



REPUBLIC OF ITALY
IN THE NAME OF THE ITALIAN PEOPLE

ORDINARY COURT OF MILAN
CRIMINAL SECTION

Judgement No. 2946 of 9 March 2009
Registered with the Clerk's Office on 3 June 2009

7th Criminal Section

formed by the Magistrates:

Judge Elena Pulici

Has rendered the following

JUDGEMENT

In the criminal proceeding against

- 1) B.P.F., free, present;
- 2) Z.A., free, absent;
- 3) L.N., free, absent
- 4) F.F., free, absent

CHARGED WITH

B.P.F.

a) the criminal offence laid down and punished by Articles 81, second paragraph, 648 of the criminal code, for having through several actions carrying out a single criminal plan, for the purpose of procuring a profit to himself or to third persons, purchased or in any case received from persons currently unknown the following fake paintings:

- tempera on canvas, 65 x 47.5 cm, *Natura morta con frutta su un tavolo* ("Still Life with Fruit on a Table"), signed g. De Chirico centre right of the painting;*

- oil on canvas, 37 x 46 cm, *Archeologi in riva al mare* ("Archaeologists on the Seashore"), signed g. De Chirico on the right in the middle of the painting year 1926

- oil on canvas, 47.5 x 65 cm, *Natura morta con paesaggio (vita silente nel paesaggio)* ("Still Life with Landscape [Silent Life in the Landscape]"), signed g. De Chirico on the right towards the middle of the painting, undated;

- oil on cardboard, 29.20 x 39.5 cm, *Natura morta con frutta e ortaggi contro il cielo* ("Still Life with Fruit and Vegetables against the Sky"), 1922, signed Giorgio De Chirico;

- oil on canvassed cardboard, 31.8 x 39.3 cm, *Cavalli, cavalieri e tempietto (Dioscuoro)* ("Horses, Horsemen, and Small Temple [Dioscuoro]"), 1932, signed Giorgio De Chirico.

Committed in Milan prior to and around June 2003, date of ascertainment

* Painting cancelled from the indictment at the hearing of 13 June 2007 being a mere copy of painting No. 3.

b) the criminal offence laid down and punished by Articles 81 second paragraph of the criminal code, 127, paragraph 1 letter b), Legislative Decree No. 490 of 29 October 1999 (now Article 178, paragraph 1 letter b), Legislative Decree No. 42 of 22 January 2004), for holding for the purpose of trading or in any case putting into circulation through sale, as authentic, the fake paintings indicated under point a).

Committed in Milan prior to and around June 2003, data of ascertainment

Z.A.:

c) the criminal offence laid down and punished by Articles 81 second paragraph, 648 of the criminal code, for purchasing or in any way receiving from persons currently unknown through several actions carrying out a single criminal plan, for the purpose of procuring a profit to himself or to other persons, the following fake paintings:

- oil on canvas painting, 61 x 50 cm, *Les Chevaux* ("The Horses"), 1927, signed G. De Chirico;

- tempera on paper, 57.5 x 47 cm, *Cheveaux devant la mer* ("Horses by the Seashore"), signed G. De Chirico bottom right of the painting.

Committed in Milan prior to and around June 2003, date of ascertainment

d) the criminal offence laid down and punished by Articles 81 second paragraph of the criminal code, 127, paragraph 1 letter b), Legislative Decree No. 490 of 29 October 1999 (now Article 178, paragraph 1 letter b), Legislative Decree No. 42 of 22 January 2004), for holding for the purpose of trading or in any way putting into circulation, as authentic, the fake paintings indicated in point c).

Committed in Milan prior to and around June 2003, date of ascertainment

L.N.:

e) the criminal offence laid down and punished by Article 648 of the criminal code, for purchasing or in any way receiving from an unidentified person in his capacity of gallerist and art consultant at the Gallery ... in Milan, for the purpose of procuring a profit to himself or to other persons, the mixed media painting on velum pasteboard, 65 x 48 cm, "Archaeologists", signed G. De Chirico and dated 1927.

Committed in Milan prior to and around March 2003, date of ascertainment

F.F.:

f) the criminal offence laid down and punished by Article 378 of the criminal code, for acting as owner of the auction house ...in ..., after having committed the criminal offence of receiving and trading a fake painting (oil on canvassed cardboard, 31.8 x 39.3 cm), "Horses, Horsemen and Small Temple (Dioscuro)" 1932, signed Giorgio De Chirico, he helped B.P.F. to elude the investigations providing to the Judicial Police delegated by the Public Prosecutor of Venice copy of the letter apparently dated 20 November 1995 and apparently signed by P. [B *ed.*] to be considered not authentic, through which the latter asked him to send the above mentioned painting to the Authentication Committee which was going to meet in the coming month of December, while, on the contrary, the painting had been already presented at the auction held in May 1995 at his auction house.

Committed in Prato in May 2003 and connected pursuant to Article 12, letter c) of the code of criminal proceedings with the criminal offences referred to in paragraphs a) and b) committed in Milan.

Public Prosecutor's final pleadings

For B.: non-application of the second paragraph of Article 648 of the criminal code, continuance of crime, 3 years and 6 months of imprisonment, fine of Euro 9,000.

For Z.: recidivism excluded, continuance of crime, 3 years and 4 months of imprisonment, fine of Euro 8,000.

For L.: 3 years of imprisonment, fine of Euro 7,000.

For F.: 1 year of imprisonment.

Civil Plaintiff's final pleadings

Conviction of the defendants in accordance with justice.

Final pleadings of defendants' lawyers

- Avv. [Attorney at law] L. on behalf of Z.: acquittal from both charges due to the absence of the psychological element of the crime pursuant to Article 530 paragraph 1 and paragraph 2. On a subordinate basis he requests the re-classification of the crime from dealing in fake works to unwary purchase of goods. On a further subordinate basis he requests to release him from the proceeding pursuant to Article 531 paragraph 1 due to the lapse of the statute of limitations.

He requests the rejection of the request of the Civil Plaintiff to publish the judgement. On a further subordinate basis the generic extenuating circumstances minimum sentence, pardon, substitution of imprisonment with a monetary fine.

- Avv. [Attorney at law] L. on behalf of F.: acquittal for not having committed the crime.

- Avv. [Attorney at law] M.B. on behalf of L.: acquittal for non-existence of the criminal action and on a subordinate basis pursuant to Article 530 paragraph 2. On a subordinate basis re-classification of the crime pursuant to Article 712 of the criminal code and release from the proceeding for the lapse of the statute of limitations. On a further subordinate basis generic extenuating circumstances and minimum penalty.

- Avv. [Attorney at law] L. on behalf of B.: acquittal due to the non-existence of the criminal action in respect of "Horses, Horsemen and Small Temple" and for "Archaeologists on the Seashore"; in respect of still life paintings acquittal due to the absence of the psychological element. On a subordinate basis reduction of the charge into unwary purchase of goods.

