Myriana Konopliz, the daughter of the emerald king. In 1975, Palazzolo represented Konopliz S.A. and travelled to America for the first time. While conducting his work, he also had contact with the German company, Zoltan Zucker in Pforzheim involved in the wholesale of precious stones, Through Myriana Konopliz, Palazzolo then bought Obelisc A.G. with offices in Zug, which then became Pageko A.G. (Palazzolo, gems. Konopliz). After travelling and doing business in the Far East, Palazzolo obtained his licence as a wholesaler. In the meantime, his brother was employed in Antwerp as a gemmologist and diamond classifier. Engineer Knoblock, the owner of a water installation and air conditioning factory, and a Mr Koch, owner of Gems Ltd in Singapore, then became shareholders in Pageko, increasing the company's capital to 500.000 francs, with a further company opening in Germany as Pageko Bau. Shareholdings were also bought in Alain Delon Diffusion for 500.000 francs, as well as apartments and shops in Monte Carlo for 650.000 dollars. The Company PGK Holdings in Zugo was then established for property investments in America.

In the summer of 1979, Palazzolo met Engineer Rosario Della Plata, a designer of highways in Italy, who intended immigrating to America where he was to buy a ranch in Arizona with 550 cattle: the cost for this was over 1 million dollars, of which 800.000 was financed through a mortgage. Pageko, through Palazzolo, paid 100.000 dollars in Tucson. Then the usual difficulties arose, so that during the Easter holidays in 1981, Palazzolo went over to America, while encountering difficulties with his wife's health. He obtained mortgage bonds from Della Plata on the ranch and personally, which amounted to 370.000 dollars, until Della Plata sold Pageko his portion of the ranch. In the meantime, Pageko had sold the A. Delon shares for a profit of 350.000 francs, and also selling 2 apartments in Monte Carlo for 700.000 dollars, keeping the two shops (restaurants) which remained as a net gain. Pageko Bau in Germany was then put into liquidation.

In August 1981, through a friend, Palazzolo contacted Finagest S.A in Lugano, and the Managing Director Ernesto Parli and Manager Franco Della Torre. They proposed that he buy Algerian dinars that were destined for the purchase of diamonds in Angola or Sierra Leone. But nothing came of this. They did however remain in contact by telephone, and the two met up at a match between Aarau-Chiasso, where Della Torre voiced the idea of forming a managing company similar to Finagest. The result was the appearance of Consultfin, but this was after Palazzolo had already concluded transactions with both Della Torre and Rossini. Palazzolo had promised that all the transfers for the sale of precious stones with Italy, as well as the administration of the significant inheritance that Zoltan Zucker had left in Switzerland would be placed with Consultfin. In October-November of 1981, he contacted Della Torre to procure South African Rands, for the

purpose of either making payment on a batch of diamonds in Switzerland or making a side payment in South Africa.

Through Mombelli at Credito Svizzero in Chiasso, Della Torre obtained about 300.000 Rands. This was the first of Palazzolo's transactions with Della Torre, and it was also on this occasion that Rossini of Traex S.A became involved. Before Christmas 1981, Palazzolo was invited by Della Torre to buy gold. 1000 ounces were bought through Traex over three months on the Hong Kong market. Palazzolo agreed to this, and it was on this occasion that he personally met Rossini, who between Christmas and New Year of 1981 explained that the 20 percent payment was unnecessary on medium term transactions. Palazzolo did not understand exactly why, but found the transaction tempting. It was also on this occasion, towards the end of 1981, that Rossini offered a section of his offices for a payment (1500 francs a month), which Palazzolo considered ridiculous given that the only Reuter's equipment that was available in that office would also cost 8.000 francs a month. However, in 1982, when Della Torre left Finagest, Consultfin moved into the offices in Via Balestra in Lugano, and Della Torre ran his professional business from here, while Palazzolo continued to live in Costanza, coming into the office every so often. Consultfin was financed in the following way: with a credit of 200.000 francs granted by Pageko, PGK Holding's capital increased and was divided in half between Palazzolo and Della Torre; the latter joined the Board of Directors, while both paid interest to Pageko. They thus started trading on the stock exchange, with Consultfin S.A. being formally established later. According to Palazzolo, who only came into the offices in Lugano sporadically, it had been a certain Cristoforetti working out of Lugano in the cigarette sector, who had introduced Della Torre to two of his Lebanese clients, who then turned up at Consultfin in Lugano on Good Friday in 1982.

With regard to Palazzolo's personal acquaintances and connections, we can count Filippo Salamone, (son of Damiano and Maria Palazzolo), who was also originally from Terrasini, and had immigrated to America. Palazzolo met up with him on the second trip he made over there with Myriana Konopliz. In 1979 – 80, he helped him in Costanza, and in 1981 he introduced him to Della Torre so that he could secure work for him at a building yard/ dockyard of Finagest's in America. Filippo Salamone appears in the records as the person closest to those who were delivering money from narcotics in New York (among them Ganci and Matassa), which had clearly emerged during the American investigations. Antonio Ventimiglia also came into the picture through Palazzolo: he had closed down his garage to move to Ticino, to act as courier for Consultfin, where he received a fixed salary according to a contract signed with Della Torre. Ventimiglia, who was already a friend of Palazzolo's (in fact it was Ventimiglia who introduced Consultfin to the well-to-do client from Brescia), had then taken on the role of couriating the money.

Palazzolo himself stated that Ventimiglia acted on instructions from Oliviero Tognoli (who was also known as Pino or Pinetto, and who had disappeared after having taken part in the event where he was supposedly involved with Leonardo Greco).

Vito Palazzolo, who was last resident in Breganzona with his wife and children, had already been arrested in Lugano on 20.4.1984 on the request of the Italian Authorities. From the 30.10.1984, while awaiting extradition, he confessed regarding his previous contacts with Ventimiglia and Della Torre that had begun from the end of 1981, when he was still operating under Finagest, and which was then followed by Rossini's company Traex. During the hearing, as with the preliminary investigations, Palazzolo essentially confirmed what he had stated in his confession statements, but was at pains to fix the time relating to these events more accurately, and especially the exact time period when he came to know the true identity of the people he was dealing with, both through Tognoli and through Rotolo.

In one of his first confession statements, considering the Swiss Judge as his obvious jurisdiction, he asked that during the course of the public debate, to be judged for what he had done, and not for his origins. He originates from a titled family in Palermo, who as far as the records show, is not directly involved with the Mafia associations. The investigating Judge himself did not consider Palazzolo to be associated with a Mafia organisation, but rather to be a businessman with international dealings in precious stones and currencies, and due to his trust management of the other people's assets, had certainly had contact, as we will see, with drug traffickers. There are no previous criminal records that can be considered significant. In fact, in 1966 he was fined DM 30 for unpremeditated personal injury, and in 1977 was arrested for 7 days and fined for having violated regulations on compulsory motor vehicle and vessel insurance. From his attitude during the preliminary investigations and during the hearing, Palazzolo replied clearly and readily and without economising on his words, showing himself to be not only a capable businessman, but also a person able to defend himself in a courteous and respectful manner in relation to others. His apprehension was also evident during the proceedings, especially as a consequence of his break with Rotolo. As a consequence of the monies that had paid over to Rotolo, involving a substantial part of his remaining assets, Palazzolo and his family members now found themselves in a difficult financial position.

- 2.3 Franco Della Torre grew up in Chiasso, where he attended school, and then moved to Zugo and Lucerne to initially study the language, and then worked as a banker, gaining experience in several sectors. He then returned to BSI securities office in Chiasso, and was a manager in a plastics factory. After 4 years, he again returned to the banking sector, to the currencies office of Credito Svizzero in Chiasso, and the cashier's window

at the Coldrerio branch, during the exact period that Italian funds were being channelled to Switzerland. In 1977, he joined Finagest as the person especially responsible for opening up branches throughout Europe. He travelled extensively and met Palazzolo in 1981, but previously during the summer of 1980 he was introduced to an Italian client at Finagest, who had needed to transfer American dollars from the USA. This referred to Amendolito, who had accompanied Oliviero Tognoli and was already a client of Cavalleri's Coopfinanz (with the currency courier Adriano Corti), and Credito Svizzero in Bellinzona. There are proceedings pending with the Prosecutor at the Court in Bellinzona against the directors of Coopfinanza, which Tognoli then abandoned to approach Rossini's Traex. Both Della Torre and Palazzolo were also clients of Traex, before they established their company Consultfin with offices at 12 Via Balestra, adjoining those of Traex.

Della Torre who appears to have a clean record, assumed the attitude of a currency courier during the preliminary investigations, with the mentality of the experienced smuggler who displays indifference with regard to the risks taken during the many trips undertaken. According to him, he needed to act rather than formulate the dealings that would be used to transport the money and this even though it involved dollars, where he had not had any personal experience.

It appears likely from his attitude that his association with Palazzolo, which can be traced to Consultfin as the financing company that derived from Pageko, must have been motivated mainly from his availability to carry out courier activities.

It should be noted that Della Torre had a clear criminal record at the time of the hearing.

- 2.4 Enrico Rossini was just thirty years old at the time of the events, and was married with a child and living in Viganello. After completing his schooling and business training, he was employed in a bank. In 1971, he suffered the after effects of a serious car accident. He studied German and English, and after his military service, he again worked in banks in Lugano and in Germany until 1976, when he established Traex S.A, as a company dealing in foreign currencies. He also established Confimex in Lausanne and other companies for business broking activities and property investments. In the meantime, Traex took on quasi banking status, and used the latest equipment especially with regard to forward transactions, also holding an account with Credito Svizzero in Chiasso, which was opened in 1978.

Rossini initially took on Della Torre as a client, when he was still with Finagest, but about to establish Consultfin. An account was thus opened at Traex, but not in the name of Consultfin, but as Pageko A.G. based in Zugo, where Della Torre and Palazzolo were the owners. According to Rossini, the purpose of the account was to carry out stock market

transactions that would not be taken on by the bank due to their closing at the time the markets opened elsewhere, because of the time differences. We need to take into account that Della Torre was already working with Finagest ex-clients at the time that he got to know Rossini's Traex.

As in the case of Della Torre, Rossini had also been detained prior to the pre-trial, for 4 and a half months, or up until the 21 March 1985. During his provisional release and up until the end of the preliminary hearings, he maintained a correct and dignified attitude, making available to the Court Traex's accounting records for the period 1982 -83 through the witness Rūfli, which proved useful in establishing the procedures, the volume and especially the chronology of the transactions that occurred through Traex's accounts. Rossini also appeared before the Court without a record, except for two serious traffic offences, dating back to November 1971 and January 1973 with two charges in Lugano for 5 and 10 days arrest respectively, but which had already been cancelled from the Criminal Records Office.

3. THE FACTS IN THE CONTEXT OF INTERNATIONAL NARCOTICS TRAFFICKING

The extensive documentation originating from Turkey, Greece, Italy (Rome, Palermo and Florence), and USA, which was duly accumulated by the investigating Judge; (while in Italy the Investigating Judge Chinnici and then the Deputy Police Commissioner Cassarà had both been killed following their involvement in the investigation); as well as the confessions made by the accused, led to the conclusion that large-scale drug trafficking was being perpetrated from 1981. The morphine base from Turkey (where Behcet and Goldagli operated), was sold to Musullulu, who offloaded this through the Greek sea onto Sicilian fishing boats, sending it on to the refineries in Sicily, who in turn transported and sold the drugs to Italian-Americans in New York, led by Catalano, Badalamenti, Castronovo, Ganci, Matassa, Greco Salvatore and Philip Salamone, who in this chain of drug buyers and distributors, would assume an important role in the relations with the four accused. The drug trafficking was therefore conducted over at least three main sectors: the purchasing and refining in Sicily, the selling on to the Italian-Americans who distributed the drugs, and received the money which was needed to pay both for the raw materials coming from Musullulu, as well as the transport and refining costs incurred by the traffickers in Sicily.

