

JUDGEMENT OF THE COURT OF APPEAL OF MILAN



REPUBLIC OF ITALY
IN THE NAME OF THE ITALIAN PEOPLE

THE COURT OF APPEAL OF MILAN
FOURTH CRIMINAL SECTION

Judgement No. 3539
5656/2009 General Records Appeal
Hearing of 20 May 2013
Deposited with the records office On 19 July 2013
Registar Luigi Cerbella

Formed by:

President Edoardo Veronelli
Judge Paolo Maria Giacardi
Reporting Judge Cornelia Martini

has rendered the following:

JUDGEMENT

against

- 1) Baldacci Paolo Filippo, present;
- 2) Z.A., *in absentia*;
- 3) L.N., *in absentia*;
- 4) F.F., *in absentia*

CIVIL PLAINTIFF:

Fondazione Giorgio e Isa de Chirico appellant
 Attorney Cesare G. Bulgheroni Milan bar
 With office in Milan – Via Montenapoleone No. 8
 The attorney is present

APPELLANT

Against the judgement of the Monocratic Court of Milan 650/2007 of 9 March 2009
 condemning:

- Baldacci: 20 months of imprisonment and a fine of euro 7,000 – generic circumstances – penalty remitted pursuant to Law No. 241/06
 - Z.: 23 months of imprisonment and a fine of euro 5,000 - penalty remitted pursuant to Law No. 241/06
 - L.: 16 months of imprisonment and a fine of euro 4,000 - generic circumstances - penalty remitted pursuant to Law No. 241/06
 - F.: 1 year of imprisonment – generic circumstances - penalty remitted pursuant to Law No. 241/06
- Seizure of the paintings attached

Orders the publication by abstract, at the costs of the defendants on a joint basis, of the judgement on the daily newspapers "Corriere della Sera", "La Stampa" and "Il Messaggero".

Jointly condemns the defendants to restore damages, with the provisional liquidation immediately enforceable and to reimburse legal fees to the civil plaintiff.

Baldacci: for the criminal offences of a) handling of stolen goods on a continuous basis, with the exclusion of the painting no. 3 "natura morta con paesaggio cm. 47.5 x 65" b) Forgery of works of art on a continuous basis. The continuation was deemed existing.

Z.: for the crimes of c) handling of stolen objects on a continuous basis, d) forgery of works of art on a continuous basis, the continuation was deemed existing.

L.: for the crime e) handling of stolen goods

F.: for the crime f) aiding and abetting

a-b-c-d) In Milan in the period preceding and proximate to June 2003

e) In Milan in the period preceding and proximate to March 2003

f) In Prato in May 2003

For the criminal offences:

Baldacci Paolo Filippo Articles 81 second paragraph of the criminal code, A) 81 second paragraph – 648 of the criminal code, B) 81 second paragraph of the criminal code – 127 first paragraph letter B) of Legislative Decree 490/99 committed in. on –

Z.A. Articles 81 second paragraph of the criminal code, C) 81 second paragraph – 648 of the

criminal code, D) 81 second paragraph of the criminal code – 127 first paragraph letter B) of Legislative Decree 490/99 committed in . . . on –

L.N. Article E) 648 of the criminal code committed in . . . on –

F.F. Article F) 378 of the criminal code committed in . . . on –

As a result of today’s hearing

Having heard the report of Judge Martini Cornelia

Having heard ...the defendants...

the Public Prosecutor Bertolé, in fact, Lamanna

the lawyer for the defence...

the lawyer for the defence...

“ “ “ “

“ “ “ “

who report their conclusions as it results from the minutes of the hearing

No. 5656/09 General Records Milan Court of Appeal

THE PROCEEDING

1) The appealed judgement.

The appeal has as object the judgement handed down by the Monocratic Court of Milan on 9 March 2009 at the end of the ordinary proceeding against

Baldacci Paolo Filippo, born Carate Brianza on 22 June 1944

Z.A.

L.N.

F.F.

D.M.

DEFENDANTS

Baldacci Paolo Filippo:

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

- tempera on canvas, cm 65 x cm 47.5 “Natura morta con frutta sul tavolo” (Still life with fruit on a table) signed g. De Chirico centre right of the painting (painting expunged from the counts of indictment at the hearing of 13 June 2007 as it was a mere duplication of painting No. 3);

- oil on canvas, cm 37 x cm 46 “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 cm 47.5 x cm 65 “Natura morta con frutta sul tavolo (vita silente del paesaggio)” (Still life with landscape [Silent life in the landscape]) signed g. De Chirico on the right towards the mid of the painting undated;

- oil on paperboard, cm 29.20 x 39.5 “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 paperboard on canvas cm 31.8 x cm 39.3 “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.

b) for 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, first paragraph, 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 2013, date of ascertainment.