REASONS OF THE DECISION

The defendants have been directly summoned before the Court and are under trial charged with the criminal offences attributed to each of them in the count of indictment. Within the preliminary time limit set forth by law FONDAZIONE DE CHIRICO entered an appearance as civil plaintiff. During the trial inquiry all the witnesses admitted and authorised pursuant to the order deposited in the Court's files have been examined and the seizure's minutes, the preliminary testimonial information utilised for the objections, as well as the plentiful documentation filed by the defendants' lawyers and the civil plaintiff, have been acquired.

The Court appointed GIOVANNA DALLA CHIESA and ESTER COEN as experts for the Court subsequently joined by CECILIA BERNARDINI, whose appointment was necessary for the pictorial investigations made on the contested paintings in support of the experts appointed by the Court.

The parties were authorised to appoint their experts who have been subsequently heard during the trial. The defendants underwent the requested examination.

Pursuant to Article 507 of the code of criminal proceedings the Court ordered the extension of the judicial expertise on certain paintings on the basis of the declarations made during the trial by the Court appointed experts.

Once the trial inquiry was completed the Court declared it closed requesting the parties to make the relevant pleadings. The Public Prosecutor, the civil plaintiff and the defendants' lawyers presented their final pleadings as indicated in the premises.

As to the commission by the defendants, each for the relevant charges, of the actions indicated as criminal offences in the summons to appear in court, the Court deems to recognise the criminal liability being the evidence acquired in the file of the utmost relevance, coherence and consistency in respect of the Public Prosecutor's reconstruction as described in the charges for the reasons indicated hereinbelow.

The reasonings for the convictions will be described for each painting in respect of which the witnesses heard and the reports of the experts on record will be analysed.

Point a) of the indictment*

In the Court's opinion it is, however, necessary to make a preliminary statement deriving from the declarations of Marshal SCABORO on the origin of the investigation. From the evidence acquired it results, in fact, that the investigation was autonomously started by the office of the Public Prosecutor in Mantua which, in order to seize a painting bearing the signature of Campigli, went to a certain ZOCCA who spontaneously delivered to the policemen delegated by the Public Prosecutor of Mantua also the DE CHIRICO paintings purchased by CINQUETTI and accompanied by the expertise of FAGIOLO DELL'ARCO.

Such paintings were "Archaeologists on the Seashore" and "Still Life with Fruit" (47.5 x 65 cm). The paintings were sent by the Tax Police to DE CHIRICO Foundation for the purpose of ascertaining their authenticity. The Foundation responded negatively with a first report signed by Professor DE SANNA as better described below for each painting. As to the other paintings referred to in the charges, it is the opinion of the Court that such paintings were totally unknown to the Foundation notwithstanding they were dated the 1920s/1930s, all accompanied by the expertise of Fagiolo DELL'ARCO with the exclusion of "Horses, Horsemen and Small Temple (Dioscuro)" which had the expertise of B. himself.

As to the charges against the defendant B. under point a) a series of circumstances which are identical for each contested painting and which support the criminal design concocted by the defendant for the purpose of carrying out the criminal actions ascribed to him represent a major evidence.

The trial inquiry has indisputably proved that: 1) all the paintings have always B. as first holder under various titles who would have acquired them from deceased persons/art dealers and for which he would not have kept any documentary evidence; 2) all are accompanied by the expertise of FAGIOLO DELL'ARCO, with the exception of the last contested painting which is accompanied by the expertise of B. notwithstanding that during those years (1995) the defendant was a member of the Foundation and therefore should have asked the Foundation to carry out the expertise for the paintings; 3) all the paintings have been displayed at minor exhibitions (e.g. Arezzo and Arona) for the purpose of creating a sort of pedigree for the purpose of facilitating their sale.

* In the body of the text, the titles of the artworks are translated in English. *Ed.*

(fig. 1) Natura morta con paesaggio (“Still Life with Landscape”), 47.5 x 65 cm

At the hearing of 13 June 2007 Marshal SCABORO reported that on 19 September 2002 they went, upon the instructions of the office of the Public Prosecutor in Mantua and as part of an investigation relating to a painting bearing Campigli’s signature, to the Gallery of a certain GIANFRANCO ZOCCA in Bussolengo (VR), Via Dell’Industria 21 to seize said painting.

At that time ZOCCA reported to the police officers that he purchased the Campigli painting from ALBERTO CINQUETTI from whom, as spontaneously declared by ZOCCA, he also purchased two paintings by DE CHIRICO specifically the still life painting referred to in the premises and the “Archaeologists on the Seashore” (*see minutes of the hearing of 13 June 2007 page 8*). Upon request of the police officers, ZOCCA showed the photographs of the two paintings and the documentation accompanying them, i.e. the historic-artistic dossiers, the so called “expertise” signed by Professor Fagiolo Dell’Arco dated 28 November 2000 for the “Still Life with Fruit” 47.5 x 65 cm and 9 October 2000 for “Archaeologists on the Seashore”.

As to the still life painting referred to in the premises, the investigations made by SCABORO permitted to ascertain that such painting was purchased by CINQUETTI, and prior to him by EVERARDO TRAZZI who in his turn had purchased it from the co-defendant L. who in his turn indicated the co-defendant B. as first purchaser (*see minutes of the hearing of 13 June 2007 page 15*). SCABORO reported that all the photographs pertaining to this painting, as well as the expertise signed by Fagiolo Dell’Arco seized from ZOCCA, were presented to the De CHIRICO Foundation in the person of the President, Professor PICOZZA, who, together with Professor DE SANNA, analysed the painting and drafted a report to the Tax Police on 12 September 2002 according to which the painting was unquestionably a fake (*see minutes of the hearing of 11 July 2007 page 4*).

PICOZZA, heard during the trial, confirmed the content of the report originally drafted with DE SANNA, as to the absolute and unquestionable non-authenticity of such painting and reported that he saw the painting at an exhibition organised by FAGIOLO DELL’ARCO in Arona in July 2001 long before it was sent by the Tax Police to the Foundation. In addition PICOZZA declared during his testimony that he went to such exhibition twice together with DE SANNA on 16 August 2001 and in September 2001 and during such visits the witness and DE SANNA noticed several figurative pictorial components in the painting which generated doubts to them as to the possibility of ascribing the painting to the Master DE CHIRICO. The subsequent investigations made proved that the painting was also brought to the Arezzo exhibition and that the catalogue of such exhibition deposited in the Court’s files indicated that the painting was part of the collection of the TRISSINO family. ELENA TRISSINO of the Trissino family was heard during the trial and confirmed what she had said to the Tax Police as preliminary testimonial information, i.e. that such painting did not belong to her family’s collection (*see minutes of the hearing of 13 June 2007 page 17*).

Shortly thereafter such painting was received by the Foundation with the request of the Tax Police to make an accurate and precise analysis regarding the authenticity of the painting “Still Life with Fruit on a Table” 47.5 x 65 cm seized from ZOCCA.