Apart from Waridel who confessed to having participated in the direct trafficking of drugs, the other accused appear involved in this large-scale trafficking not so much for having directly trafficked the morphine base or the refined product, but for having facilitated the

above trade due to the contribution made by their actions. They are accused of having taken delivery of money in America, which was then secretly transferred both to the suppliers of the morphine base, as well as the refiners and sellers in Sicily. The specific charge is for having taken delivery, transferred, hidden and redistributed about 40 million dollars that were physically taken delivery of in the USA, as well as 7 million dollars taken delivery of in another manner. All in all, the charges against Palazzolo, Della Torre and Rossini are based on them not having directly dirtied their hands with drugs, but with the dollars (“narco-dollars”) destined to pay for them. They had made contact with Waridel who was Musullulu’s representative, and Tognoli, Rotolo and Greco in the context of these financing operations. We will see hereunder that the quantities of drugs transported, and the quantities of narco-dollars, appear less not only than those taken in consideration in the foreign investigations with regard to the large-scale international trafficking, but also less than those indicated in the charge sheet, with regard to the elements being examined by these Swiss proceedings.

Before going on to ascertain the way these contacts occurred according to the facts indicated in the two charge sheets, it is worth looking at the question of the law, which will allow us to accurately establish the crime in relation to each of the accused, and the definition of the concrete facts that are considered punishable in terms of Swiss Law, and especially the application of article 19, number 1 para.7 of the Federal Law on narcotics.

4. LAW

4.1 Facts set out in the charges, which are punishable.

The verification of the crimes set out under the charges, was translated into the questions that were proposed and accepted by the Court and all parties in the application of article 202 of the Criminal Procedure Code, Therefore the Court had to verify the following crimes in relation to each of the accused:

- Dealing in narcotics (article 19, number 1 para. 1-5 Swiss Federal Law on narcotics)
- Preparatory activities for the illegal trafficking of narcotics (article 19, number 1 para. 6 Swiss Federal Law on narcotics)
- Financing of narcotics’ trafficking (article 19, number 1 para. 7 Swiss Federal Law on narcotics)

- Violation of article 19, number 1 of the Swiss Federal Law on narcotics, due to negligence (article 19, number 3 Swiss Federal Law on narcotics)
- Money laundering (article 144 of the Criminal Code).

Identifying the elements of proof that constitute the crime of dealing in narcotics, did not pose any specific problems.

With regard to the crime under article 19, number 1 para. 6 of Swiss Federal Law on narcotics (preparatory activities), the Court initially took into consideration that under Swiss Criminal Law, preparatory actions are largely not punishable. Article 19 number 1 para.6 specifies an exception to this principle where it provides that “whoever makes preparations for these purposes” is punishable to the same extent as those who produce, marketed, import, sell, etc. narcotics. But according to authoritative sources, (cfr. Schütz, pg.126 to 133, Delachaux pg.158 and Hug-Beehil pg.46 ZH 1983), preparatory actions that refer to the financing of illegal trafficking in narcotics are not punishable. This is clearly evident both from the tenor and the setting out of this regulation. Therefore, from the outset, the Court excluded the possibility of this crime, in the context of the law.

With regard to the crime of negligence, the Court noted from authoritative sources (cfr. Delachaux, Tesi Lausanne 1977, pg.159 and Schütz ZH 1980 pg.131), that only people that are effectively subjected to official controlling bodies (those in the medical profession, or responsible for narcotics in factories, etc.) can commit the violations set down under para. 1-7 of number 1 under article 19 on the Swiss Federal Law on narcotics, relating to negligence.

With regard to financing, and specifically the financial brokering of the illegal trafficking of narcotics, we need to point out that in this case, neither Rossini, nor Palazzolo or Della Torre in their capacity as owners of a trust company, were obliged to adopt the same precautions as those required of a banker who was bound by the Diligence Convention of 1977. Therefore, from the outset, the possibility of the crime relating to negligence must also be excluded in terms of the law. But, as we will see, the Court has nonetheless considered it necessary to re-examine the facts relating to this less serious crime, making a distinction between the three accused.

In accordance with article 144 of the Criminal Code, anyone who acquires, receives anything as a gift or as a lien, hides or assists in passing off something that they know or

should have presumed to have come from a crime, is guilty of the crime of money laundering.

Authoritative sources (cfr. Stratenwerth, Bes, Teil I pg. 270 and following, Shiltz, Germann, Thormann-Overbeck, Trechsel), as well as jurisprudence (cfr. RU 101 IV 405), have formulated the Court's consideration in the sense that the thing that forms the object of the money laundering, must originate from a financial crime in accordance with the Criminal Code, which would exclude the possibility of punishing someone for money laundering in the case of the money laundered object (as in this case), coming from the crime of narcotics trafficking. According to the Court, the diverging opinions of authoritative sources like Hafer, Schwander and Logoz are to be considered to have been superseded by the development of sources and case law over the last few years, especially with regard to the crime of narcotics.

4.2 Punishable aspects of the various cases set down under article 19 of the Federal Swiss Law on narcotics.

The application of article 144 of the Criminal Code is similarly to be excluded in terms of Law, where the Court dedicated special attention to the problem of whether acts were punishable according to the regulations set down under article 19 of the Federal Swiss Law on narcotics, and specifically in terms of paragraph 7, introduced with the new legislation that came into effect on 1.8.1975.

In its communiqué dated 20.3.1978 (cfr. FF 1968 pg. 977 and following), the Federal Council stated the following with regard to the revision:

“In terms of article 36 no.2 paragraph a), part ii of the Single Convention, parties must use the basis of criminal regulations, among others, to adjudicate the sanctions that are adopted in relation to financial transactions for committing illegal business dealings in the area of narcotics. It is also true that these transactions are often liable for punishment as they constitute acts of participation, nevertheless it is possible for financial transactions to be carried out after the illegal business has been effected in the area of narcotics, and these are thus punishable as such...”

With regard to what is punishable, the Court paid particular attention to the opinion expressed by Delachaux (op. cit. pg.127), according to whom the financing of illegal trafficking in terms of the 1936 Convention, is understood as a special case of participation. In the Single Convention of 1961 on the other hand, financial transactions relating to illegal trafficking that are committed intentionally, can be attributed to specific

crimes. This indictment, introduced following the proposal made by the OIPC-Interpol at the Conference for the adoption of the Single Convention, allows for prosecution and extradition in the case of financing, even if the transaction did not effectively take place, or if it was transacted at a later stage.

According to Schultz, who is quoted by J. Weiss in RPS 102 (1095) on page 192 and following, actions that are punishable as financing (para 7 of article 19), if not already as trafficking, are actions such as the direct payment for the purchase of narcotics, even if this is effected after delivery has taken place; the preparatory actions, like the preparation of money in the denominations requested by the seller; making available cash money or credit money directed at preparing or facilitating the trade in narcotics; all transfers of money that serve as a transfer to the participants in narcotics trafficking, for example the payment of expenses or insurance to those transporting the narcotics; and also the deposit of money into accounts that can be freely transacted on, if it can be shown that the funds are available to be used at any time in the trafficking of narcotics. According to the same author, financial brokering is taken to mean all the actions or all the attempts directed at putting in contact people predisposed to trafficking in narcotics, or those who are already involved, by making available funds for said trafficking.

In the absence of specific case law, the Court also needed to consider whether financing in the practices relating to article 35 para 1 and 64 para 2 LAIMP was punishable, as far as this relates to being punished twice in the context of recent decisions on the subject of extradition, concerning people that were connected to the events regarding the charges being evaluated. In a decision on 27.9.1984, the Federal Police Office requested Palazzolo's extradition. In the observations made to the Federal Court on 16.11.84, this Office argued that the charges ascribed to the accused regarding money laundering and financing in the context of drug trafficking, fall under article 19 of Swiss Federal Law on narcotics. The extradition was not granted, but only because criminal proceedings had been opened in Lugano for the same facts. In the context of the extradition proceedings of Edmond Beck, Colmegna, Calmasini and Just (proceedings relating to Spadaro and Giuffrida's funds, and the 82 kg of heroin confiscated in Florence – cfr. no. 5.2 and 22 of the charge sheet), the Federal Court granted the extradition with judgments handed down on 26.11.84, 30.8.85 and 2.9.85, thus basically acknowledging that financing was also punishable under Swiss law. In the context of these proceedings, and with reference to the Federal Court judgment in the Beck case, where this involved Catalano and Castronovo's funds (rogatory proceedings of 12.6.85 in re: De Carli), the Federal Police Office in its letter dated 30.7.85 stated that "whoever launders money originating from the trafficking of narcotics, is punishable for having participated in said trafficking".

Given the above premises, the Court has drawn the following conclusions regarding the legal problems posed by this complex case, directed at establishing what the exact objective and subjective prerequisites are with regard to the crime of financing.

Article 19 of Federal Swiss Law on narcotics clearly focuses on stopping any conduct, which in some way makes it possible or favours the consumption of narcotics. Therefore all transactions are punishable, whether they are transactions directly aimed at making narcotics available to the consumer (production, transport, storage, processing, sale, purchase, possession, etc.), or transactions indirectly connected with the illegal trafficking of narcotics (on the one hand, the preparatory actions of the above transactions, and on the other, the financing of the illegal trafficking of narcotics).

The direct participation in the trafficking of drugs can be found as much in a transaction aimed at transferring drugs from the producer to the consumer, as a transaction aimed at transferring the earnings from the trafficking from the consumer to the producer. In this context, we need to bear in mind, particularly with regard to buying and selling transactions, that from a legal viewpoint the drug pushing cycle is represented by an interlinking of a series of single crimes that stand independently with regard to accomplishing the operation: the trafficker (buyer/seller) who stands in the drug distribution cycle between the producer and the consumer, commits a crime both from the moment that the drugs are purchased, and from the moment that they are resold. The first crime is concluded once the final act in the bilateral legal transaction has been realised, in other words the moment in which the bought drugs reach the buyer in the case of payment being made in advance, or at the moment in which the seller receives payment, in the case of the drugs being supplied on credit. The participation of third parties, as intermediaries in the buying and selling transaction, is possible all the while that the crime (considered as a stage in itself in the drug pushing cycle), has not been concluded, or all the while that the drugs have not reached the buyer, or while the money has not reached the seller. Whoever acts as an intermediary in the payment transaction for the price of drugs consequently participates as a co-author or accomplice to the crime of buying and selling drugs (article 19 number 1 para 4 and 5 of Federal Law on narcotics), to the extent that he knows (*dolus eventualis*) that the money being transferred from the buyer to the seller is linked to the supply of drugs, which has already taken place or that still needs to be carried out (cfr. DTF 106 IV 295 and following).

In this regard, it is worth noting that the participation of third parties in the buying and selling, during the stage that money is transferred from the buyer to the seller, is limited to the legal transaction being concluded, and does not extend to the crime by which the seller, in turn, has obtained the drugs. Consequently the question of knowing whether through the payment of the

sale, the seller has recouped the investment made to obtain the drugs, is irrelevant for the purposes of concluding the crime.

Besides being directly apparent in the supply chain illustrated above, participation in the cycle of transferring the drugs from the producer to the consumer, and the earnings from the consumer to the producer can also be represented in an indirect manner with regard to the financial aspects of the trafficking. Article 19 number 1 para 7 of the Federal Law on narcotics in fact also punishes the financing of the illegal trafficking in drugs, whether this is carried out on one's own accord, or on behalf of third parties by intermediaries.