Z.A.:

c) for 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 for himself and or for other persons, the following fake paintings:

- oil on canvas cm 61 x cm 50 “Le Chevaux” (The horses), 1927, signed G. De Chirico;
- tempera on paper cm 57.5 x cm 47 “Chevaux devant la mer” (Horses by the seashore) signed G. De Chirico bottom right of the painting.

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

d) for 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, first paragraph b) of Legislative Decree No. 42 of January 22, 2004) for holding for the purpose of trading or in any case for putting in circulation, as authentic, the fake paintings indicated in paragraph c). Committed in Milan prior to and around June 2003 date of ascertainment.

L.N.:

e) for 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 as gallerist and art consultant at Galleria B. in Milan, for the purpose of procuring a profit for himself or for other persons, the mixed technique painting on velvety pasteboard cm 65 x cm 48 “Archeologi” (Archaeologists) signed G. De Chirico and dated 1927.

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

F.F.:

f) for the criminal offence laid down and punished by Article 378 of the criminal code, for acting as the owner of the auction house “F” in Prato, after having committed the criminal offence of receiving and trading a fake painting (oil on paperboard on canvas cm 31.8 x 39.3) “Horses, horsemen and small temple (Dioscuoro)” 1932, signed Giorgio De Chirico, he helped Baldacci Paolo Filippo to elude

the investigations by providing to the Judicial Police delegated by the Venice Public Prosecutor copy of the letter apparently dated 20 November 1995 and apparently signed by Paolo (Baldacci, *ed.*) to be considered not authentic through which the latter was asking 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 already been 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 procedure with the criminal offences indicated in paragraphs a) and b) committed in Milan.

With the specific recidivism pursuant to Article 99 second paragraph No. 2) of the criminal code for Z.A.

With the simple recidivism pursuant to 99 first paragraph of the criminal code for L.N..

With the simple recidivism pursuant to Article 99 first paragraph of the criminal code for F.F.

the offended party being:

- Fondazione Giorgio e Isa De Chirico in the person of its authorized representative, with seat in Rome, Piazza di Spagna No. 31.

1.2 The ruling.

The judge has declared BALDACCI PAOLO FILIPPO guilty of the criminal offences referred to in paragraphs a) and b) of the indictment with the exclusion of the painting No. 3 “Still life with landscape of cm 47.5 x cm 65” being a mere duplication of the painting No. 1 referred to in paragraph 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 sentenced him to 20 months of imprisonment and to a fine of euro 7,000; has declared 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 sentenced him to 23 months of imprisonment and to a fine of euro 5,000; declared L.N. guilty of the criminal offences ascribed to him under point e) of the indictment and granting the general extenuating circumstances sentenced him to 16 months of imprisonment and to a fine of euro 4,000; declared F.F. guilty of the criminal offence ascribed to him under point f) and granting the general, extenuating circumstances, consequently sentenced him to one year of imprisonment. He also condemned the defendant to pay on a joint basis the proceeding’s expenses. Having seen Article 1 of Law 241/2006 declared the above penalties remitted in full for each defendant.

Having seen Articles 178 paragraph 3 of Legislative Decree 42/2004 and 36 paragraph 3 of the criminal code ordered the publication of an abstract of this judgement at the expense of the defendants to be borne on a joint basis on the following daily newspapers “Corriere della Sera”, “La Stampa” and “Il Messaggero”.

Having seen Articles 538 and followings of the code of criminal procedure condemned the accused on a joint basis to indemnify the civil plaintiff for the damages suffered leaving to the competent civil judge the relevant determination and ordering immediately the payment of an interim

provisionally enforceable compensation equal to Euro 25,000; condemned the accused on a joint basis to refund the legal expenses incurred by the civil plaintiff consisting in overall charges, fees and overhead expenses equal to Euro 20,000 plus burdens provided by law.

Ordered the submission to the Public Prosecutor of the Court – main office – of the records relating to the testimonies of TRAZZI EVERARDO (hearing of 21 January 2008) and HELMUT FUERST (hearing of 21 October 2008) in order to determine whether the criminal offence of perjury applies to them.

The forfeiture of the seized paintings was ordered.