The indications by PICOZZA of the exhibitions (in Arezzo and Arona) where such painting was displayed allowed SCABORO to make further investigations through which he ascertained that both the

exhibitions had been prepared and organised by FAGIOLO DELL'ARCO. As to the marketing of the work, the witnesses examined during the trial confirmed the basis for the charges of the Public Prosecutor as to the purchasers of such works, with TRAZZI having confirmed to have purchased the works with the expertise of FAGIOLO DELL'ARCO from the co-defendant L. at his gallery in Milan and to have subsequently sold them to CINQUETTI who then sold them to ZOCCA (*see minutes of the hearing of 21 January 2008 page 13*). He also declared at trial that he also bought from L. the work "Archaeologist on the Seashore" and that he paid them approximately Lit. one billion subsequently selling them to CINQUETTI for Lit. one billion and 100 million. He also confirmed that the expertise of FAGIOLO DELL'ARCO represented a guarantee of a safe sale considering that he was one of the major art experts at the time, notwithstanding that TRAZZI declared that at that time "the Foundation existed even then but the expertise of FAGIOLO DELL'ARCO was sufficient for me. For those who do this job what is important is the provenance, that's the thing" (*see minutes of the hearing of 21 January 2008 page 35*).

TRAZZI declared also that when the first seizures of the works relevant to this proceeding were made he personally went to the persons who were the last holders of the paintings in order to take back the above mentioned painting and return it to B. with the criminal intent of withdrawing it from the market.

Hence, such declarations are to be confronted with specific circumstances ascertained during the trial, i.e.: 1) the witness knew the co-defendants L., Z. and B. for more than twenty years and he had regular business dealings with them (*see minutes of the hearing of 21 January 2008 page 30*); 2) the painting came from B. as first seller who bought it from an art dealer in Rome named SPROVIERI who is now deceased; 3) the Foundation was intentionally excluded from any assessment of such work – as well as of all the other works referred to in the charges – for the sole purpose of leaving it unaware of the criminal trade of unquestionably false works with the expertise of a person who, although considered a major historian, was indeed under investigation of the Tax Police for similar crimes (*see Marshal SCABORO's declarations rendered at the hearing of 13 June 2007 page 18*) and who had already passed away at the time when the investigation started shortly after the issue of certain expertises – 11 May 2002 –, and consequently was not in the position to confirm or deny whatsoever.

The decision to use a person other than the DE CHIRICO Foundation certainly represents an essential element for the positive result of the criminal plan concocted by the defendants.

Such interpretation is confirmed by the circumstance that as soon as they learnt about the seizures of certain works the defendants immediately started to withdraw from the market "dangerous" paintings that were unquestionably fake through a detailed and diligent exchange of information between the witnesses examined at trial and the defendants about what was happening (i.e. the seizures made by the Tax Police) for the sole purpose of justifying their actions.¹

During his examination B. declared that he bought said work in October 2000 from a certain art dealer named SPROVIERI of Rome together with another work relevant to this proceeding, i.e.

¹ With regard to this, the Court observes that the criminal plan described above which unquestionably undermines the credibility of the witness TRAZZI finds precise confirmation with respect to the other smaller still life painting ("Still Life with Fruit and Vegetables against the Sky", 29.20 x 39.5 cm) in respect of which TRAZZI declared at trial that he went to B.'s house in order to take back the incriminated painting and to obtain a Boeri and a Manzoni in exchange.

“Archaeologists on the Seashore”, which had already the expertise of FAGIOLO DELL’ARCO. The fact that the expertise allegedly issued by the deceased critic as reported by B. himself during the trial examination, confirms the charges of the Public Prosecutor. The defendant declared, in fact, that he bought the work “Archaeologists” from SPROVIERI which already had such expertise while as to “Still Life” 67.5 x 45 cm he said *verbatim*. “I asked Fagiolo for it, Fagiolo told me that he was very busy for the Arezzo exhibition and that he would have sent it directly to the person I would have indicated to him” (*see minutes of the hearing of 5 May 2008 page 13*). Hence, in the opinion of this Court B. has admitted that the expertise although bearing the signature of FAGIOLO DELL’ARCO was not originating from the critic but from a third person who the defendant would not indicate to him at the time, being such circumstance of relevance to prove that B. was aware of the non-authenticity of the work for which he needed an expertise (falsely) signed by FAGIOLO DELL’ARCO in order to present it at exhibitions and also sell it at very high prices as admitted by the defendant (Lit. 280 million).

It should be noted that, with regard to the procedure followed for the purchase of such work, B.’s defence was not able to support it with any witness or documentary evidence, such circumstance undermining the legitimacy and likelihood of the reconstruction of the events and, on the contrary, confirms the charges of the Public Prosecutor relating to the defendant’s behaviour as an acknowledged expert of DE CHIRICO’s work (of the 1940s). In this context, the circumstance that B. was not able to provide reliable information regarding the origin of “Still Life with Landscape” 67.5 x 45 cm (as well as of other works referred to in the indictment) constitutes conclusive evidence; from such circumstance according to a steadfast interpretation of the Supreme Court, it is possible to ascertain the psychological element of the attributed crime of dealing in fake works considering that the insufficient indication of the origin of the painting should, in the opinion of this Court, reveal the intention of concealment, which may only be explained by a purchase made in bad faith (see Supreme Court division 2, No. 2436, 13 March 1997). These were, in fact, the circumstances under which the defendant acted, who, contemptuous of the opinion of the Foundation despite being a member of the authentication committee until 1997, decided 1) to buy a work without any expertise, 2) not to refer to the Foundation (although he was in a position to know about it having been a member of the committee and a leading expert of DE CHIRICO for years) but rather to request an expertise from FAGIOLO DELL’ARCO, finally 3) at the time would not – further to the latter’s refusal – indicate the person to send the work to for the expertise, while the same work was then found in the office of ZOCCA where it was seized accompanied by an expertise by FAGIOLO DELL’ARCO dated 18 November 2000.

The evidence of the unquestionable non-authenticity of the work is based primarily on the declarations of PICOZZA, on the results of the expertise made by DE SANNA and finally on the results of the expertise made by the experts appointed by the Court which is deposited in the Court’s files.

In addition, even B.’s defence, in the person of the expert Professor CAVALLO, confirmed the results of the expertise of the Court’s experts with the defence’s expert having also recognised in his report, as well as during his examination, that the work could not be attributed to DE CHIRICO and that FAGIOLO DELL’ARCO had certainly made a gross mistake in his expertise (*see minutes of the hearing of 16 February 2009 page 40 and followings*). At this point B.’s knowledge of the non-authen-

ticity of the work is consistently proven and is not based on mere circumstantial evidence as “he could not be unaware” since even Professor CAVALLO, whose knowledge of DE CHRICO is certainly less extensive than that of the defendant, has fairly easily ascertained the non-authenticity of the painting.