The financing of illegal drug trafficking sets aside the consideration regarding the origins of the money, which has been injected into the drug peddling cycle. A determining prerequisite for committing the crime under article 19 number 1 para 7 of the Federal Law on narcotics, is that the financial means destined to cover the costs of the financial process from the producer to the consumer have been consciously made available to the traffickers (producer, wholesaler or retailer) (cfr. Weiss, RPS 1985, 199). A determining prerequisite is that funds are made available to the traffickers, which can then be used to promote the production or sale of drugs, independently of the fact of whether these funds are then effectively used in an actual drug transaction (cfr. DTF 11.1.85 in re L. v Staatsanwaltschaft Zurich, consider. 3...[text in German]; DTF 11.1.85 in re X. v Staatsanwaltschaft Zurich, consid. 4a " [French text] In terms of article 19 number 1 para.7 of the Federal narcotics Law, the financing of the illegal trafficking of drugs, is providing the financial means to be able to offer, transfer or sell narcotics. The violation is generally intentional – fully cognisant of the purpose of the financial transaction – or the *dolus eventualis* – implying the acceptance of probable trafficking. But simple negligence can suffice, art.19 number 3 Federal narcotics law").

In other words, for the crime of financing the illegal trafficking in narcotics to take place, it is sufficient that whoever had made the financial means (money or other assets) available to third parties, knows or at least, takes into consideration and accepts the possibility that the beneficiary is using these means to sustain a transaction that is connected to the trafficking of drugs, independently of whether said transaction has taken place or has effectively been concluded. The crime under article 19 number 1 para 7 of the Federal narcotics Law therefore has already been carried out by making financial means available to persons that operate in drug trafficking, and not when the trafficker invests these means in one of the transactions listed under article 19 number 1 para 1-5 of the Federal Law on narcotics. (cfr. Obergericht Zurich 14.3.84 in re L. consider 2 e on *dolus superveniens*, Schultz I vol, p.200).

With the clear intention of stopping all transactions that are directly or indirectly connected to the illegal trafficking of drugs, article 19 number 1 of the Federal narcotics Law does not limit itself to punishing only the conduct indicated under paragraphs 1 – 5 (production, processing, transport, buying, selling, etc.), but also makes the preparatory actions relating to the above transactions

punishable (cfr. article 19 number 1 para 6 of the Federal Law on narcotics), in other words the actions that precede the enterprise. From a reading of the law, it is clear that these punishable preparatory actions, according to article 19 number 1 para 6 of the Federal narcotics Law, must refer to the transactions listed under the first five paragraphs, with the exclusion of financial transactions that are punishable only after the transaction stage.

5. EVALUATION OF MATERIAL FACTS IN RELATION TO THE CHARGES

The reader should note that the elements of proof (especially confessions and documents) that the Court has specifically evaluated, have been detailed at the bottom of each charge.

5.1. Facts concerning Waridel (charge sheet dated 12.7.1985).

ad.1 These facts essentially take place in the spring-summer of 1981 in Zurich, and relate to Waridel's activities as interpreter between Musullulu and La Mattina. Waridel simply acted as an interpreter for arranging the trafficking that had already taken place, and did not directly influence Musullulu in favour of La Mattina. He did however make a contribution as intermediary in the sense of promoting the agreement between Musullulu and Rotolo. Waridel himself confessed that following this intermediary action, Rotolo agreed to deal with other supplies of morphine base on a fixed basis, on conditions that these were paid in advance, and that a significant sum outstanding from previous shipments was paid. Waridel's contribution to the resumption of drug trafficking was considered irrelevant in deciding on judgment. These circumstances in fact are not important, and even less decisive, as we will see hereunder, in relation to Waridel's conduct that is liable for punishment.

Ad.2 Not at the end of 1981, but in March 1982 in Zurich, Waridel acted as interpreter between Musullulu and Rotolo, Following his contribution to the negotiations between Musullulu and Rotolo, they agreed that the latter would accept the price of 13.000 dollars/kg for the morphine base. Besides setting the price, the previous dispute between La Mattina and Musullulu was also settled, and it was agreed that an advance payment would be made on the shipment of 400 kg of morphine base, and that payments would be made in advance on any future shipments.

Ad.3 Between 1982 – 1983, Waridel acted as the go-between between Musullulu and Rotolo in two ways: materially, with regard to communicating times of delivery and quantities, as well as organising transport by sea and the ferrying of the drugs, likewise materially with regard to the advance payment transactions regarding the various shipments. The procedures for receiving payments for the various shipments were put in place by Rotolo, with Waridel's contribution, acting as go-between in the payment of at least 13.5 million dollars.

Ad.4 In Lugano and Zurich during 1982, Waridel contributed to Musullulu's payment. Waridel saw to these transactions on behalf of Musullulu, evidently in agreement with Rotolo, who accompanied Waridel in Lugano, or Soleymann accompanied him in Musullulu's absence. It does not appear however that Waridel received specific instructions from Rotolo.

4.1 On Good Friday, being 9 April 1982, Waridel accompanied by Soleymann (Musullulu's son-in-law and friend), took Rotolo to the offices in Via Balestra, Present at the meeting were also Leonardo Greco, Oliviero Tognoli, Philip Salamone and Antonio Ventimiglia, as well as the two accused, Palazzolo and Della Torre, with the accused Rossini making a temporary appearance. For Waridel, the purpose of the meeting was the receipt of a payment of 5 million dollars, of which 3 million were in small denominations and the rest in notes of other currencies. Waridel carried out the payment of the above amount, and together with Soleymann transported and delivered this to Musullulu at his home in Küssnacht in Zurich.

4.2 Subsequently, towards the end of the spring of 1982, on the street at 12 Löwestrasse in Zurich, Waridel together with Musullulu, took delivery of various suitcases containing small denominations of dollars for about 3 million dollars from Rotolo, Palazzolo, Della Torre and Ventimiglia.

Subsequently, no longer in Zurich but at the Hotel Alexandra in Thalwil, Waridel took delivery of another 3 million dollars, as well as Swiss and Italian bank notes, and DM 800.000 also in bank notes.

Ad 5, 6, 7 During 1982, Waridel only went occasionally to Musullulu's offices; and was present when the latter received 15 cheques of 100.000 dollars each from Rotolo. Waridel knew nothing about what was done with 10 of these cheques; with regard to the other 5, he learnt that Musullulu had used 2 to cover his financial expenses on a trip to England; the other 3 cheques were given to him by Musullulu to be deposited into Waridel's bank

account, with instructions to keep these funds in his account at Musullulu's disposal. Waridel, essentially assisted in the payment of the two cheques, having accompanied Musullulu to the Bank, and then organised to directly deposit the other three, keeping the equivalent amount available on his account.

5.2 Facts regarding the other accused (charge sheet dated 10.6.1985).

At this point, we need to specify that besides the movement of cash where Waridel participated in Lugano, Zurich, Thalwil and again in Zurich, the other accused also participated in the movement of other money, which went through the stock market transactions in the period during which Rossini was still operating through Merrill Lynch and later Hutton, through the channel of money originating from Canada, and also through the channel of money headed by Enrico Frigerio.

According to the summary of these movements presented by the Prosecution during the hearing, the following quantities of money were involved:

- 13.5 million dollars moved in cash through Waridel, destined for Musullulu,
- 39,4 million dollars in cash through other channels by Palazzolo and Della Torre;
- 24,5 million dollars moved by Rossini, either in cash or through the stock market (involved only 11,5 million dollars).

The Prosecution had already dropped charges on the transfers referred to under point 5 of the charge sheet (Caruana/ Giuffrida channel), point 7 (relating to the famous bad smelling dollars), and point 22 (regarding 2 million dollars through the Kastl channel).

Before looking at the specific evaluation of the facts referred to in the charge sheet of 10 June 1985, the Court took into consideration that:

- drug trafficking on an international scale was involved from Turkey through Sicily, up to the USA, and with regard to the money movements, from the USA to Switzerland;
- it was necessary to specify the relationship of each of the accused, both in relation to their co-accused, and in relation to other people that were operating in these transfers of money;
- it was also necessary to ascertain what instruments were used by the accused, or the different channels for each specific transfer.

With regard to the subsequent charges, it is necessary to specify the following.

- Ad.5 It is noted that the facts described herein also correspond to documentary evidence, and that from the end of 1981, Palazzolo and Della Torre had already become partners in a financing-trust type business. In order to conduct this, they had made available to their clients two accounts at Credito Svizzero in Chiasso, which were held only in Della Torre's name. It is confirmed that the amounts indicated under points 5.1 – 6 of the charge sheet came into these accounts.
- Ad.6 On 21.6.1982, Palazzolo and Della Torre formally established Consultfin S.A., a financing company in Lugano. Before establishing the company, Rossini had made available to Palazzolo and Della Torre, some premises next to the offices of his financing company Traex at 12 Via Balestra in Lugano. The offices occupied by Palazzolo and Della Torre were on the same floor, but separate from Traex. It is obvious that even before Good Friday of 1982, Rossini made his money counting machine available to Palazzolo and Della Torre. Also before April 1982, both Palazzolo personally, and Palazzolo and Della Torre together were clients of Rossini: in other words they Traex's clients.
- Ad.7 It is Palazzolo who confesses to this fact, and it is credible since Della Torre claims to have only transported the dollars to America. The dollars were in fact returned to Ventimiglia.
- Ad.8 The meeting on Good Friday of 1982 did actually take place. But prior to this, Rotolo together with Tognoli had left Gestinest, and entrusted the transfer transactions to Palazzolo and Della Torre. At the time, Rotolo urgently needed 5 million dollars for a payment: and this was the reason for the meeting. Participants in the meeting on the one hand were Tognoli, Greco, Rotolo and Ventimiglia, and on the other Waridel and Soleyman, while Palazzolo and Della Torre initially, and then Rossini shortly (was not there at the beginning), were present in order to prepare the necessary money for the payment to Waridel. The cash was brought to the office by Rossini's courier, a certain Scossa: this involved 3 million that had arrived the previous day. Della Torre then withdrew the remaining two million dollars required for the full payment, from various bank accounts, and the amount was completed by a loan of 200.000 dollars from Rossini to Palazzolo and Della Torre, who promised to return this as soon as possible.

Ad.9 In this way, Palazzolo, Della Torre and Rossini carried out Rotolo and Tognoli's instructions in the sense that they delivered 5 million dollars in total to Waridel, which were then transported by Waridel to Küsnacht for delivery to Musullulu. At this time, Rossini had already made investments on the stock market on Palazzolo and Della Torre behalf, and had already recorded losses in this regard. This was the reason why there were difficulties in scraping together the 5 million, with the 200.000 dollars lent by Rossini.

It had been Palazzolo in his managerial capacity, who had given instructions to Rossini to trade on the metal and commodity futures markets. This is probably the case, seeing that Palazzolo had confessed in this regard, that his instructions to operate on the markets had been given unbeknown to his clients, who without being aware of the type of transactions, could also not have known of the losses incurred.

Ad.10 These facts and those in the subsequent point, relate to the movement of dollars in cash: that had been transported by air. It was Palazzolo who had engaged Salamone to take delivery of the dollars in the USA, and it was Palazzolo and Della Torre who supplied Salamone's address to both Tognoli and Rossini. The latter had accepted Salamone's address as a person appointed to take delivery of the dollars in the USA.

Ad.11 Salamone carried out this appointment that he had received from Palazzolo, and effectively received dollars from various people, among them Philip Matassa, a cousin of Oliviero Tognoli's wife, and from Salvatore Greco, who were in contact with Joseph Ganci. The Court considers this relationship between Salamone and the providers of the dollars to be confirmed, on the basis of findings during the American investigation, which were confirmed during the proceedings by the witness Rooney. It should be noted in this regard, that Salamone's relations with these people and with Palazzolo, were conducted by telephone.

Ad. 12 Of significance, is the fact that Della Torre and Ventimiglia were able to check the whereabouts of Salamone's house, where the smaller denomination dollars were being collected and hidden.