1.3 Sources of evidence

Collegial expertise initially entrusted to Dalla Chiesa Giovanna and Ester Coen and subsequently extended to the cooperation of the restorer Cecilia Bernardini for the purpose of determining the authenticity of the paintings attributed to De Chirico and representing the *corpus delicti* from a technical and artistic perspective; technical expertise obtained at the request of the advocate general from De Sanna Palmina Iole and acquired pursuant to Article 512 of the code of criminal procedure for being De Sanna subsequently deceased; testimonies of Mazzoleni Giuseppe, Scaboro Sandro, Picozza Paolo, Elisa Albini Trissino Dal Vello D'Oro, Lucchini Guglielmo, Cappelletti Giancarlo, Andraghetti Astorre, Gieli Elena, Zara Cinzia, Occhipinti Carlo, Bovera Maurizio, Trazzi Everardo, Mirri Maria Beatrice, Ilaria Uzielli, Daniele Crippa, Di Maglio Daniela, Helmut Fuerst, Bordonaro Gaetano, Italo Spagna, Maria Iride Crippa, Luigi Cavallo, ex parte expert for the Baldacci defence, Pavia Alessandro, ex parte expert of the civil plaintiff and Feriani Barbara ex parte expert of the Baldacci defence; examination of experts: Dalla Chiesa Giovanna, Ester Coen and Cecilia Bernardini; examination of the defendants, spontaneous declarations released by Baldacci during the proceeding; acquisition of testimonies of Rigato Giuseppe, Vecchiato Dante and Helmut Fuerst; additional acquisition of documentation.

Relevant exhibitions:

- 1) Arona exhibition from 14 July 2001 to 14 October 2001;
- 2) Arezzo exhibition from 18 November 2000 to 14 January 2001;
- 3) Bologna exhibition in 2000;
- 4) Palermo exhibition from 25 October 2002 to 6 January 2003

2) ACT OF APPEAL

Against said judgement the attorneys of L.N., Paolo Baldacci, F.F. and A.Z. filed an appeal.

Appeal in the interest of Paolo Baldacci

The defence critically examines the errors and misinterpretations contained in the judgement, as well as the lack of motivations of a stylistic and artistic nature (from page 1 to page 43).

1° ground: as to the forgery of the paintings, having noted the bias of the technical expertise and their non-impartiality towards the parties of the proceeding, as well as the lack of details and the incorrectness, also from a technical point of view, of the expertise

made by the consultants and experts, requires a new expertise through the appointment of a person of proved capacity and totally independent from the Foundation.

He also requests the graphical expertise of the signatures on the canvas (two of which recognized as authentic by the expert of the defence Professor Cavallo, as well as the most competent expert of De Chirico Maurizio Fagiolo dell'Arco) and on the letter of Baldacci to F.

2° ground: as to the good faith of Baldacci in the purchase and in the authentication:

- all paintings had the expertise of Maurizio Fagiolo dell'Arco
- all paintings had indisputable elements of De Chirico and therefore should they be forged works they would be forgeries of the highest quality and consequently deceptive;
- it is absurd to consider that Baldacci could not not have known!
- the specific modalities of purchase are not relevant in the field of art where the market knows only indistinct and changeable rules and where only a "countermarket of art" exists (Fernand Braudel);
- the fact that the paintings were publicly exposed and therefore subject to the judgement of the entire scientific community proves the good faith of Baldacci who was surely convinced of the authenticity of the paintings.

The defence therefore pleads for the acquittal of the defendant from the crimes attributed on the basis that the fact does not subsist or does not constitute a crime.

3° ground: on the interim compensation: in a situation where the De Chirico Foundation would have hypothetically suffered for example just moral damages and not an economic damage, recognizing a provisionally enforceable compensation represents an additional element of the unfavourable prejudice which clearly inspired the judge.

The defence pleads for the revocation of said decision.

Appeal in the interest of A.Z.

1° ground: reasoning illogical and inadequate and lack of adequate means of evidence to prove the psychological element for the contested crimes.

As to the painting "The horses" the Judge places the occurrence of the psychological element for the crime in 2001 and therefore the consummation of the crime of handling of stolen goods. The Judge forgets, however, that Z. bought the painting at the end of the 1990s and that therefore the painting was received in good faith.

The painting was then authenticated by an expert such as Professor Fagiolo dell'Arco and this must be considered as circumstance proving the good faith of the defendant, who attributed a higher weight to the historical and expert indications rather than the verbal opinion of two members of the Foundation reported to him.