In other words, it appears absolutely unlikely to this Court that B., notwithstanding the remarkable differences between the work and the original works made by Master DE CHRICO, did not notice such differences but rather put the work on the market without being aware of its non-authenticity. Hence, the assumption of the defence does not appear to be at all credible being based on a consideration which is *in re ipsa* non-admittable, i.e. that the defendant is not a leading expert of DE CHRICO and, as a consequence, he may have incurred in a non-voluntary error in considering authentic works which were unquestionably fake. On the contrary, in the opinion of this Court, the experience and knowledge of the defendant B. of DE CHRICO’s works is unquestionable (in the light of all the documents and the testimonies deposited in the Court’s files²) and therefore the defence’s assumption relating to the unawareness of the non-authenticity of the works received by the defendant which he permitted to circulate at indubitably high prices, loses its legal relevance as well as its credibility. The conduct of the defendant B. constitutes therefore not only the criminal offence of dealing in fake works but also that of putting fake art works into circulation as referred to in point b).

In addition, in this Court’s opinion, there are justified reasons for the transfer of the documentation relating to the testimony of EVERARDO TRAZZI to the office of the Public Prosecutor for matters falling under its competence.

(fig. 2) *Natura morta con frutta e ortaggi contro il cielo* (“Still Life with Fruit and Vegetables against the Sky”), 29 x 35 cm

With reference to this work, it was the Foundation which signalled it to the Tax Police on 17 September 2002, having DE SANNA indicated the painting displayed at the exhibition in Arezzo evidencing serious doubts on its authenticity despite being accompanied by the usual expertise signed by FAGIOLO DELL’ARCO, as she deemed, on the contrary, that the work was apparently attributable to the author (forger) of the other still life seized from ZOCCA.

During the trial inquiry, it was ascertained that such still life had already been sent to the Foundation by the auction house Christie’s for verification.

The circumstance that the work was on display at the exhibition in Arezzo is most relevant as it demonstrated that, through the presentation at the exhibition of one or more works, such works were accredited as reported by Marshal SCABORO “we know well that after the exhibition the catalogues remain and once the catalogue is printed it remains as document and it is often used for the purpose of confirming the authenticity of the work. Namely the work is put on the market saying that it was displayed in one or more exhibitions therefore increasing its value and at the same time the credibility as to its authenticity is increased” (see page 23 transcriptions of the hearing of 13 June 2007). Marshal SCABORO reported at trial that the investigations of the Tax Police on the origin of

² PICOZZA declared during his testimony that he was surprised by the authentication of certain works and by the origination of other works from B.

the painting allowed to identify a certain MAZZOLENI of the Galleria Gissi in Turin as the owner of the work until July 2000; in July 2001, the painting was already purchased by Galleria Marescalchi in Bologna and, finally, in March 2002 it was purchased by TRAZZI from B. with the expertise of Fagiolo. The work came directly from B. and was initially sold to Z. This person reported during his examination at the hearing of 6 March 2008 that he subsequently delivered the work to MAZZOLENI of Galleria Gissi in Turin for him to see it and he, in turn, doubting the authenticity of the painting, sent it to the DE CHIRICO Foundation for examination which gave a negative response. Consequently, MAZZOLENI demanded to return the work to Z. In particular at the hearing of 13 June 2007 the witness MAZZOLENI reported a remarkable circumstance, i.e. that Z., in response to his request to take the work back, due to the doubts raised by the Foundation, was not surprised of this circumstance, but simply requested him to send the work directly to the exhibition in Arezzo to be exhibited (the exhibition organised by FAGIOLO DELL'ARCO).

At the end of the exhibition (probably because it remained unsold), the work was returned to B. who subsequently transferred it directly to TRAZZI in April 2002 (*transcriptions of the hearing of 21 January 2008 page 21/25*). TRAZZI reported that he was familiar with such work and he had received it directly from B. proposing an exchange with two other paintings (a Boetti and a Manzoni): the work was accompanied by the expertise by Fagiolo and was purchased in March/April 2002. TRAZZI then transferred the work to a certain PLESSI of Reggio Emilia. Subsequently, as soon as he learnt of the seizures made of DE CHIRICO works originating from B., he went immediately to PLESSI, he retrieved the work and delivered it to B., obtaining a Boetti and a Manzoni in exchange.

This work was also subject to identical transfers from the first holder to the last holder B./Z./MAZZOLENI and then again Z./B. and finally TRAZZI.

In this respect, when B. put the work on the market giving it to Z., he was aware of the non-authenticity of the work as it had been sent to the Foundation by the auction house Christie's as well as by MAZZOLENI himself and on each occasion the work was considered not authentic. Nevertheless, B. although he was aware of the non-authenticity of the work, put it on the market committing, therefore, the criminal offence referred to in points a) and b) of the indictment. The fact that the work is a fake seems unquestionably confirmed not only by the results of the expert reports deposited in the Court's files and the reports made by DE SANNA as well as by the declarations of PICOZZA but also by the declarations of the defence's expert CAVALLO who rules out that the work can be attributed to the artist but is rather attributable to the circle of fellow painters who knew DE CHIRICO and in particular to a certain SCILTIAN.

From the documents admitted in evidence and deposited in the Court's files it appears that DE CHIRICO and SCILTIAN painted together only between the late 1930s and the early 1940s and not during the period in which such painting is intended to be attributed. Not only, the results of the expert report made by GNUDI deposited in the Court's files and relating to the use of white paints (anatase white was produced until 1939 and definitively replaced by titanium white in 1945) and of blue paints with phthalocyanine subsequent to 1935 (page 22 of the expert report: file 302, sample 2, layer C) have found in this work yellow ochre, coal, chalk, white of barium, anatase (the type produced until 1939) and some rutile (the white of titanium with anatase structure has been definitively

replaced by white of titanium with rutile structure since 1945) (*see pages 40/41 of Gnudi's expert report*). As a consequence the painting was certainly and unquestionably painted after 1945, at a time subsequent to the period during which DE CHIRICO and SCILTIAN worked together on a lot of works. Hence, the work is to be considered a fake as even from this standpoint the conclusions of the witness CAVALLO as the defence's expert are not confirmed in any way, such conclusions are indeed denied by the results of the expert reports obtained during the trial.

Hence, with regard to both the still lifes under point a) of the indictment B.'s knowledge of their non-authenticity, which even his defence's expert CAVALLO did not question, is to be considered proven and as a result the criminal offences of dealing in and putting into circulation fake works under points a) e b) of the indictment are to be considered committed.