Ad.13 Rossini organised the transportation of the dollars through Scossa, in the same way used by Cavalleri on instructions from Oliviero Tognoli and Joseph Ganci. The transporting that Cavalleri had previously carried out is the subject of an enquiry that is currently pending with the Prosecutor's Office, and to date has not resulted in charges being brought.

Scossa and Esposito who had been in contact with Salamone, had in fact transported the suitcases by air, as they had previously done on the instructions of Cavalleri.

Ad 14- 17 These circumstances seem clear, but it is nonetheless necessary to specify that right from the first delivery, Rossini who had known Salamone's address in the USA, had made this address known to his appointees Scossa and Esposito, so much so that they could then deliver the suitcases to the people Rossini indicated, or directly to Traex in Lugano. Rossini then deposited the money with Traex on accounts held both by Palazzolo and Della Torre, and by Pageko A.G., which was a company belonging to Palazzolo. We note also that Della Torre confessed to having personally carried out some deliveries.

Stock market transactions were conducted, with substantial losses right from the outset. Other transactions, using other capital, had previously also recorded serious losses.

Ad 18 This charge relates to the participation of the accused in the delivery of money to Waridel and Musullulu, which took place on two occasions in Zurich and in Thalwil, as has already been noted in examining Waridel's case. Della Torre was present during the first delivery in Löwenstrasse, while Palazzolo was at the Pageko offices. Rossini was not present in the street, but at Pageko's offices. The Court considers it probable that Rossini had personally delivered 2 million dollars to the office. He accounted for this delivery, which makes it improbable that it took place on the street (or in the way that the deliveries of dollars were made by Salamone in the USA).

Ad 19 It is very clear that Ventimiglia transported money to Zurich, which Rossini then took delivery of.

Ad 20 At this stage, the facts need to be set out in chronological order, with the following premise:

- that Palazzolo already had futures contracts on the metals and commodities markets on behalf of his clients;
- that these transactions were conducted through Traex, who had the necessary equipment to work directly with a broker on the New York market;
- that following these transactions, Palazzolo's clients had already incurred losses, before the cash deposits started with the first American broker, namely Merrill Lynch.
- That following these losses on current transactions, the American broker asked Traex for a margin call payment, who in turn asked Palazzolo for this, otherwise the

transactions would have closed with the total loss of all the funds that had been paid into the transactions up until that time.

Rossini insisted that these margin calls be covered, as he was directly responsible in relation to the broker. It was probably at this time that the discussion arose on the possibility of Palazzolo making the required funds available directly with the broker (in cash, in New York). Rossini, finding himself under pressure, contacted the broker to check whether they would accept the funds made available in New York (as recorded in the conversation with Camozzi). The representative from Merrill Lynch then gave Rossini the assurance that the proposed method of payment would be acceptable, indicating however that according to American Law, the Federal Reserve would have to be notified in the case of any cash payments in New York above 10.000 dollars.

This then went ahead, and the contracts were kept in place. It should be noted that the payments made in cash, coming from the amounts delivered by Della Torre either to the broker or to the broker's bank, were recorded as incoming in the accounts, and therefore recorded in Traex's books. Della Torre's name as a paid operator did not appear, nor was it recorded.

It should further be noted that the cash payments made in New York (so that the market transactions did not close with a loss), allowed the operators to withdraw their funds through normal banking channels in Switzerland: essentially the bill handed over in New York could be recovered by the holder in Switzerland through normal banking channels, as an amount expressed in American dollars.

According to the Court, the reason for moving over to Hutton during July 1982 was not due to problems arising from the crediting procedures following the cash payments, but rather due to technical and operational considerations, namely the speed with which transactions could be expedited and the results communicated, the difference in costs and the possibility of increasing the volume of transactions in the hope that Palazzolo (Rossini's client) could recover (luck allowing) much quicker from the losses that had accumulated. In fact, the initiative to increase the number of contracts came from Palazzolo, who at the end of the day, was the one most interested in recouping these losses. He knew that he had funds available to cover the development of these transactions (cash in New York), and on the other hand it would seem that the broker and Traex were indifferent to the outcome of the transactions, except obviously for the risk of losing their client.

With regard to Rossini, we note that he supported the idea of developing the transactions (increasing the number of contracts), because in this way he would gain more on the relevant commissions earned.

Ad 21 It was Rossini decision to move Traex's transactions on behalf of Palazzolo and Della Torre from Merrill Lynch to Hutton: Rossini on the other hand, was not involved in the establishment of the Acacias Corporation and the transactions conducted directly by Acacias with Hutton. Acacias was a financing company owned by Palazzolo and Della Torre that was established on the advice of Phelan, with the intention of saving on the commissions that were previously being paid to Traex; this fact is significant given the difficult financial situation that Palazzolo and Della Torre found themselves in due to the prior losses they had incurred. It has been confirmed that the transactions in Traex's name with Hutton (excluding those falling under Acacias' account), which were effected during the period of about one month, from the 27.4 to 2.7.1982, related to total payments of 11.5 million.

The start of activity on Acacias' account, conducted between the 6.7 and 27.9.1982 for 8.25 million dollars, corresponds to Rossini withdrawing from the picture. Rossini met with the Manager of Credito Svizzero in Chiasso, Perucchi, in order to get information on his clients Palazzolo and Della Torre, as he was concerned with the extent of the transactions they were dealing in. Following this discussion on 5.8.1982, Rossini decided to cut off relations between Traex and his clients Palazzolo and Della Torre.

In the meantime, Phelan, the Manager at Hutton had informed his colleague Mr Riedener who was manager of overseas services in Geneva that the FBI was investigating the cash payments made by Della Torre in New York. Riedener let Palazzolo know of this by way of a telephone call from the Bahamas, which must have taken place prior to the Grand Jury injunction that prohibited Hutton to warn anyone of the investigation. Palazzolo was at Nova Park in Zurich at the time, and he in turn telephone Della Torre, managing to track him down only a day later. This resulted in Della Torre's trip to Zugo, where Palazzolo found Della Torre stunned by what he was told. After the information he received from Riedener, Palazzolo was concerned regarding the remaining balance of 3 million dollars with Salamone, as well the funds available on Acacias' account.

This was followed by the meeting with Rotolo in Zugo, the destruction of the diaries, and the episode regarding the Porsche motor car.

In all likelihood, Palazzolo alone also had a meeting with Rotolo in Zugo immediately after receiving the warnings. However, during the meeting in Zugo, Palazzolo and Della Torre were present with Rotolo, and probably also Ventimiglia. On this occasion, Rotolo threatened Palazzolo, demanding the return of his funds, which had been made available in the USA, and which at that time were partly held on the Acacia account, and partly at Salamone's house. The threat was preceded by a question posed by Palazzolo to Rotolo, with the purpose of establishing who the funds were finally destined for: Rotolo replied that instead of being interested in the identity of the people, he would do better to immediately arrange for the return of the funds. Following this conversation, Palazzolo decided to make Della Torre's diary disappear, where the movement of the funds was recorded, together with the note to sell the Porsche that Tognoli had given to Della Torre, and which Ventimiglia had previously told him had been owned by someone suspicious (Priolo). Palazzolo also asked Rossini to destroy all the accounting documents relating to his transfers of money through Traex. Della Torre's diary was destroyed, the Porsche was sold to the Beretta Garage in Chiasso on 12.10.1982, but Rossini did not comply with the request to destroy the above documents.

With regard to the factual circumstances indicated under this charge, we need to take note that in the meantime the commission taken on the transferred funds had risen from 6 to 8%, and also note the chronological order of the transactions. At the end of September 1982, the activity on the Acacias account closed at a balance of 4.5 million dollars, of which a cheque for 1.5 million dollars issued by Hutton in Geneva was delivered to the brokers of the Tognoli/ Rotolo group (cfr. PP report 5, pg.4), while the difference of 3 million dollars was used to buy 200 kg of gold, which Della Torre, through Ventimiglia, delivered to Tognoli in Italy, as recorded under point 24 of the charge sheet.

Ad. 26 There were still 3 million dollars in cash remaining in America at Salamone's house in December 1982. Palazzolo and Della Torre set about finding a new channel to be able to move the funds over to Switzerland, and make this available to Tognoli and Rotolo. They therefore struck an agreement with Frigerio, who with the assistance of Brändli and his brother transported the cash over to Switzerland. Della Torre took delivery and then delivered this to the Tognoli/ Rotolo group in various instalments, one of which was made up of a delivery of 800.000 dollars handed over by Della Torre to Tognoli in Chiasso. The hand over was done on the street, because Palazzolo had told Della Torre not to allow Tognoli to come into the offices.

Ad. 27 This point on the charge sheet regarding the redistribution, refers to all the dollar transfers. It should be noted that the transfers were done according to instructions given by Rotolo and Tognoli, through Ventimiglia. It is sufficient to note that some of the holders of the accounts used to redistribute the dollars, were people close to those responsible for large-scale international drug trafficking.

Ad. 28 The circumstances indicated under this last point on the charge sheet have already been discussed under the previous circumstances that the Court took into consideration in chronological order.

5.3 The relevant facts to establish the possibility of an international crime.

After a detailed study of the facts set out in the two charge sheets, and given that it must proceed with a single judgment, the Court considered it worthwhile to summarise the facts that it considers to be confirmed and therefore relevant for the purposes of the judgment. Very briefly summarised, given the complexity of the dual case, the facts are as follows:

- a) Trafficking between Waridel and Musullulu, which involved dealing in 400 kg of morphine base, against payment of about 5 million dollars, and another 6 million dollars being made available to Musullulu, destined for future illegal trafficking in narcotics;
- b) The payments made in Lugano, Zurich and Thalwil to Waridel by Palazzolo and Della Torre, with a partial contribution made by Rossini, for over 10 million dollars;
- c) The cash transfers of about 7.5 million dollars from the USA to Switzerland, and more specifically:
 - 3 million dollars transferred by Scossa at the beginning of April 1982, and delivered to Rotolo/ Tognoli, respectively to Waridel;
 - 1.5 million dollars transferred by Della Torre to Salamone, through Canada at the beginning of August 1982;
 - 3 million dollars transferred by Frigerio after September 1982, and delivered to the Tognoli/ Rotolo group.

- d) The payments in cash of about 20 million dollars through the American brokers, and more specifically:
- 4.9 million dollars on the Traex account with Merrill Lynch in New York, between 24 March 1982 and 23 April 1982;
 - 6.8 million dollars on the Traex account with Merrill Lynch in New York, between 27 April 1982 and 2 July 1982;
 - 9 million dollars on the Acacias' account with Hutton in New York, between the 6 July 1982 and 27 September 1982.
- e) The break in relations between Rossini and Palazzolo/Della Torre at the beginning of July 1982.
- f) Riedener's telephone call to Palazzolo to warn him of the FBI investigation at the beginning of October 1982.
- g) The conduct of Palazzolo and Della Torre in the period subsequent to the above telephone call, and more specifically:
- the meeting in Zugo with Rotolo, and the threats he made against Palazzolo;
 - the destruction of Della Torre's diary
 - the sale of the Porsche
 - the request made by Palazzolo and Della Torre to Rossini to destroy accounting documents relating to the Traex/PGK relations
 - the increased commission on the money transfers
- h) The delivery of the active balance on the Acacias' account with Hutton (4.5 million dollars) and the 3 million dollars in cash remaining at Salamone's house, to the Rotolo/Tognoli group.
- 5.4 Verification that excludes the crime of negligence.