For the painting "Horses by the seashore" bought from the gallerist Edoardo Giuliani, once again, he did not request the authentication from the Foundation but from Professor Fagiolo dell'Arco, as the Foundation was not authenticating paintings in that period.

In addition the price paid for the painting corresponded to market value.

The well known gallerist Dante Vecchiato bought the painting from Z. in 2001 and having no doubts as to its authenticity, sold it to a private collector.

The defence therefore pleads for the acquittal of Z. from the crimes attributed to him on the basis that the fact does not constitute a crime.

2° ground: failure to declare the extinguishment of the crimes referred to in the paragraphs of the indictment.

Z. transferred the painting “The horses” to Spagna in May 2001, but such action corresponds to the commitment of the crime referred to in paragraph 2). The purchase by Z. took place instead towards the end of the 1990s as declared by the accused during the examination on pages 8 and 9.

Z. has in addition declared to have bought the two paintings almost at the same time and considering that “Horses by the seashore” was bought at the beginning of 1998 it is reasonable to assume that the other painting was also bought in the same period of time (see the examination of the defendant transcriptions of 6 March 2008 at pages 13, 24 and 259).

The statute of limitations of the crime referred to in paragraph 2) was to be declared prior to the handing down of the judgement of first degree.

3° ground: failure to grant the generic extenuating circumstances and application of an excessive penalty.

The appellant, who has no criminal record, behaved commendably during the proceeding and entirely restored the damages caused, indemnifying both buyers of the two paintings (see transcriptions of the hearing of 6 March 2008, examination of the defendant and examination of the witness Italo Spagna who, at the hearing of 2 December 2008, affirmed that Z. had acted correctly and reimbursed the sum).

Appeal in the interest of N.L.

1° ground: the version offered by the defendant is logical and the declarations rendered by him during the preliminary investigations and the debate appear coherent and precise.

He identified the origin of the painting indicating that he bought it from Amanda Devis, a citizen of Oakland and his reconstruction of the facts is dense with supporting elements.

In particular he was introduced to Devis by Fagiolo dell’Arco.

On the back of the painting there is the sticker NY Richard L. Feigen & Co attesting to the U.S. origin of the painting.

L. bought the painting for his own interest and he did not have any intention to put it on sale.

The defendant was not a friend of Fagiolo dell’Arco but had contacted him for professional reasons and he did not bring the painting to the Foundation because from 1998 up to 2001 the Foundation was not releasing expertises.

The defendant did not have a degree in fine arts and therefore he was not capable of knowing if the painting was authentic or not. Sgarbi had also given a positive judgement to the painting in question.

The defence therefore pleads:

Firstly to arrange for a second expertise for the evaluation of the authenticity of the painting “Archaeologists” and should the painting be considered authentic, absolve the defendant pursuant to

Article 530 paragraph 1 of the code of criminal procedure of the crime ascribed for lack of the objective element of the crime;

Secondarily to absolve the defendant pursuant to Article 530 paragraph 1 of the code of criminal procedure of the crime identified in Article 648 second paragraph of the code of criminal procedure for not having committed the fact in terms of the psychological element of the crime; on a subordinate basis pursuant to Article 530 second paragraph of the code of criminal procedure for the absence of evidence as to his guiltiness;

On a further subordinate basis, to reduce the charge indicated in Article 648 of the criminal code to that of misdemeanour committed and punished by Article 712 of the criminal code and consequently declare it extinguished by the statute of limitations;

Lastly, in the event of confirmation of the criminal liability of the defendant for the crime of handling stolen objects to reduce the penalty applied to the legal minimum recognizing the existence of the circumstance provided in paragraph 2 of Article 648 of the code of criminal procedure.

Appeal in the interest of F.F.

Sole ground for appeal: the falsity of the signature of Baldacci on the letter dated 1995 is irrelevant considering that the only remaining doubt is that of its date.

The Judge exposes four arguments to consider the crime proved.

- 1° argument contradiction between what was stated by F., who declares to have sent the F.A. auction catalogue to the Foundation, in which the painting appears with the indication that it originated from Baldacci and what was referred by Picozza regarding his failure to view the catalogue.

The contradiction is apparent as upon the sending of the catalogue, Picozza may not have examined it.

- 2° argument: after the sale at auction F. tried to obtain the authentication by the Foundation and this should prove that at the time of the sale the authentication had not been given.

It is well known that at auctions paintings are sold with or without the declaration of authenticity which, if existing, are freely valued on the market.

F. has only said to have sold the painting convinced of its authenticity, considering the origin from Baldacci, expert and member of the De Chirico Foundation but has never affirmed that the painting was already authenticated.