(fig. 3)

Archeologi in riva al mare ("Archaeologists on the Seashore")

The work "Archaeologists on the Seashore", accompanied by the expertise signed by FAGIOLO DELL'ARCO, was bought by ZOCCA from a certain CINQUETTI who had received it, already accompanied by the expertise, from TRAZZI. Such person reported during his testimony that he had bought the work from the defendant L. at his Art Gallery... in January 2002. L. declared during his trial examination that he received the work from Z. who declared at the hearing of 6 March 2008 that he had received the work from B. already accompanied by FAGIOLO's expertise. Hence, the scheme is identical to that already seen for the other works as "Archaeologists on the Seashore" which also originated from the same circle of people, with the expertise of FAGIOLO DELL'ARCO. Furthermore, such painting was also displayed and published on occasion of the exhibition in Arona where it was analysed on the wall by PICOZZA. During his testimony PICOZZA pointed out that it was an unpublished work even though it was dated 1927, that neither the owner nor the person presenting the painting at the exhibition were known and that the work had never been published or displayed prior to the exhibition in Arona.

Furthermore, PICOZZA reported that such work was made with a technique of chiaroscuro pouncing creating a velum effect – never found in De Chirico's paintings and, in addition, the paint was even fresh. It is therefore a painting which, as reported by PICOZZA, does not reflect De Chirico's iconography, made from two other paintings of which one is "Mysterious archaeologist, mannequins: the day and the night". What is more: during his testimony PICOZZA pointed out that there was: "a matter of incorrect shadows and light and of proportions (inadequate) ... of colours that don't fit and a brush-stroke which is different from that of De Chirico. Also the signature appears uncertain, giving rise to many doubts".

The circumstance relating to the circulation of the work, regardless of the opinion of the Foundation even prior to the seizure, constitutes foremost evidence. In particular, L. reported during his examination at the hearing of 21 February 2008, that when the painting was displayed at the exhibition in Arona a prospective buyer interested in the purchase of the work asked him to confirm the authenticity of the painting (accompanied by Fagiolo's expertise) on behalf of the Foundation.

At this point L. decided to send the work to the Foundation not directly but through a person he knew, a certain Muciaccia, owner of an art gallery as well. This person subsequently communicated

in writing to L. that the work was not recognised as authentic by the Foundation. Nevertheless the work was illegally circulated.

Hence, as indicated above for the two still lifes, although the work was a fake whose authenticity had already been denied by the Foundation, it was put into circulation by B. who received the work from Z. who gave it back as a fake and sold again to TRAZZI by B., thus keeping it on the market although aware of the negative opinion of the Foundation. Certainly, therefore, the psychological element of the wilful conduct is present for the criminal offence of dealing in fake paintings as well as the criminal offence referred to in Article 127, letter b, of the Consolidated Act also with reference to such work.

(fig. 4) *Cavalli, cavalieri e tempietto (Dioscuoro)* (“Horses, Horsemen and Small Temple [Dioscuoro]”)

The painting was seized on 27 February 2003 by the Tax Police at the Art Gallery ... in Trieste, accompanied by the expertise signed by the defendant B. After the seizure the work was examined by Professor De Sanna who confirmed its non-authenticity.

Moreover the work was accompanied by a certificate of origin and authenticity by Professor B., in January 1996. It is worth mentioning the inconsistency of such expertise signed by B. given that at the time the defendant was still a member of the scientific committee of the De Chirico Foundation to which he certainly should have submitted the work in order to be archived. The failure to submit the work to the Foundation confirms the validity of the evidence acquired being certainly a strong indirect evidence of the wilful intention of B. to conceal the dealing to the Foundation which would never have registered the work due to its non-authenticity.

Nevertheless, the work was displayed at the exhibition in Palermo in October 2002/January 2003.

BORDONARO, as the person who organised the exhibition in Palermo (coordinated by Professor Calvesi), was therefore examined at the hearing of 21 October 2008. The witness declared that on the back of the work there was the declaration of origin from B. as guarantee of its authenticity which was then also indicated in the exhibition catalogue. In addition, BORDONARO reported that also PICOZZA and DE SANNA went to the exhibition and examined all the works without making any remarks at the time.

As to the origin of the work, the investigation pointed out that the work was put on auction at F. and bought there by an art gallerist of Bologna, a certain ANDRAGHETTI who then sold it to another art gallerist, a certain RIGATO DI CONEGLIANO. This person sold the painting to the art gallery ...in Trieste. A certain DORIGONI of Trento was identified during the trial as the first holder of the work from whom B. bought it through a certain GIANCARLO CAPPELLETTI.

At the hearing of 22 November 2007, ASTORRE ANDREGHETTI was examined and he declared that he had bought the work at an auction from in May 1995 paying over one hundred million lire and he resold it through his friend RIGATO to another person for Lit. 95 (or 100) million. Some years later, continued ANDREGHETTI, F. informed him that the painting was not authentic and that it would have been seized inviting him to send a registered letter in order to obtain a refund for the price paid, a circumstance that was confirmed by the witness. The witness examined at trial on 10 October 2007 confirmed the procedure used in the selling of the work.

He reported at trial that he had not bought such work but that he had heard about it from his friend DORIGONI who told him that a friend of his found the work in Germany and wanted to sell it. He decided therefore to introduce DORIGONI to B. to whom he showed a photo of the work: the defendant told him that, in his opinion, the work was fine. After that, according to CAPPELLETTI, B. and DORIGONI agreed on the sale of the work: “I believe that the work was bought by B., I was not present at the time of the sale, I can only report what I was told by Dorigoni. I believe that B. paid 40 million lire for the work. I don’t remember having received two million to be given to Dorigoni for the intermediation. When I then talked with Professor B. he said that the work had been authenticated by the Foundation and everything was in order” (see page 37 transcriptions of the hearing of 10 October 2007). And furthermore: “I don’t know who delivered the work to Dorigoni: he said that such person was a German but I don’t know I have never met him”.

PICOZZA confirmed during his testimony that he noticed the painting in Palermo at an exhibition curated by Calvesi and that De Sanna had immediately expressed the need to notify the painting to the Public Prosecutor’s office which was already investigating the work’s non-authenticity, the reasons for which, PICOZZA declared, were to be found in his and DE SANNA’s opinion in the proportions: “the back of the horse is far smaller than it should be compared to the front part (De Chirico could never have made such a mistake); the left horse’s tail blends with the shadow; the blanket which seems to be made of cardboard, is rigid; it is not clear where the leg and the hoofs are; the signature seems to have been repainted” (transcriptions of the hearing of 11 July 2007).

With reference to such work, PICOZZA then clarified that, on 21 December 1994, a photo of the work was sent to the Foundation by a German auction house (Villa Grisenbach) requesting a check of the work’s authenticity. Shortly after, on 30 December 1994, F. also sent a photo of the same painting to the Foundation for verification. The painting however, as reported by PICOZZA, never arrived to the committee for verification.