These checks relate to the accused Palazzolo and Della Torre actions up until the end of September 1982, while they relate to Rossini for the entire period that he was operational, namely from March until July 1982. Effectively, it involved checking if in the given circumstances, Palazzolo and Della Torre, on the one hand, and Rossini on the

other, could have foreseen that the money they were delivering to the Rotolo/ Tognoli group, in part through Waridel, could have been used to finance drug trafficking. It should firstly be noted that most of the money channelled onto the Merrill Lynch and Hutton accounts, and therefore withdrawn so that it could be delivered to the Rotolo/ Tognoli group, was used to finance drug trafficking, or rather, constituted funds that were available to Rotolo and Tognoli to finance future trafficking (cfr. Weiss, in RPS, 1985 p. 199). Taking into account the circumstances under which the accused acted, and taking into consideration current practices in the area of currency trafficking (delivery of dollars under ambiguous circumstances, by suspicious people, like Salamone, redelivery of dollars to people like Rotolo, Tognoli and Waridel, whose identity was not entirely known to Palazzolo and Della Torre), this Court considers that, at the least, Palazzolo and Della Torre did not exercise the precautions that other honest and upstanding financial operators would have used to establish the destination and use of these funds by the receiver. The Court therefore considers that after the request for information received by Della Torre from Phelan (cfr. AI 119), Palazzolo and Della Torre were not aware of the consequences of their actions. But we will see that liability for this is covered by international law.

The situation is different however, in the case of Rossini, where Palazzolo and Della Torre were Rossini's clients, and had their own office that managed third parties' interests. We cannot therefore pretend that Rossini, who was essentially removed from the traffic taking place between Palazzolo and Della Torre and the Tognoli/ Waridel group, would have taken any specific precautions to check on who was receiving the amounts being paid or what activities they were involved in, taking special note of the prerequisites laid down under article 19 number 1 para.7 of the Federal narcotics law, with regard to the destination of the funds. Therefore the negligence set down under number 3 of article 19 of the narcotics law must be excluded in the case of Rossini, not only in terms of the considerations under the law, but also consideration of the facts, or specifically, because the acts he committed in the noted circumstances could not, unless for some unforeseen reason, assume a level of guilt that the Court would be able to consider punishable.

6. VERIFICATION OF INTENT

As a premise in discussing this aspect, the Court came to the following conclusions in examining the law applicable to this case.

The liability for punishment of direct participation in drug selling presupposes proving a relationship between the financial transaction and the supply of the drugs, that is the actual drug trafficking.

For the application of article 19 para. 7 of the narcotics law regarding the financing or the brokering of financing, one needs to prove only the relationship between the financial transaction of making capital (or other financial means) available to traffickers, and the possibility that these means are being used in drug trafficking (that has already happened, or that has yet to take place). In this case, it is not necessary to prove that these means were effectively used in actual drug trafficking.

6.1 Waridel's intent refers to two types of crime. We firstly need to recall that Waridel committed acts that must be differentiated for the purposes of applying article 19 of the narcotics law:

- those relating to the advance payment of the supply of 400kg of morphine base. This payment for 5 million dollars appeared to be made to Musullulu, someone known to Waridel as a drug seller, and originated from Rotolo, who he knew as a buyer of drugs. Given these facts, the legal prerequisites under article 19 number 1 para.2 of the narcotics law have been met;
- those relating to the payment of the remaining 8.5 million dollars (at least 7.5 million dollars confirmed), which meet the prerequisites under article 19 number 1 para.7 of the narcotics law, in that Waridel was aware of the possibility that these financial means were being used in drug trafficking, given the nature of the business that Musullulu was involved in.

Before moving on to consider the proof of his intent, the Court had already taken note of the objective aspect, and did not consider Waridel as co-author but rather an accomplice with regard to Musullulu, both with regard to the acts he committed that are punishable in terms of article 19 number 1 para.2, and with regard to the acts he committed that are punishable in terms of article 19 number 1 para. 7 of the Federal narcotics Law. Both with regard to the payment of the 5 million dollars, and with regard to the other brokered payments, Waridel's participation considered from an objective and subjective viewpoint, is not considered decisive, so as to be defined as complicity. With regard to the proof of Waridel's intent, we firstly need to consider that in the execution and payment of the first 5 million, he knew and wanted to contribute to the selling of that particular drug: being the 400 kg. morphine base for an equivalent value of 5 million dollars. In this case, Waridel acted with direct intent.

With regard to Waridel's actions relating to payments for at least another 7.5 million dollars, Waridel also acted as a subordinate, fully aware of the facts and purposes pertaining to the drug payment transactions. Therefore, again in this case, Waridel also acted with direct intent, or in a fully voluntary and knowledgeable manner.

With regard to the justification that Waridel adopted relating to the way he acted, it should firstly be noted that he cannot be considered in an official capacity in terms of article 110 of the Criminal Code, in that his attitude was not passive, but was in fact active in the selling of drugs. With regard to article 32 of the Criminal Code, it can be confirmed that Waridel did not carry out any acts that had been imposed by law or by his duty to his office, but that he intentionally committed acts that were punishable, or acts that cannot be justified under any Swiss or foreign law. Not only was he not an official functionary, but the information that he provided to the Greeks was irrelevant and inconclusive. He refrained from conveying any concrete information to the Greeks, which he had on the people involved in the trafficking (Musullulu, Rotolo and others); information which had it been given would certainly have contributed to dismantling the trafficking at the earliest opportunity. Furthermore, Waridel refrained from providing timely information to the Swiss Authorities, who above all others, would have been able to put it to good use. In fact, Waridel only partially passed information on to the Swiss Authorities, and then only after the trafficking with Musullulu had been concluded. We also need to consider in coming to this conclusion that Waridel himself said that his remuneration for the information would have been paid only in terms of the results the Greek Police were able to secure, based on his information.

To conclude on the verification of the facts and Waridel's intent, we need to add that if he had acted as an accomplice, in this way limiting the level of his guilt, he also acted within the context of a large-scale drug business, well aware that he was contributing as a member of an organised gang, with the purpose of putting in place more transactions in the context of international drug trafficking. The Court therefore had no hesitation in considering that all the aggravated circumstances under number 2 of article 19 of the Federal narcotics law had been met, even though a cumulative verification of the prerequisites in each instance is not required.

6.2 On the intent of the other accused.

We firstly need to distinguish between the subjective elements regarding the crime, based on article 19 number 1 para. 1-4 of the Narcotics Law (dealing), and the subjective element referred to under article 19 number 1 para.7 (financing).

- 6.2.1 With regard to dealing in drugs, the Court has verified that the only transaction concerning drugs was the one for 400 kg of morphine base (in March-April 1982), connected to the delivery of 5 million dollars to Waridel-Musullulu.

To the question of whether Rossini knew or could have known and accepted that this amount of money was needed for a transaction of buying and selling drugs, the Court replied in the negative, taking into consideration that with regard to payment, the transaction was undertaken on behalf of Palazzolo and Della Torre who were his clients, and who had already remitted considerable amounts of money to Traex on various accounts, and who also already operated on Merrill Lynch accounts. We need to consider that for Rossini, Palazzolo and Della Torre were good clients, to whom he rendered the required services.

The Court also replied in the negative to the same question with reference to Della Torre, taking into consideration that as far as this accused knew, the money paid to Waridel (who Della Torre did not know), belonged to Tognoli, an iron industrialist. The Court could find no objective proof that would prove that Della Torre, with his mentality of a currency courier, could have suspected that it involved a payment pertaining to the supply of drugs. In this regard, we need to reiterate that as far as the relations between Della Torre and Palazzolo went, if the latter could be considered the brains, Della Torre could be considered the arm that was available to carry out Palazzolo's instructions, without investigating too far beyond his immediate task. In this regard, the Court also considered the probatory value of the statement given by Waridel, who confirmed that according to him anyone could have known that this involved a drug's payment. The Court took the precaution of considering this impression given by Waridel as being insufficient, because it is not supported by any other corroborating elements. It also needs to be considered that for Waridel, it might have been clear that it involved drugs, while for others, and especially for Rossini and Della Torre, it could also have involved a payment similar to many others that they made in their business.

To the same question with reference to Palazzolo, the Court replied after the following considerations. It was Palazzolo giving instructions at the beginning of April 1982; directed partly to his partner Della Torre and partly to Rossini. Palazzolo, in turn, was

certainly conducting transactions on the instructions of his principals, which cannot be verified with any degree of accuracy. We therefore need to ask ourselves whether Palazzolo could have considered his principals to be people involved in drug trafficking, and we must note that at the beginning Palazzolo was certainly unclear on the identity of his principals. On the other hand, even if it were to be accepted that Palazzolo belonged to the Sicilian Mafia, something that even the Prosecution has excluded, it is not reasonable to assume from these circumstances, that at the beginning of April 1982, he had acted with knowledge and readiness to contribute to the trafficking of drugs. Besides which, it is also possible that at that time, Palazzolo was being exploited and that he therefore acted without thinking of drugs. In conclusion, Palazzolo's relations with his principals can constitute circumstantial evidence to ascertain his intent, but this alone cannot rise to the level of proof. Likewise, Palazzolo's principals in the persons of Tognoli and Rotolo, could also not at that moment in time, be unequivocally considered by Palazzolo to belong to the Mafia that trafficked drugs, since it emerged during the hearing that (Orlando?) Tognoli was known to Palazzolo as an industrialist from Brescia, who operated in the steel industry.

To conclude on the intent of the three accused regarding the transaction of the 400 kg of morphine base, the Court could not confirm either direct intent or eventual intent in any of their regards, and for this reason the application of article 19 number 1 para.4 of the Federal Law on narcotics was excluded. For the same reason, the Court excluded that Rossini, Della Torre and Palazzolo could be punished in relation to preparatory acts (article 19 number 1 para.6 of the Federal narcotics Law), since the liability for punishment for preparatory acts for drugs that are marketed, presupposes the same subjective elements of the crime that the law requires for the main crime.

6.2.2 With regard to the charge of financing drug trafficking in accordance with article 19 number 1 para.7 of the Federal Law on narcotics, the Court considered it important to firstly proceed with the verification of the subjective elements according to the chronological order of the facts.

These can be summarised as follows:

1. cash payments to Merrill Lynch from the 24.3.1982 until 23.4.1982:
 - a) 24.3.82 1 million 110.000 dollars;
 - b) 25.3.82 1 million 310.000 dollars;
 - c) 26.3.82 689.910 dollars;

- d) 22.4.82 499.960 dollars;
e) 23.4.82 1 million 408.455 dollars
for a total of 4.908.335 dollars, to which another 6.806.260 dollars were added from the 27.4.82 until the 6.7.82.
2. presumably on 9.4.82, a cash delivery made to Tognoli, Rotolo and Waridel of about 5 million dollars.
 3. from the 27.4.82 until 2.7.82 about 5 million dollars on Traex's accounts with Hutton, of which about 3 million were transferred in cash from the USA
 4. cash transfer through Toronto by Della Torre and Salamone for about 1.5 million dollars (according to the records in AI 68 pg.42 no.180, occurred on 1.8.82)
 5. deposits in cash on Acacias' account with Hutton for 8.25 million dollars from the 6.7.82 until 27.9.82, until the balance reached about 4.5 million.
 6. From October 1982, the delivery to the Rotolo/ Tognoli group of:
 - 1.5 million dollars from the Acacias' account with Hutton, by way of cheques;
 - 3 million dollars converted into 200 kg of gold, originating from Acacias' account
 - 3 million dollars through the Frigerio channel, transferred in cash from the USA.

Taking into consideration that as from April 1982, there is no verification on the supply of drugs through Musullulu – Waridel, the Court essentially needed to establish whether the transfers of funds carried out through the channels of Merrill Lynch and Hutton, and the withdrawals with subsequent delivery of money to the Tognoli/ Rotolo group in the period between April 1982 and the end of September 1982, could have been considered as financing for drug trafficking in terms of article 19 number 1 para.7 of the Federal Law on narcotics. For this purpose, the Court needed to establish whether Rossini, Della Torre and Palazzolo had considered and accepted the possibility that the money delivered to the Rotolo/Tognoli group (drug traffickers) was used, or could have been used to sustain drug trafficking. In this context, we also need to keep in mind that Rossini was out the picture from the 2 July 1982, and that the investments being made with the brokers, were done without the knowledge of the principals, Tognoli and Rotolo.