- 3° argument: the tribunal considers far-fetched that F. had found in his papers a copy of the letter sent by Baldacci in 1995. Since the falsity of the signature has not been ascertained, the Court's decision is therefore based on an element which is wrong.

- 4° argument: F. had never declared that the painting had been submitted to the Foundation for authentication prior or after the sale at auction. The letter under accuse proves only that after the sale at auction F. contacted Baldacci so to make sure that the painting was also examined by the Foundation, so as to obtain the authentication to be added to Baldacci's declaration of origin.

A subsequent buyer of the painting, considering equivalent the declaration of authenticity given by the Foundation and that given personally by Baldacci, directly requested F. to obtain the latter and this is what happened.

At the end of the trial nothing else appeared than those suspicions which possibly are sufficient to formulate an indictment, but surely cannot be used as the base of a judgement of guiltiness. The defence therefore pleads for the acquittal of the defendant for not having committed the fact.

GROUNDS OF THE JUDGEMENT OF THE COURT

The grounds for the appeal must be accepted in part and the judgement reformed as it results from the ruling.

We shall begin with the position of Z.A., against whom the civil plaintiff has revoked its claim in the proceeding.

The evaluation of said accused having appealed the judgement must therefore be made pursuant to Article 129 of the code of criminal procedure.

From the examination of the results of the findings of the inquiry obtained during the first degree, the clear evidence that the fact does not subsist does not emerge or that the defendant has not committed it or that the fact does not constitute a criminal offence and consequently the criminal offences ascribed to Z. must be declared extinguished by the statute of limitations.

One should say beforehand that in the act of appeal of Z. the non-authenticity of the two paintings is not contested, as argued by the Judge of first instance, considering that the defence evidences only the lack of the psychological element on the side of the appealing party.

As to the fake painting "The horses" one should evidence that the painting was seized from Italo Spagna of Galleria M. in Bologna by the Italian Revenue Guard Corps in November 2002. As to its origin, Italo Spagna, heard at the hearing of 2 December 2008, declared to have received the painting from Z. in May 2001 for a price of ITL 230/250 million, paying ITL 120,000,000 with checks and the rest through barter.

The Court had evidenced the circumstance that the painting in question, prior to the sale to Spagna, passed through Mazzoleni's Galleria G. in Torino and was given back to Z. by Mazzoleni expressly as a consequence of the remarks of Picozza and of De Sanna as to its non-authenticity. Right at that time Z. became aware that the painting was a fake, but irrespective of this decided all the same to sell it to Spagna in May 2001, committing through this action the criminal offence of handling and putting into circulation the fake painting of art, for which he is contested.

Consequently the statute of limitations came into effect in May 2011 for the criminal offence, as the consequence of the fact that there were no periods of suspension to be counted during the proceeding, while the criminal offence referred to in point d) must be considered extinct under the statute of limitations in November 2008.

As to the knowledge of the accused, it is sufficient to highlight that the above described episode regarding Mazzoleni is emblematic and is a circumstance which should put on alarm any art merchant as to the non-authenticity of a work of art. Z., on the contrary, rather than calling the person who gave him the painting, who was never indicated by the defendant in the proceeding, sold it to a third person who was not aware that it was a fake.

The other painting in dispute, "Horses by the seashore" had been seized instead from Vecchiato

on 1 April 2003 on the basis of De Sanna's evaluation of falseness and very poor execution, with the document already drafted at the time of the communication of 4 February 2003 to the Italian Revenue Guard Corps.

De Sanna declared in her report that it was only a print covered by a veil of tempera. Notwithstanding this, the work was accompanied by the expertise signed by Fagiolo dell'Arco and presented in Nuoro during the "G. De Chirico. Immagini di un viaggio mediterraneo" (G. De Chirico: Images from a Mediterranean voyage) exhibition held from December 1999 to January 2000.

The painting was seized from said LUCCHINI who bought it from DANTE VECCHIATO for the considerable price of ITL 250 million. In turn, VECCHIATO had bought said painting directly from Z. for ITL 200/230 million in 2001, year in which the Judge of First Instance deemed that the handling of and the putting in circulation of said painting had occurred. As to its origin Z. declared during his examination at the trial: "I had organized an exhibition in Brazil and San Paolo. I met a gallerist there named Edoardo Giuliani who showed me said tempera which belonged to one of his clients. Considering that I was leaving I requested a colour photograph of the painting as I was interested in purchasing it: then I sent him an advance payment of USD 20,000 to reserve it and I showed the picture to Fagiolo who said that in his opinion the painting was good, I paid the residual part of the price sending funds to San Paolo and then I bought it. There was no intermediary. Bovera did not act as intermediary. I subsequently sold the painting to Vecchiato. At that time I did not contact the Foundation as the Foundation was not issuing authentications during that period."