With reference to the painting B. declared that “in March/April 1995 I was a member of the Foundation’s committee for the authentications which comprised of me and Vastano. At that time I was contacted by Cappelletti who informed me that an antique dealer in Trento, Dorigoni, wanted to propose to me a De Chirico painting of which he obtained a colour photo which was submitted to me by Cappelletti and it was immediately clear that it was authentic even without any need to examine it” (see transcriptions of the hearing of 5 May 2008), such circumstance was indeed denied by DE SANNA and by the actions of the same defendant who never brought the painting to the Foundation. He also went on “According to what Dorigoni said to Cappelletti, the painting came from Germany and the purchaser bought it from a person trading with Czechoslovakia, a circumstance that convinced me as De Chirico had held an exhibition in Prague in 1935 and he had sold some paintings there. In that period, April 1995, there was tension in the Foundation between myself and Picozza and, therefore, after April no committee was convened until December”. B. also declared that the photo was brought by him to the Foundation and that he personally archived it, a circumstance that is indeed not supported by any evidence since there is no trace of the delivery of the work to the Foundation as reported by PICOZZA during his testimony.

He also declared at the hearing of 5 May 2008 that “Twenty days after having put the photo in

the Foundation archive, I put the painting at auction; I went to Verona, where I met with Dorigoni who arrived from Germany with the painting: Dorigoni then took the painting from the German person who also came with his car, he showed it to me and I took it and I paid him the agreed Lit. 40 million in cash, part in lire and another part in US dollars”.

At this point the witness FURST was examined as first “holder” of the work “Horses, Horsemen and Small Temple (Dioscuro)” subsequently purchased by B.

The witness during his examination appeared unquestionably unreliable and incoherent so that it was necessary, in the Court’s opinion, to send the relevant records to the Public Prosecutor’s office as to its competence for the criminal offence of perjury.

FURST reported at the hearing of 21 October 2008: “Dorigoni called me three or four years ago to tell me that there was a problem with such painting and I did not remember anything since it was so long ago. I had bought the painting in the late 1980s in Munich from an Hungarian or a Czechoslovak in Munich” under completely unlikely circumstances with the witness declaring “to have bought it on the street” (*see page 11 transcriptions of the hearing 21 October 2008*). Furthermore: “I paid 2/3,000 marks for it and have kept it at home for four or five years: then a person arrived, a merchant possibly but I don’t know, who told me that it was a De Chirico painting and that it had a high value, maybe 20/30 thousands of marks” (*see page 9 transcriptions*). “I met Dorigoni at the auctions where I used to go to buy and sell maybe in 1994 and he told me to inform him should I have found Italian works to sell”. DORIGONI, as soon as he saw the photo of the painting supposedly contacted an expert who confirmed the authenticity of the painting: “I sold the painting to Dorigoni who should have come with B. to Vipiteno but I am not sure that he was in the car since I didn’t see him. I knew that Dorigoni showed the painting to B. but I have never heard from him” (*see page 16 transcriptions*). At this point the Public Prosecutor objected to the witness during his testimony that he had rendered different preliminary testimonial information, i.e. that he was contacted by B. who assured him of the authenticity of the painting and who told him that he wanted to buy it.

After a couple of weeks, FURST reported at the trial hearing that he went to Brennero where he gave the painting to DORIGONI, paying for it in cash. Such circumstance is inconsistent with the preliminary testimonial information rendered by him during the investigations when he reported that he had not received any compensation for the intermediation from DORIGONI or B. since he had received it from the German owner. FURST contradicted himself during his trial examination when a written text of his dated 29 January 2006 was produced where it was indicated that “the sale occurred directly between me and B. to whom I personally delivered the painting”. Notwithstanding this he declared at trial: 1) that he did not know B. but he then recognised him in the courtroom and 2) that in any case he did not deliver the painting to him but to DORIGONI: “when I gave the painting to Dorigoni I thought that the person sitting in the car was B.; in Brennero I dealt only with Dorigoni, Dorigoni gave me 20 million lire” (*pages 32 and 35 transcriptions*).

Hence, the fact that the work was absolutely fake results not only from the statements of PICOZZA, and from De SANNA’s report but also from the report of the experts appointed by the Court deposited in the Court’s files. And indeed such non-authenticity appears unchallenged by the expla-

nations of the expert of B.'s defence which were weak and inconsistent – with regard to the layers of painting already noticed by PICOZZA and DE SANNA – characteristics confirmed by the expert although he considered them inconsistent for the purpose of determining the non-authenticity of the work. The fake work was consciously authenticated by B., displayed at the exhibition in Palermo and put into circulation so completing the wilful conduct of dealing in fake works and the criminal offence referred to in point b) of the indictment.

Points c) e d) of the indictment

(fig. 5)

Les chevaux (“The Horses”)

The person charged with dealing in and putting into circulation such painting is Z.A. who is to be deemed, without doubt, guilty of the charges ascribed to him for the following reasons.

Through a communication dated October 2002, PICOZZA and DE SANNA reported to the Tax Police the existence of another suspected work, i.e. “The Horses”, which was also accompanied by the expertise of FAGIOLO DELL'ARCO, was seized from ITALO SPAGNA of Galleria Marescalchi in Bologna. As to the origin, SPAGNA, heard at the hearing of 2 December 2008, reported to have received it from Z. in May 2001 for a value of 230/250 million lire, paying Lit. 120 million by cheque and the remaining amount through exchanges. SPAGNA arranged for the publication of the painting in a review called *Arte* and the painting was subsequently displayed at the exhibition of Galleria Marescalchi where it was seized in November 2002.

He also declared that he did not have any doubt as to the authenticity of the painting due to the expertise of FAGIOLO DELL'ARCO (*see page 13 hearing of 2 December 2008*).

A set of circumstances, representing strong evidence for the guiltiness of the defendant Z., occurred immediately prior to the selling of the work to SPAGNA which are in strong contrast with the axiom of the defence of the prescription of the crime.

In particular, the Court points out that the work was in fact displayed in Turin at Galleria Gissi of MAZZOLENI who, further to the remarks made by PICOZZA and DE SANNA as to its non-authenticity, gave it back to Z. at the beginning of 2001.

In such period, Z. became aware of the non-authenticity of the work, so to incur in the criminal offence of dealing in fake works and notwithstanding he transferred it to SPAGNA in May 2001, when the criminal offence of dealing in and putting into circulation fake works is to be deemed committed.

(fig. 6)

Les chevaux devant la mer (“Horses by the Seashore”)

Once again, for this criminal offence the person charged with dealing in and putting into circulation fake works is Z. “Horses by the Seashore” was seized from VECCHIATO on 1 April 2003 further to the opinion of falsity and extremely poor quality by DE SANNA in the report already drafted at the time of the communication of 4 February 2003 to the Tax Police.

DE SANNA declared in her report that the work was only a print with a coat of tempera colours applied on it. Notwithstanding the above, the work was accompanied by the expertise signed by FAGIOLO and displayed in Nuoro during the exhibition “G. De Chirico. Images from a Mediterranean voyage” held between December 1999 and January 2000.