With regard to the cash payments made to Hutton in New York, it should be noted that the Prosecution considered these payments to amount to 15.5 million dollars. From the

documents produced by the Defence, which are confirmed by the statements attached to the documentation, these payments only amount to 6.806.260 dollars. This amount paid onto Traex's account at Hutton has been confirmed by FBI investigations (AI 68 pg.39 and following, nri 151, 154, 155, 158, 162, 163, 165, 169, 171 and 172).

To decide on the accused Rossini, Della Torre and Palazzolo's knowledge, the following also needs to be considered:

- that Rossini was essentially interested in profiting from the commissions on the futures contracts,
- that Palazzolo and Della Torre had a strong interest in getting money into their accounts to cover the losses they had incurred with other clients: this was of vital importance for them,
- and that in short, the commodities market was the least suited channel one would think of for transferring funds from the USA to make available to Rotolo and Tognoli in Switzerland, taking into account that these future contracts involved very high loss risks, especially in the case of sudden withdrawals.

While it is true that Palazzolo confirmed in his statement given to the Public Prosecutor that he had doubts regarding the origins of these funds, and that Della Torre asked himself a thousand times where these dollars came from, and who they were meant for. But the Court considers that despite this circumstantial evidence (large amounts, in small denominations in cash, delivered by Della Torre to a suspicious person, in irregular circumstances), that had Palazzolo and Della Torre taken into consideration the possibility that the funds originated from drug trafficking, and that they were destined to be put back into this traffic, they would certainly not have chosen the commodities market as their investment channel.

The Court is therefore satisfied that the dollars transferred from the USA to Switzerland through the channels at Merrill Lynch and Hutton, which were destined for the Rotolo/Tognoli group, were not put in place by Palazzolo and Della Torre and even less so by Rossini who was acting of the instructions of the other two, with the knowledge and willingness to finance drug trafficking, nor taking in consideration and accepting the possibility that the money delivered to Rotolo/Tognoli could be used to finance the trafficking of drugs.

After Rossini's exit from the scene at the beginning of July 1982, brought about by Palazzolo and Della Torre's decision to transact directly, as had been suggested by

Phelan, about 9 million dollars were deposited (between the 6.7.82 and 27.9.82) on the Acacias' account with Hutton (cfr. AI 68 pg. 41 and following, no. 173, 175, 176, 177, 179, 182, 215, 218, 219, 224). On the 1 August 1982, 1.5 million dollars were transferred in cash from the USA to Europe via Canada, by Salamone and Della Torre (cfr. AI 68 pg. 42 no. 180 and Palazzolo's statement to PP no. 5 pg.3), and paid into accounts held by Palazzolo and Della Torre.

With regard to the accused's intent, the Court considered the situation prior to Rossini's exit from the scene to be largely unchanged, except for the fact that the Acacias replaced Traex, and consequently Palazzolo and Della Torre, despite any doubts they may have had, had still not taken into consideration the possibility that the funds being brought over to Europe and paid to Rotolo and Tognoli were being used, or could be used in financing drug trafficking.

At the end of September 1982, the situation was essentially the following:

- Rossini had been out the picture from the beginning of July.
- Relations with Merrill Lynch via Traex were closed after about 4.9 million dollars were moved to Traex.
- Relations with Hutton via Traex were closed, after about 6.8 million dollars had been deposited onto the accounts.
- The Acacias' account with Hutton remained, into which about 9 million dollars had been channelled.
- 3 million dollars made their way by air to Switzerland and were delivered to Waridel, together with another 2 million scraped together in Switzerland on Good Friday, or the 9.4.1982.
- Besides the above 3 million, Waridel had already received about 6 million dollars coming from withdrawals made on the Merrill Lynch and Hutton accounts.
- From the 9 million dollars paid into the Acacias' account, after losses and withdrawals, about 4.5 million dollars still remained.
- There was a further 3 million dollars remaining at Salamone's house.
- Palazzolo had his doubts regarding the origins and destination of the money, and had entrusted Ventimiglia to find out more.
- And Della Torre asked himself a "thousand times" where this money came from and where it could be going to, and did not believe Tognoli's justification (he had replied "ghem scia' poc" to the justification given by Tognoli that this was due to undercharging on the iron trading).

On the 5 or 6 October 1982 Riedener telephoned Palazzolo to warn him that the FBI was investigating the cash deposits made with the American brokers (Traex and Acacias' accounts). Palazzolo warned Della Torre, then met with Rotolo in Zugo to obtain information regarding the origins and destination of the money. In reply, Rotolo told Palazzolo to worry about giving him the money that he had paid into the Acacias, by way of Salamone, rather than investigating the origins and destination of these funds. Palazzolo took the threat seriously, fearing for his safety, and showed his intention to divest himself of Rotolo, by cancelling the signatures that the latter had at the bank, and taking back Befra A.G., which he had sold to him in the past.

In all likelihood, Palazzolo did not inform Della Torre about this threat, since the latter continued to have contact with Rotolo till the beginning of 1984.

The threats made by Rotolo to Palazzolo appear credible, since if Palazzolo had transferred funds from the USA to Europe through the brokers in agreement with Rotolo, he could have blamed him for having caused the losses that had accumulated by making sudden and ill-timed withdrawals.

Palazzolo and Della Torre's conduct after the meeting with Rotolo in Zugo lead one to believe that from that time onwards, both of them had seriously taken into consideration the possibility that the money was connected to drug trafficking. In fact, Palazzolo saw to it that Della Torre's diary was destroyed, and that Della Torre sold the Porsche, and that both asked Rossini to destroy the accounting records at Traex that related to them. At the hearing, Palazzolo himself admitted that he had considered that the money was connected to drug trafficking, as he had already admitted during the preliminary investigations to the Public Prosecutor.

According to the Court, even if Della Torre was not aware of the threats against Palazzolo, he must have entertained thoughts of drug trafficking.

Given the questions that Della Torre repeatedly asked himself regarding the origin and destination of the money, the inconsistencies in the justification given to him by Tognoli, and the absolute lack of any element that would have allowed him to exclude that the movement in funds was connected to any trafficking other than drugs, and given his professional experience with regard to the specific nature of the facts, and finally given the investigations underway by the FBI of which Della Torre was well aware, he also could not reasonably not have thought about drugs. The fact that Della Torre remained in contact with Rotolo until 1984 demonstrates his lack of concern in maintaining contact and being of use to someone involved in drug trafficking. One also needs to consider the experience that Della Torre had had in America following the hiding of the money in

Salamone's house, and the delivery of the above in suspicious circumstances. Again this experience, linked with the situation that was created following Riedener's warning, could not allow him to exclude that the money was connected to drug trafficking.

Therefore the Court holds that both Palazzolo and Della Torre had taken into consideration and accepted the possibility that the money given to the Rotolo/ Tognoli group after October 1982, could be used in drug trafficking, by making money available in favour of people that were operating in narcotics trafficking.

From October 1982 onwards, Della Torre and Palazzolo still effected the following transactions:

- the remittance of cheques for 1.5 million dollars onto the Acacias' account with Hutton in Geneva,
- the remittance of 200 kg of gold to Tognoli (equivalent of about 3 million dollars) and
- the transporting of about 3 million dollars via Canada, through the Frigerio channel.

With regard to the remittance of the cheques for 1.5 million dollars on Hutton's Acacias' account, it should be noted that this money was essentially already due to the Rotolo/ Tognoli group, and that Palazzolo and Della Torre had no other choice to be able to close off the transactions with Rotolo. The Court however does not find an act financing drugs in this transaction. The case differs on the other hand, with the situation regarding the 3 million dollars withdrawn from the Acacias' account and converted into contraband gold in Italy, and delivered to Tognoli: in this case Palazzolo and Della Torre did not limit themselves to turning the balance over to Tognoli and Rotolo, but carried out an extra transaction in the interests of this group of drug traffickers.

In this transaction, the Court found the prerequisites for financial brokering of drug traffic, since it involved a financial transaction that was concluded in favour of people, who from that moment onwards, Palazzolo and Della Torre could no longer consider to be completely estranged from drug trafficking (cfr. Weiss, in RPS 1985 pg. 198 and 199).

Of greater significance is the last transaction carried out on behalf of Rotolo and Tognoli: which consisted of transferring the 3 million dollars that were still being held at Salamone's house, from the USA to Europe through Frigerio. Palazzolo and Della Torre could well have asked Salamone to return the money to the sender: instead they provided a significant contribution so that this substantial amount of money could be made available here in Switzerland to persons implicated in drug trafficking, so that these last 3 million dollars could be used to finance trafficking in narcotics.

On the basis of the above premises, the Court therefore held that Palazzolo and Della Torre were guilty perpetrators, with eventual intent, of the crime of financial brokering (for 3 million dollars), and financing (for a further 3 million dollars) drug trafficking in terms of article 19 number 1 para.7 of the Federal Law on narcotics.

7. CONCLUSIONS ON GUILT

Having to consider Enrico Rossini acquitted on all charges, the Court drew the following conclusions with regard to the other accused:

7.1 With regard to Waridel, it must firstly be stated that the delivery of 5 million dollars to Musullulu clearly referred to the supply of 400 kg. of morphine base that he had been dealing in.

Furthermore, there were additional deliveries of 6 million dollars that could not be linked to actual drug supplies. Nonetheless, the crime of financing drug trafficking applies with these funds having been made available to Musullulu, since Waridel knew that Musullulu was a drug trafficker, and knew that these funds could have been destined to trafficking in narcotics.

The justifications given by Waridel with regard to the assistance he had given to the Greek anti-drug unit are considered inconsistent, since as we have already stated, Waridel never forwarded any useful information, nor did he timeously approach the Swiss Police, who would have been better able to intervene.

7.2 With regard to Palazzolo and Della Torre, the Court considered the evaluation of the subjective elements to be significant, and concluded that the doubts regarding the origin of the dollars, and their destination had become consistent as from Riedener's telephone call and the meeting with Rotolo in Zugo, namely from the month of October 1982. From this moment onwards, both the accused had taken into consideration and accepted the possibility that the funds given to the Tognoli/ Rotolo group could be destined to drug trafficking.

Consequently, the transfers of funds that took place prior to this date cannot represent the crime of having dealt in narcotics, or the crime of financing the illegal trafficking of narcotics. This conclusion is confirmed by the fact that the transfers done by Palazzolo and Della Torre through Ventimiglia on the futures' markets, without the knowledge of the principals to cover losses of other clients, was the least suitable method to choose for

channelling money from the USA to Europe, especially considering the risks that these investments involved.

The transfer of 3 million dollars taken from the Acacias' account and converted into 200 kg of gold for Rotolo and Tognoli, and the transfer of the remaining 3 million dollars from the USA through the Frigerio channel, do however constitute conduct that is punishable according to article 19 number 1 para.7 of the Federal narcotics law.

In the opinion of this Court, Palazzolo and Della Torre had taken into consideration and accepted the possibility that Tognoli and Rotolo were drug traffickers. They had furthermore taken into consideration and accepted the possibility that the funds made available to the Rotolo and Tognoli could be destined to drug trafficking.

- 7.3 With regard to Rossini, the Court reiterates that it has excluded that the accused (who had left the picture at the beginning of July 1982), could have taken into consideration and accepted the possibility that the money transferred from the USA to Switzerland could have been connected to drug trafficking. Furthermore, the principals in relation to Rossini were Palazzolo and Della Torre, who in turn held trust accounts. The Court has therefore decided to acquit Rossini on all charges.