The defendant did not provide any document relating to this painting's origin either, and merely declared to have bought it from a Brazilian person and to have paid for it in cash. In addition it was not a painting but a print with a veil of tempera and therefore Z. could not have been unaware of the unlawful origin of that piece.

As to the date the criminal offence was committed, the Court does not uphold the views of the Judge of First Instance considering that in the minutes of the preliminary testimony rendered by Vecchiato on 1 April 2003 and acquired at the hearing of 30 October 2007, Vecchiato declared to have bought the painting from Z. in 1998.

In the absence of periods of suspension of the statute of limitations, the criminal offence referred to in point c) must be considered extinguished under the statute of limitations in 2008 and that referred to in point d) in 2005.

As to said statute of limitations it should be highlighted that the Court did not take into account the recidivism referred to in Article 99 second paragraph of the criminal code contested to the defendant.

The Judge of First Instance therefore did not take into account the penalty for said recidivism, implicitly excluding the optional aggravating circumstance. On this matter the Supreme Court has constantly stated that with regard to the statute of limitations, when the Judge has excluded even implicitly the recidivism, not considering it *de facto* as the expression of a more evident guiltiness or social dangerousness of the defendant, said circumstance must not be considered relevant for the purposes of calculating the period necessary for the statute of limitations of the criminal offence to apply (see Supreme Court section 2, decision No. 2090 of 10 January 2012, deposited on 19 January 2012, Rv 251776).

Having the civil plaintiff withdrawn its claim against Z., for having reached a settlement, the civil claims against Z. must be considered cancelled.

Following now to the examination of **the position of F.F.**, it should be highlighted that the subject accused waived all grounds for appeal, except the request for the application of the statute of limitations for the criminal offence attributed to him. The criminal offence must be considered extinguished by the statute of limitations in November 2010, since seven and a half years have elapsed from the date of the criminal offence, identified to have occurred in May 2003 and as a consequence of the fact that there were no periods of suspension to calculate in order for the statute of limitations to apply.

In this case, and in line with the reasoning made by the Judge of First Instance, crossed referenced in full, no evidence of the innocence of the appealing defendant seems to exist, against whom therefore the civil claims must also be confirmed, as the Court considers serious, uniform and consistent the elements of guiltiness underpinning the conviction of the defendant by the Court of Milan.

We now start to examine **the position of L.N.**, accused of holding stolen goods as indicated in point e) of the indictment with reference to the painting "Archaeologists" cm 65 x cm 48 with the apparent signature of G. De Chirico and dated 1927.

The painting was seized from L. on 20 March 2003 at his home. The judgement of non-authenticity, anticipated by the examination "on wall" made during the Arona exhibition was confirmed by DE SANNA in her report of 30 April 2003. The painting is supported by the expertise of Fagiolo and was exhibited not only in Arona but also at the Bologna art fair in 2000.

Said painting was identified as it was exhibited and published in the catalogue of the Arona exhibit which was proved to be prodromal to the commercialisation of the paintings being the object of this proceeding, as well as to a commercial exhibition in Bologna.

The judgement of non-authenticity previously given, as indicated above, was confirmed with additional accuracy and clarity in the expertise requested during the trial, where it is indicated by the panel of experts that "the painting in question is to be considered a forgery of the subjects and painting of Giorgio de Chirico, made with inadequate materials, poor and rushed techniques, with a style not adequately interpreted". What else could the experts say to underline the non-authenticity of a painting!

Hence, there is no need during this phase of appeal to obtain an additional expertise to evaluate the non-authenticity of said painting.

As to the ground of appeal regarding L.'s lack of knowledge that the contested painting was fake, it is advisable to go through the version given by the defendant to describe the purchase, which cannot be considered in any way credible.

The defendant, during the examination at the hearing of 21 February 2008, declared the following.