The painting was seized from a certain LUCCHINI who bought it from VECCHIATO paying 250 million lire for it. VECCHIATO, in turn, had bought such painting directly from Z. for 200/230 million in 2001, the same year in which both the criminal offences of dealing in and putting into circulation fake works are to be deemed committed. As to its origin, Z. declared during his trial examination:

"I had organised an exhibition in San Paolo, Brazil. I met a gallerist named Edoardo Giuliani there who showed me such tempera which belonged to one of his clients. Since I had to leave I requested a colour photo of the work as I was interested in the purchase: I then sent to him an advance payment of US dollars 20,000 to him in order to reserve it and I showed the photo to Fagiolo who said that in his opinion it was authentic. I paid the residual amount of the purchase price sending the sum to San Paolo and I bought it. There was no intermediary. Bovera did not act as intermediary. I then sold the painting to Vecchiato. At that time I did not contact the Foundation as it did not issue expertises". Such circumstance would not have prevented Z. from contacting the Foundation to verify a De Chirico work other than for concealing the real criminal intention of Z., i.e. to keep the Foundation unaware of such painting which, on the contrary, would never have obtained a positive opinion from the Foundation itself, confirming in this way, the Public Prosecutor's assumption on the knowledge of the unlawful origin of the work.

The existence of the psychological element on the defendant who is also charged with specific recidivism pursuant to Article 99 No. 2 of the criminal code is therefore confirmed, with regard to the criminal offences of dealing in and putting in circulation fake works into circulation.

Point e) of the indictment

Archeologi ("Archaeologists")

(fig. 7)

N.L. is the person charged with dealing in fake works for this painting which was seized on 20 March 2003 at his house. The non-authenticity opinion, previously recognised during the "on the wall" examination made at the exhibition in Arona, was confirmed by DE SANNA in her report of 30 April 2003.

The painting is accompanied by the expertise of Fagiolo and, in addition to the exhibition in Arona, it was also displayed at the art exhibition in Bologna in 2000.

Such work was identified due to its indication and publication in the catalogue of the exhibition in Arona, a circumstance, as unquestionably ascertained, that was in function to its circulation on the market of the disputed works, as well as at a commercial exhibition held in Bologna.

L. provided an account of the acquisition of such work that was, to say the least, unbelievable and highly imaginative, lacking any supporting evidence.

During the trial examination, when asked about the origin of the work, L. reported that he had bought it, paying 80,000 US dollars in cash, in a hotel in Milan directly from the U.S. owner, a certain Amanda Davis, a person who remains unidentified for the time being. The defendant reported that: "I was visiting Art Basel and I met Fagiolo who on the same occasion contacted the owner of the painting. Fagiolo showed me a photo of such work and he pointed out the work to me: I spoke with the owner telling her that I was interested in buying it provided that it was deemed genuine by Fagiolo who then would have examined it as I suppose took place". "I was then contacted by

this woman (Amanda Davis) in Italy and I bought the work for 250 million (a part in US dollars and a part in exchange for a Mirò). I met with Davis at Principe di Savoia in Milan: I paid an amount in cash, in US dollars, which sum I previously collected". For the time being it is not possible to ascertain who such person was, as she was never registered at the Hotel Principe di Savoia. Nor is there any document proving the defence's thesis of the purchase paid in cash, using a sum in US dollars that L. reports to have collected for this purpose from a bank. The work, which according to L. would have been destined for his private collection, was, in any case, displayed at the exhibition in Arona so confirming the legitimacy of Public Prosecutor's thesis as to the criminal intent ascribed to L. The incapacity of the defendant to provide a reliable explanation of the purchase of the work fully confirms the occurrence of the constitutive element of the criminal offence of dealing in fake works as it was undoubtedly (due to the circumstances) a *mala re* purchase of a fake work of which L. could not be unaware being an expert of this field who referred to the Foundation many times in order to have a confirmation of the authenticity of works submitted to him for professional reasons. The knowledge of the non-authenticity of the work derives, in fact, from the conduct of L. who, even though the work was a clear fake, did not bring the work to the Foundation but displayed it at the exhibitions in Arona and Bologna for the purpose of selling it to unaware purchasers who have little knowledge of De Chirico's works.

Point f) of the indictment

Finally F. is charged with the criminal offence of abetting B. for the work referred to in point a) of the indictment "Horses, Horsemen and Small Temple (Dioscuro)".

At the hearing of 21 February 2008 the defendant declared: "I received the painting from B., I have known him forever, and I did not have any doubt of the authenticity of the painting. The painting was included in the 1995 auction's catalogue where there was reference to the origin from B. The catalogue was sent as usual to the Foundation and no one objected". Such circumstance was denied by PICOZZA who reported at the hearing of 11 July 2007 that he had never seen such catalogue as, on the contrary, he would have certainly spoken with B. about it.

F. went on: "The documentation of this painting consisted in the guarantee of Professor B. (see page 6 transcriptions hearing of 21 February 2008), I think I remember B. saying that it came from a Polish collection. As far as I was concerned, the guarantee was given by B. who was a member of the Foundation. I send the catalogue to the Foundation, they did not say anything. The painting was sold and after a while the purchaser called me and asked for the expertise". Such declaration is of great relevance and confirms and makes credible the criminal offence ascribed to the defendant as in this Court's opinion if the last purchaser requested the expertise, such expertise did not exist at the time of the purchase of the work.

At that point F. gave absolutely improbable and non-reliable declarations according to which he found a letter in which B. in November 1995 asked him to bring the painting to the Foundation taking into account that at the time of B.'s alleged request the work had already been sold without expertise (in May 1995) (*see page 9 transcriptions*): "I found the copy of the letter and I gave it to the Tax Police; it was only a copy as the original had probably been thrown away". The Court con-

siders also in this case such circumstance non-reliable where the original was thrown away while a copy sent to the Tax Police was kept with the only criminal intent of concealing the absolute diversity of the signature with that put by B. in 1995 on the mandate to sell such work. In addition:

“I tried to find the painting but in the meantime the commission for the authentications had already convened and, then, I was contacted by the person asking for the expertise who told me that a declaration from B. would have been sufficient, such declaration was rendered by B. upon my request to him (*see page 13*) and, then, I delivered it to the person who requested it. The painting was sold at approximately 100 million”. “The fact that the work was authenticated by B. was relevant as he was the only art historian professor who was a member of the Foundation” (*see page 17*). Also on this circumstance, F. contradicted himself during the examination as the work was never submitted to the Foundation.

The defendant declared: “On 4 April 2003, I sent B.’s letter to Picozza by fax; when I heard that the painting had been seized, digging among my stuff I found this letter and I sent it to him as evidence” (*see pages 26 and 27 transcriptions*).

F. had clearly received the letter from B. after the seizure and sent it to the Foundation in order to favour him in his justification of the fact that the work owned by him was put at auction without being submitted to the authentication committee of the Foundation although he was a member of such committee at the time and with the only purpose of avoiding that the fake work would be refused, thus preventing its sale.