8. FITTING THE PUNISHMENT TO THE CRIME

- 8.1 The basic criteria to make the punishment correspond to the crime is set down under article 63 of the Criminal Code, according to which the punishment must be commensurate to the guilt of the offender, taking into account his motives for committing the crime, his previous life and personal circumstances. Once the level of participation in the crime has been decided (collusion or complicity), and it has been established whether this involves a simple or aggravated crime, the provisions made for aggravated or extenuating circumstances based on article 67 and 64 of the Criminal Code are then applied. In the case of collusion to commit a crime, if the offender is involved in several crimes that are denied personal liberties, the punishment will be set for the most serious crime and then be increased in appropriate measure for the secondary crimes, but in such a way that does not exceed half of the maximum penalty imposed. This rule that has been standing under the Swiss Criminal Code since 1937, avoids the addition of detention sanctions that need to be considered with regard to penalties that are imposed abroad for similar cases, especially when dealing (as in this case) with the punishment for participation in narcotics trafficking on an international scale.

8.2 In the case in hand, the penalties imposed are those under article 19 of the Narcotics Law of 3.10.1951, with the final amendments, as we have seen, coming into effect on 1.8.1975.

With regard to all the crimes with intent under number 1 of the law, the punishment imposed is either detention (from 3 days to 3 years) or a fine. But in serious cases (for one of the reasons listed under number 2 of the law, as will be the case for each of the accused), the punishment imposed is imprisonment (from one to twenty years), or detention of at least one year, with the addition of a fine of up to 1.000.000 francs. If the crime under number 1 was committed by negligence, the punishment is up to one year detention or a fine.

In the case at hand, only aggravated crimes with intent are to be punished with detention of between 1 and 20 years imprisonment. There are crimes that have been committed with direct intent as in the case of Waridel (where the Swiss Judge and the Judge in the Ticino Court had already applied severe sanctions of around 10 years, even though this involved quantities of drugs that were less than those currently being taken into account, they obviously still constituted less risk to the public's health), and there are those committed with intent as with Palazzolo and Della Torre, but these were committed with eventual intent [*dolo eventualis*], or a subjective participation at a considerably lower level, which would mean that the perpetrator posed a lower level of risk in relation to the thing being protected, in this case the health of the local and overseas public.

According to considerations that appear repeatedly in our case law, among the crimes committed intentionally, those that are punishable only for eventual intent, fall into the lower limits of liability for punishment, namely between one and five years, so that the penalty can often appear to be significantly higher than the maximum in the case of the crime of negligence. We also need to note that there is less risk in the case of someone acting with eventual intent, but also only as an intermediary in financing. In other words we can confirm (even though the crime under para.7 refers to the same penalty being imposed, which goes from 1 – 20 years), that whoever brokers financing (to be considered, in itself, in the same way as a punishable action committed by an accomplice) must be punished to a lesser degree than the person committing a crime in the selling of drugs with eventual intent, under para. 1-5.

In this case, which is unusual in the practices of our Courts (both in terms of the quantities being traded, and the international extent of the trafficking), the overall penalties applied in relation to each accused must be fair, both in relation to each other, and in relation to sanctions that have already been imposed in drug trafficking cases that have occurred recently in a national or local context.

8.3 Therefore in making the three punishments match the crime, the Court has taken into account the following:

- that Waridel was directly involved as an accomplice in Musullulu's extensive drug trafficking; for this reason his punishment must clearly differ from that of Palazzolo and Della Torre;
- that Palazzolo and Della Torre had however made a significant contribution to the drug traffickers, with the regard to the extent of the brokered funds, and that they found themselves in a unique situation that determined their choices, especially in the case of Palazzolo who had been threatened by Rotolo;
- and that we need to distinguish between Palazzolo and Della Torre, where Palazzolo acted on a decision-making level, Della Torre acted on an operational level, even when we consider that the difference is not compensated by the situation of serious anguish that Palazzolo found himself in.

The repeated offence in the case of Waridel referred to a similar previous crime, committed in 1977. This therefore results in a significant increase in the sentence in terms of article 67 of the Criminal Code, especially when one considers that after having served his three year sentence, Waridel's intention was to again establish contact with well-known drug traffickers. Waridel did not hesitate in these circumstances, and again blatantly and unscrupulously took the part of the traffickers, in other words, not with the precautions that one would expect from any upstanding person collaborating with anti-drug units, but rather with the intention of again involving himself in unclean business so as to ensure a significant income for himself.

With regard to Palazzolo, he has a clean record over the last few years and is a first offender in relation to drug crimes; not only did he in reality commit a crime for the first time, but he committed the crime confirmed by the Court only from October 1982 in the extenuating circumstances referred to, which fall under article 64 of the Criminal Code. He continued to directly finance or broker the illegal trafficking of narcotics after he received threats from Rotolo, which the Court considers to have been made seriously. Furthermore, he committed the crime because he chose to accept even the worst case scenario that presented itself in October 1982, as did Della Torre, when he had few other choices; in other words, his willingness to accept the criminal action was not taken entirely freely, as was the case with his partner Della Torre, who from a decision-making point of view, was Palazzolo's subordinate in these circumstances.

- 8.4 In order to set the imprisonment terms fairly, we also need to take into consideration how these are integrated with the financial penalties imposed, which should be appropriate to the economic- financial standing of each of the accused. We therefore need to consider that the financial penalty added to the detention period, will be effective in being felt directly, even after the detention period has been served. In both cases (for the detention and the fine), the Court has considered the personal circumstances of each of the accused, noting in Waridel's case that he still holds significant assets in Zurich and Spain; while Palazzolo and Della Torre from what we have been able to ascertain on the basis of the records in the trial, have emerged with a decided lack in assets. This was also the reason why, even before the hearing stage, Palazzolo's bank assets were unfrozen so that his wife and children could meet their more urgent expenses.
- We also need to consider that the Court has accepted the justification given by Palazzolo in the sense that the better portion of his previous assets had already been used to recoup the losses that his principal Rotolo had incurred as a result of the market transactions made by Palazzolo himself, initially through Rossini's Traex, and then also later on. So then, this would justify the significant disparity in the amounts allocated to the fine against Waridel, and the one posted against the other two accused, taking also into consideration that the amounts proposed by the Prosecution already appeared excessive in relation to the financial circumstances of each of the accused.
- 8.5 With regard to the application of the measures that require that illicit profits be returned to the State, in other words, all illicit pecuniary gains found in Switzerland (in accordance with article 24 of the Federal narcotics law and article 58 and following of the Criminal Code), the Court limits itself to noting that nothing has been sequestered for the purposes of being subsequently confiscated, for the very reason that the assets held in Palazzolo's bank accounts could not be considered (on the basis of investigations) as profit, or the subject of a crime, nor could they be considered as funds used or destined to carry this out (cfr. application 12.8.85 and Prosecution's letter to Attorney Postizzi dated 23.8.85). Furthermore, the Court notes that Palazzolo and Della Torre, as well as Waridel did not effectively make a profit or gain any actual monetary advantage. In fact, Palazzolo and Della Torre's transactions after September 1982 incurred significant losses, so much so, that in their case, there is no possibility of hypothetical profits being destined to other drug trafficking (as would happen in the normal application of article 59 of the Criminal Code).
- 8.6 For the judgment regarding legal costs, in applying article 284 and following of the Criminal Procedure Code, the Court firstly considered the outcome of the judgment,

where on the one hand, Waridel had been convicted on two counts for the crime of putting drugs up for sale and for financing, whilst on the other hand, Palazzolo and Della Torre have a partial conviction for the crime of financing, and Rossini has been completely acquitted.

In accordance with article 285 of the Criminal Procedure Code, when an accused is convicted only on a few of the counts in a case relating to several crimes, he cannot be obliged to pay the costs that were especially allocated in the judgment to the facts that he has been acquitted on. It therefore seemed just and fair to allocate more than half the overall costs to Waridel, and a larger portion to Palazzolo than would be allocated to Della Torre, while the costs relating to Rossini who is acquitted, are to be carried by the State in the application of the last paragraph of article 284 of the Criminal Procedure Code. This breakdown was also deemed to be justified in consideration of the connection between the two proceedings, and the conduct of the accused from the time of their arrest.

- 8.7 With regard to the precautionary incarceration, the Court needed to consider the irregular situation of each of the three accused.

Palazzolo appears to have been detained for more than seventeen months, namely from the 20.4.1984. Only on the 14.11.84 was he given notice (cfr. PP report no.5) of the opening of these criminal proceedings, which occurred on the basis of the documents reaching the Prosecution, and the statements already made (cfr. statements 1,2 and 3) in the context of the enquiry on his extradition, being the reason he was detained. But the extradition never took place. The Court therefore took into account only the precautionary incarceration he suffered from the moment that these proceedings were formally opened. It is worth noting in this regard that in reducing the imprisonment period to three years (remaining within the limits of a significant difference in relation to the period imposed on Waridel), the Court also took into consideration the cooperation given by Palazzolo during the first months of his incarceration, as required by extradition regulations. It has also already taken into account the unusual circumstances, which made it impossible to recognise (in compliance with consistent case law) the calculation of almost seven months of precautionary imprisonment that he had suffered. In other words, if the Court had counted in all the time of precautionary imprisonment served by Palazzolo in Switzerland (including the time consequent to the extradition application), his punishment would have been set for longer than 3 years.

The precautionary detention in the case of Della Torre ran from the 14.11.84 until the 21.3.85, when after four months and one week he was provisionally released with Rossini. From the end of March until today, Della Torre has conducted himself correctly. Even after his conviction, the provisional release was not cancelled, given that further detention could be ordered by the competent Authorities only once judgment (more so in a case of this kind) becomes final or is verified by the higher courts. This is also relevant in the case of first level judges, who given the nature of the judgment, have had to do their utmost to untangle the basic facts.

Rossini, who has been acquitted on all charges, similarly to Della Torre, was also held in precautionary detention for 4 months and one week, and was released on the 21 March 1985, on payment of 100.000 francs bail. The outcome of the judgment will allow the Court to order the immediate release of the bail money.

Immediately after the sentence was published, Rossini's Defence requested and obtained a period of 15 days within which to present an application for damages due to unjust detention (article 267 and following of the Criminal Procedure Code). If the application is presented, the Court will reconvene to hear the Parties, and make an immediate decision, given that the decision on costs (which exonerates Rossini who has been acquitted), must consider the question of whether the incarceration was justified, especially if we take into account that it was only at the end of the proceedings that Rossini provided decisive proof, which allowed the Court to declare his innocence.

8.8 To realistically conclude (given the final considerations dedicated to the consequences for the three accused) this motivation, and especially in compliance with the principle that the administration of criminal justice must be swift for everyone, but especially in respect of the convicted who must then serve out their sentences, it remains to note that the first charge sheet is dated 10.6.1985 (while the one regarding Waridel is dated 12.7.1985), and that this first instance Court judgment was handed down on 26.9.1985, following all the procedures set down by the old Canton rules, which were certainly not formulated at the time, for proceedings of this magnitude.

The correct and pro-active cooperation of all Parties during the preliminary investigations and pre-hearings, as well as in the drawn out trial have gone a long way to facilitate the timeous decision taken by the Court whilst observing all procedures. The contribution made by the expert financial consultants who supported the three judges has been of equal importance in reaching this outcome.

On examination of the facts and the Law, the Court

RESPONDS

By admitting the charges under: 1.1, 1.3, 2. 3, 4, 6, 7, 9.3, 10, 11.2, 15, 16, 19.3, 20, 21.2, 26;

By denying the charges under: 5, 9.1, 9.2, 12, 13, 14, 17, 18, 19.1, 19.2, 22, 23, 24, 25, 27, 28, 29, 33, 34;

While all other charges are dropped;

Having examined articles: 21, 32, 35, 41, 48, 50, 55, 58, 59, 63, 64, 65, 67, 68, 69 and 144 of the Criminal Code;

Article 19 numbers 1,2,3; 23 para. 2 and 24 of the Federal narcotics law;

Article 284 of the Criminal Procedure Code and 39 TG on costs;

The Court

FINDS

1. PAUL WARIDEL

guilty of the aggravated violation of the Federal Law on narcotics as an accomplice, for having participated in dealing in at least 400 kg. of morphine base, acting both as an interpreter and go-between in the negotiations between Musullulu and the Italian buyers, and in having delivered the price on the sale (5 million dollars) to Musullulu, and for having financed the illegal trafficking of narcotics, by delivering about 6 million dollars to Musullulu which was destined for further trafficking, in the period from the spring of 1981 until the beginning of 1983, in Zurich and Lugano.