"I was visiting Art Basel and I met Fagiolo who got in contact at that time with the owner of the painting. Fagiolo showed me a picture of said painting and recommend it to me: I spoke with the owner saying that I was interested in the purchase should the painting be considered authentic by Fagiolo who would have examined it as I think then happened. I was then contacted in Italy by this

lady (Amanda Davis) and I then bought the painting for 250 million (part in dollars and the rest in exchange for a Mirò). I met Davis at Principe di Savoia in Milan: I paid the dollars in cash, funds I had previously collected. I would have never bought a painting without authentication and the painting was authenticated by Fagiolo who, at that time, was the top expert (at that time the Foundation was not issuing expertise). There were no witnesses at the time of the sale. The sole witness was Fagiolo (now deceased): I had a commercial interest and not a cultural interest (see pag. 66 of the transcripts of the hearing of 21 February 2008)... I did not have further contacts with Davis; then I put the painting in my home as my wife and I liked it very much (see transcripts page 68).

The elements given by L. appear totally vague and artificial. First of all, it is not proved that Davis attended Art Basel and similarly it is not proved that Fagiolo was part of the transaction and that Amanda Davis sojourned at Principe di Savoia. This latter circumstance is, on the contrary, excluded by Marshal Scaboro and L. subsequently said that Davis may have sojourned in other places in Milan. This fact as well was in no way documented.

As to the price paid for the painting, although it was a payment in cash, L. should have requested at least a receipt for the cash given to Davis or at least he should have documented the payment through bank documents pertaining to the withdrawal of a consistent amount of cash. Nothing of this was done by the defendant.

As to the good faith of Mr. L. in consulting Fagiolo, this is in no way proved as there is no evidence of the meeting between L. and Fagiolo at Art Basel and on the circumstance the statements of the accused are not sufficient.

As to the expertise made by Fagiolo dell'Arco, from the defendant's statements it appears that he was not even aware of the fact of whether the expertise of Fagiolo was made examining the original or only its picture.

The fact that the painting has a "Galleria Richard L. Feigen & Co." sticker on the back does not prove in any way that the painting belonged to the alleged Davis, as Marshall Scaboro reported that the presence of the sticker was pointed out by the defendant but without any evidence in connection to this circumstance being made.

The defensive thesis, formulated in order to prove that the painting was purchased on a personal basis, is an argument that only L. brought up and that is contradicted by two proved circumstances (the exhibition in Arona and at the Art Fair in Bologna in 2000: see statements of Scaboro reports at the hearing of 13 June 2007) and on the basis of the prior admissions made at the hearing of 21 February 2008, from which it appears that the defendant said that he bought the painting "Archaeologists" for "commercial interest".

Also this defensive thesis is in no way documented but rather is contradicted by the facts that emerged and the circumstance that the painting was seized at L.'s home is in no way relevant, as it is clear that the accused preferred not to leave an obviously fake painting on permanent exhibition, considering it preferable instead to show the painting at the request of potential buyers.

The defence additionally stated that if Fagiolo dell'Arco considered the painting authentic, an inexperienced defendant like L. could also have been mistaken.

L., however, cannot be defined an unaware collector who can easily be fooled, considering that he is an expert in the sector and owns an art gallery (Galleria B.) which is among the most famous in Milan, which for years has dealt with a great number of paintings.

In the light of his professional expertise – which regards the relations he had with the De Chirico Foundation as well – it is strange that the defendant, in order to obtain an expertise of the painting, which considering the subject and period – a metaphysical subject of the 1930s – should have been important and instead was unknown, contacted Fagiolo dell'Arco, who had already been condemned for having authenticated fake paintings.

On the other hand, the same civil plaintiff in the brief deposited for the appeal, underlined that it cannot be a coincidence that all the seized paintings were considered authentic by Fagiolo and precisely during the period in which the Foundation was not operating and, therefore, was not in a position to adequately control the market.

In fact, during that same period, on the basis of the indication of the civil plaintiff the De Chirico fakes for which the proceeding is pending arrive on the market all together and all of them carry the expertise to Fagiolo.

Hence, the psychological element for the handling of stolen goods subsists for L. who, as indicated above, is an art merchant, expert on modern paintings, who could not have been unaware of the patent non-authenticity of the painting in question and therefore had full and conscious knowledge of the criminal origin (criminal offence of forgery) of the painting at the time of the purchase.

The showing at the Arona exhibition took place in 2001 and it is during this period that L. must have become aware that the painting was a fake.

The criminal offence under examination therefore came under the statute of limitations in 2011, considering that during the proceeding there were no periods of suspension.

In any case, considering the fact that the criminal offence was committed close to March 2003, as contested in the premises, the criminal offence should also be considered as coming under the statute of limitations in March 2013.