Hence, the letter referred to in such point of the indictment is undoubtedly to be deemed drafted after the seizure of the work by the Tax Police with the only purpose of avoiding and misleading the ongoing investigations on the criminal offence (as well as on the discovery of the relevant perpetrator) of dealing in and putting into circulation the fake work “Horses, Horsemen and Small Temple (Dioscuoro)” attributable to B. The wilful conduct of F. therefore represents concrete assistance to his friend B. in the preparation of a false written request of submission of the work to the Foundation – indeed never received – undoubtedly integrates the criminal offence ascribed for which F. is to be deemed guilty.

Punishment and Rulings on Matters of Civil Law

Having recognised therefore for the above mentioned reasons, the criminal liability of all the defendants, each with regard to the relevant charges, the Court orders the following as to the relevant punishment. In the Court’s opinion the provision on petty conduct under Article 648 paragraph II of the criminal code cannot be applied due to the high price at which each work appears to have been sold.

For B., this Court believes in accordance with the Law, to sentence him to 20 months of imprisonment and to a fine of Euro 7,000, with the exclusion of the painting No. 3, namely “Still Life with Landscape” of 47.5 x 65 cm being a mere copy of the painting No. 1 referred to in point a) of the indictment, considering the criminal offence under point a) as the most serious crime, granting the general extenuating circumstances and applying the continuance of the crime (base penalty two years of imprisonment and fine of Euro 9,000 reduced by the general extenuating circumstances to

16 months of imprisonment and fine of Euro 6,000 increased to the penalty applied due to the continuation of crime).

For Z.A., for the criminal offences ascribed to him under points c) and d) of the indictment and considering the criminal offence under point c) of the indictment as the most serious crime, applying the continuance of the crime this Court believes, in accordance with the Law, to sentence him to 23 months of imprisonment and a fine of Euro 5,000 (base penalty 20 months of imprisonment and a fine of Euro 4,000 increased to the penalty applied due to the continuation of crime). The past convictions of the defendant do not allow the granting of the general extenuating circumstances in his favour.

For L.N., with reference to the charge under point e) of the indictment and further to the granting of the general extenuating circumstances this Court believes, in accordance with the Law, to sentence him to 16 months of imprisonment and a fine of Euro 4,000 (base penalty 20 months of imprisonment and fine of Euro 6,000 reduced to the penalty applied due to the granting of the general extenuating circumstances).

For F.F. with reference to the criminal offence ascribed to him under point f), having granted the general extenuating circumstances this Court believes, in accordance with the Law, to sentence him to one year of imprisonment (18 months of imprisonment reduced to the penalty applied pursuant to Article 62 bis of the criminal code).

The defendants are jointly condemned to pay the proceeding's expenses. Pursuant to Article 1 of Law 241/2006, the penalties inflicted to each defendant are remitted in full. In accordance with Articles 178 paragraph 3 of Legislative Decree 42/2004 and 36 paragraph 3 of the criminal code an abstract of this judgement is to be published at the defendants' expenses on a joint basis on the following daily newspapers "Corriere della Sera", "La Stampa" and "Il Messaggero".

As to the rulings on matters of civil law, in this Court's opinion the multiple criminal actions ascribed to the defendants have certainly produced considerable damage – consequential and direct – to the Foundation which appeared in the proceeding as civil plaintiff with regard to which the Court resolves to impose the following sanctions. As to the amount of such sanctions, this Court condemns the defendants on a joint basis to indemnify the civil plaintiff for the damages suffered leaving the relevant determination to the competent civil Court and ruling an interim compensation of Euro 25,000 provisionally enforceable.

The defendants are also condemned on a joint basis to refund legal expenses borne by the civil plaintiff consisting in overall charges, fees and overhead expenses equal to Euro 20,000 plus burdens provided by law.

On the basis of the results of the trial inquiry, in this Court's opinion, the records relating to the testimonies released by T.E. (hearing of 21 January 2008) and H.F. (hearing of 21 October 2008) are to be sent to the Public Prosecutor of the Court for the evaluation of the commission by such persons of perjury.

The forfeiture of the seized paintings is ordered.

A term of ninety days for the deposit of the reasons of this judgement is set.

FOR THESE REASONS

Having seen Articles 533-535 of the code of criminal proceedings

DECLARES

B.P.F. guilty of the criminal offences referred to in points a) and b) of the indictment, with the exclusion of the painting No. 3, namely "Still Life with Landscape of 47.5 x 65 cm" being a mere copy of the painting No. 1 referred to in point a) of the indictment, considering the criminal offence under point a) as the most serious crime, granting the general extenuating circumstances and applying the continuation of the crime and consequently

SENTENCES HIM

to 20 months of imprisonment and a fine of Euro 7,000;

DECLARES

Z.A. guilty of the criminal offences referred to in points c) and d) of the indictment and considering the criminal offence under point c) of the indictment as the most serious crime, applying the continuation of the crime consequently

SENTENCES HIM

to 23 months of imprisonment and a fine of Euro 5,000;

DECLARES

L.N. guilty of the criminal offence ascribed to him under point e) of the indictment and granting the general extenuating circumstances consequently

SENTENCES HIM

to 16 months of imprisonment and a fine of Euro 4,000;

DECLARES

F.F. guilty of the criminal offence ascribed to him under point f) and granting the general extenuating circumstances consequently

SENTENCES HIM

to one year of imprisonment.

DECLARES

*The defendants bound to pay on a joint basis the proceeding's expenses.
Having seen Article 1 of Law 241/2006*

DECLARES

The penalties inflicted to each defendant as indicated above remitted in full.

Having seen Articles 178 paragraph 3 of Legislative Decree 42/2004 and 36 paragraph 3 of the criminal code

ORDERS

The publication of an abstract of this judgement at the defendants' expense to be borne on a joint basis in the following daily newspapers "Corriere della Sera", "La Stampa" and "Il Messaggero".

Having seen Articles 538 and followings of the code of criminal proceedings

CONDEMNNS

The defendants on a joint basis to indemnify the civil plaintiff for damages suffered, leaving to the competent Civil Court the relevant determination and ordering immediately the payment of an interim compensation provisionally enforceable equal to Euro 25,000 (twenty-five thousand/00);

*CONDEMNNS**

The defendants on a joint basis to refund the legal expenses borne by the civil plaintiff consisting in overall charges, fees and overhead expenses equal to Euro 20,000 (twenty thousand/00) plus burdens provided by law.

The Court submits to the Public Prosecutor of the Court the records relating to the testimonies of T.E. (hearing of 21 January 2008) and H.F. (hearing of 21 October 2008) in order to ascertain the commission by such persons of perjury.

The forfeiture of the seized paintings is ordered.

The full text of the judgement has been deposited within ninety days.

Milan, 9 March 2009

Translated by Susanna Beltramo, Attorney at law

* The judgement has been appealed by all the defendants before the Court of Appeal in Milan