2. VITO PALAZZOLO

guilty of the aggravated violation of the Federal Law on narcotics as co-author, for having directly or as an intermediary financed the illegal trafficking of narcotics, in having delivered 6 million dollars that had been taken delivery of in the USA, hidden and transferred to Switzerland, and converted into 200 kg of gold to hand over to drug traffickers, as financial instruments destined for further trafficking in narcotics, after September 1982.

3. FRANCO DELLA TORRE
guilty of the aggravated violation of the Federal Law on narcotics as co-author, for having directly or as an intermediary financed the illegal trafficking of narcotics, in having delivered 6 million dollars that had been taken delivery of in the USA, hidden and transferred to Switzerland, and converted into 200 kg of gold to hand over to drug traffickers, as financial instruments destined for further trafficking in narcotics, after September 1982.
4. ENRICO ROSSINI
is acquitted on all charges.
5. PAUL EDUARD WARIDEL, VITO PALAZZOLO and FRANCO DELLA TORRE
are acquitted on all other charges.

Consequently, in the application of the relative penalties, which have recognised that Paul Eduard Waridel had a criminal record, and that Vito Palazzolo had acted in a state of serious anguish after September 1982

THE COURT
SENTENCES

1. PAUL WARIDEL to:
 - thirteen years imprisonment, from which the precautionary detention period served from 28 April 1985 is to be deducted
 - a fine of 150.000 (one hundred fifty thousand) francs.
2. VITO PALAZZOLO
 - three years imprisonment, from which the precautionary detention period served from 14 November 1984 is to be deducted
 - a ten year expulsion period from Switzerland
 - a fine of 20.000 (twenty thousand) francs.
3. FRANCO DELLA TORRE
 - two years imprisonment, from which the precautionary detention period served from 14 November 1984 until 21 March 1985 is to be deducted
 - a fine of 10.000 (ten thousand) francs.

4. WARIDEL, PALAZZOLO and DELLA TORRE together, to the payment of judicial taxes of 15.000 (fifteen thousand) francs, and legal costs in the measure of 6/10 by Waridel, 2/10 by Palazzolo and 1/10 by Della Torre, with the remaining one tenth carried by the State.

The Parties have been informed of their right to appeal through the Supreme Court of Appeal, and to have the criminal charges reviewed within ten days from the notification of the complete judgment.

SCHEDULE OF EXPENSES

Judicial tax	fr	15.000.00
Expenses for preliminary investigation	fr	13.326.25
Expenses for Chambers	fr	2.927.10
Witnesses	fr	577.60
Photocopies, telex, interpreters, binding of sentence		
Postal, telephone costs, various	fr	2.018.00
Block stamping	fr.	<u>30,00</u>
Total	fr	33.878.95
Fines: payable by Waridel	fr	150.000.00
Payable by Palazzolo	fr	20.000.00
Payable by Della Torre	fr	<u>10.000.00</u>
Total	fr	213.878.95
Court appointed defence counsel Attorney Renzo Galfetti for Della Torre	fr	<u>43.315.00</u>
Total	fr	257.193.95
		=====

Breakdown :

Portion payable by Paul Waridel

6/10 of judicial tax and costs	fr	20.327.40
Fine	fr	<u>150.000.00</u>
Total	fr	170.327.40
		=====

Portion payable by Vito Palazzolo

2/10 of judicial tax and costs	fr	6.775.80
Fine	fr	<u>20.000.00</u>
Total	fr	26.775.80
		=====

Portion payable by Della Torre

1/10 of judicial tax and costs	fr	3.387.90
Fine	fr	10.000.00
Court appointed defence counsel	fr	<u>43.315.00</u>
Total	fr	56.702.90
		=====

Portion payable by the State

1/10 of judicial tax and costs	fr	3.387.90
		=====

Notification:

- Paul Eduard Waridel, c/o Canton penitentiary, Lugano;
- Vito Palazzolo, c/o Canton penitentiary, Lugano;
- Franco Della Torre, Via Guisan, 6828 Balerna;
- Enrico Rossini, 13 Via Quiete, 6962 Viganello;
- Attorney Roberto Macconi, 6 Via Ploda, Lugano
- Attorney Mario Pistizzi, 27 Via Balestra, Lugano;
- Attorney Renzo Galfetti, 1 Via Valdani, Chiasso;
- Attorney Daniele Timbali, 7 Piazza Cioccaro, Lugano;
- Public Prosecutor Paolo Bernasconi, Lugano;
- Public Prosecutor, Bellinzona;
- Police representative, Lugano;
- Commander of Canton Police, Bellinzona
- Department of Justice, Bellinzona;
- Canton penitentiary offices, Lugano;
- Judicial traffic offices, Camorino;
- Public Prosecutor of the Confederation, Berne;
- Central Swiss Police office, Narcotics Unit, Berne.

FOR THE SUPREME CRIMINAL COURT OF APPEAL

The Judge President

[signed]

the Registrar

[signed]

[Round stamp of the Supreme Criminal Court of Appeal – Ticino]

[INDEX PAGES FOLLOWS]

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[Right margin: Hearing in Chambers on 10.4.89]

[JUDGMENT NO. 972]

[GENERAL REGISTER NO. 5131/8]

[SUPREME COURT OF APPEAL, COPIES' OFFICE. One certified copy issued to Mr Angelucci, for Lire 24.000. 20 March 1990. Signed: the Registrar]

[SUPREME COURT OF APPEAL, COPIES' OFFICE. One certified copy issued to Mr Angelucci, for Lire 28.000. 20 March 1992. Signed: the Registrar]

[Revenue stamps cancelled]

[Page 1 - [SUPREME COURT OF APPEAL, COPIES' OFFICE. One certified copy issued to Mr Angelucci, for Euro 1,55 3 April 2003. Signed: the Registrar]

REPUBLIC OF ITALY
IN THE NAME OF THE ITALIAN PEOPLE
THE SUPREME COURT OF APPEAL
FIRST CRIMINAL SECTION

Consisting of the following:

- Dr Corrado Carnevole	Judge President
- Dr Stanislavo Sibilica	Judge
- Dr Francesco Pintus	Judge
- Dr Umberto Toscani	Judge
- Dr Umberto Feliciangeli	Judge

handed down the following judgment, in the application made by: VITO ROBERTO PALAZZOLO, born in Terrasini on 31/7/1947, against the warrant of arrest no. 94/88 reg. m.c. issued by the Judge in the preliminary investigations at the Court of Palermo on 28.3.88;

Having heard the report made by Judge Feliciangeli;

Having read the conclusions of the Prosecution, in which the "Supreme Court of Appeal is asked to cancel the warrant of arrest that forms the subject of this application, without delay."

Having considered in fact and in law:

1. Under the above warrant of arrest, issued against Vito Roberto Palazzolo, accused of the premeditated murder of Agostino Badalamenti, which was committed in Solingen (Federal German Republic) on 20.2.84, the Judge responsible for the preliminary investigations held that serious elements of proof existed for collusion, on the basis of the following considerations:
 - a) The reason for the murder had been identified as a vendetta carried out by the “winning” Mafia family (headed by Luciano Leggio and Salvatore Riina) against the victim, confirmed by the way the crime was committed (victim’s face slashed, unequivocal sign of Mafia vendetta), and the fact that Badalamenti belonged to the “losing family”, headed by Gaetano Badalamenti;
 - b) a gun was found at the crime scene, which was used in the murder, and identified as belonging to Antonio Ventimiglia, the bodyguard and “factotum” of Palazzolo, resident in Switzerland and linked to the “winning family” (specifically to Riina, and Antonino Madonia, his business partner, who had been living in West Germany for some time, and to Antonino Rotolo, one of the men close to Pippo Calò, who was also resident at the time in West Germany). Palazzolo was actively involved in the trafficking of heroin for the Mafia organisation, and the money laundering of the profits, thanks to his residency in Switzerland, and his “professional” business attitude;
 - c) On the 7.10.86, Franco Oliveri told the Judge that he had learnt from Palazzolo (with whom he had been detained in Switzerland, where he had gained his confidence), that the crime was carried out in the context of the Mafia strategy to eliminate the leading members of Gaetano Badalamenti’s “family”, and that Palazzolo himself had given Ventimiglia permission to lend his firearm to two young men from Sicily, who had come specifically from Sicily to kill Agostino Badalamenti.
2. The accused had lodged an appeal against the warrant of arrest, in terms of section 3 of article 263 bis of the Criminal Procedure Code (last amended by law no. 330 dated 5.8.88), stating that it was invalid due to flaws in the motivation, which was set out in the appeal application and the additional statements.
3. The appeal must be accepted, given that the motivation for the warrant of arrest is invalidated by the illogical, inconsistent content and distortion of the facts.

- 3a. The reason that was identified, and the involvement of Ventimiglia in the crime (certainly a serious element of proof in “generalities”, which would seem to have been strengthened by the statements made by witnesses cautioned by the investigating German Authorities), have probatory relevance in relation to Palazzolo in terms of his dual link to the organisation – in the role of principal, and to Ventimiglia, who was identified as a member as stated above.

However, these probatory elements do not go beyond the threshold of “generalities”, because the connection from Ventimiglia to Palazzolo is ambiguous, and for this reason does not allow one to logically solve (even if only on the level of evaluating the probatory elements, which must however have specific relevance) the intricate ambiguous connections in the case, when they are not corroborated by other elements.

The relationship of trust between Palazzolo- Ventimiglia, which manifests itself in a number of different business-criminal activities of various types, in fact involves the former in the specific crime only in terms of the generalised possibility, rather than in context where the victim was reached by assassins sent directly from Sicily, and therefore operating on a mandate from the “leaders”, which would quite plausibly completely disregard Palazzolo.

- 3b. On the other hand, the relationship of trust in relation to Oliveri, whose reliability was considered in the sense of his connections arising while he was in jail with Palazzolo, and ignoring any other decisive component in this type of evaluation, has made no specific contribution whatsoever to the probatory elements against the accused. They have in fact excluded complicit knowledge on Palazzolo’s part in the crime ascribed to him, and are in fact limited to attributing the accused’s consent that Ventimiglia’s gun be put at the disposal of the two sent from Sicily for a “job”, of which he was totally ignorant regarding the details, and had been told nothing about.

The reason for the mandate, even though referring verbatim only to the consent for the use of the firearm, clearly alludes (and this is where the facts are distorted) to the extension of the consent to the murder. However, the text of Olivier’s statement, in the pertinent section, following the part of the statement that the reason stated had been reported, between inverted commas, as direct speech from the deponent, who stated: “I specifically note” (Palazzolo) “that two young men came to Switzerland, whose names I was not given, nor did I obviously ask for their names – and they asked him for a firearm,

saying that they had a job to do, without giving any further details. He was surprised that they did not have a firearm with them, but anyway, gave Antonio Ventimiglia permission to give them his firearm”.

It is certainly possible to guess that Oliveri wanted to allude to more than he was actually saying, but it is just as certain that the specific nature of the generalised probatory elements cannot be substantiated through suppositions.

FOR THIS REASON

The Court cancels the warrant of arrest against Vito Roberto Palazzolo, issued by the Judge in Palermo in the preliminary investigations on the 28.3.88.

Thus decided on 10.4.89.

The Judge President – signed

The Judge – signed

[Stamp: Filed with the Registrar on 17 April 1989. Signed: Director of the Section – Carlo Navacci]