Considering that the statute of limitations applied after the judgement of first instance, having just mentioned all elements of liability, the civil ruling against L. must be considered confirmed.

We now examine the position of **Baldacci Paolo Filippo who is called liable under points a) and b) of the premises for the five paintings allegedly attributed to De Chirico.**

It seems advisable to analyze immediately the issue of the impossibility to proceed on the claim of the statute of limitations of the facts attributed to the defendant in the two grounds for indictment for the painting **Horses, horsemen and small temple**, dissenting the Court from the Judge of First Degree as it deems that the criminal offences occurred in 1996 with the consequent application of the statute of limitations in 2006 as to point A) and in 2003 as to point b) i.e. at a time preceding the judgement of first degree (9 March 2009).

The declaration of the statute of limitations prior to the decision of first instance has the consequence that we have now to evaluate exclusively the existence of the evidence of the non-guiltiness of the defendant and that the civil rulings on the point must be excluded.

The Court deems that in the circumstances the conditions set forth in Article 129 of the code of criminal procedure do not subsist for acquittal, having evaluated the elements of proof highlighted by the Judge of first instance and not superseded by the grounds for appeal. One should remember for this painting, that the relevant expertise – i.e. declaration of origin and authenticity as specified by the defendant Baldacci – was given directly by Baldacci himself.

Baldacci must consequently be acquitted from the charges for the behaviours described above considering that the criminal offences attributed to him are prescribed. Consequently the civil ruling relating to the painting “Horses, horsemen and small temple” 1932 must be revoked. The Court has identified the period for the commitment of the criminal offence on the basis of the declarations of Rigato Giuseppe as part of the preliminary testimony acquired at the hearing of 21 October 2007 and of the declarations rendered by Furst Helmut Richard in the preliminary testimony rendered to the Italian Revenue Guard Corps in Venice on 2 May 2006, declarations contested by the witness during the trial and acquired at the hearing of 21 October 2008.

It should be remembered in particular that as to the witness Furst, the Judge of first instance transmitted the file to the Public Prosecutor for false testimony for what he stated during the examination and not as to the witness statements made in Vipiteno in 2006.

Rigato declared to have purchased the painting at the end of 1995/1996 already with Baldacci's authentication and Furst declared in the preliminary testimony previously mentioned, that the negotiations for the sale of the painting, then materially delivered to D., were made in favour of Baldacci, previously contacted during the period comprised between 1994 and 1996.

We shall now examine more in detail the appeals relating to the other four paintings under dispute.

The first ground for appeal is unjustified and must be rejected.

The defence, with reference to the authenticity of the paintings, indicated a bias in the technical expertise and their lack of impartiality with the parties, as well as the unconvincing and, indeed erroneous quality, also from a technical point of view, of the examinations made by the consultants and experts, requesting another expertise to be performed by persons of proven ability and totally independent from the Foundation.

Firstly, it should be emphasized that the experts were chosen by the judge from a list proposed by the attorney of the parties (defendant and the civil plaintiff).

Baldacci himself, during the examination of 5 May 2008, stated that he also considered appointing Professor Ester Coen as his own technical consultant, thus confirming his respect, also from a professional point of view, of this expert, who was subsequently appointed together with other two by the judge.

No party, including the experts themselves, indicated to the Judge, at the time of their appointment, an incompatibility or unsuitability to undertake the appointment and, therefore, it is not correct that once the expertise was completed and resulted unfavourably to the defendant, the defendant should raise doubts concerning the choice made by the Judge after a full discussion with the parties.

The stylistic analysis was carried out with great attention, rigor, and the utmost competence by the experts Ester Coen and Giovanna dalla Chiesa, with the assistance of restorer Ms. Cecilia Bernardini, who, also using a WOOD lamp, examined the paintings as well as the supports, canvas and paint surface.

So we are not dealing with superficial or hurried examinations by the experts, but rather with repeated and accurate analyses, with the inclusion of Ms. Bernardini as part of the technical analysis, who brought her experience in the field of restoration in addition to the profound pictorial culture of Professors Coen and Dalla Chiesa.

With reference to the painting **Archaeologists on the seashore, 1926, cm 37 x cm 46, oil on canvas**, the experts have all agreed the following anomalies in the painting, which are univocally indicative of its falsity: a) the excessive emphasis with which the architectural elements - normally integrated perfectly in the mannequins' bodies and placed in different positions seen from the side, frontally and in perspective, with the use of transparency which allows for their clear insertion in the limited space, - are literally crammed onto the laps of the figures, creating a sort of continuous horizontal block, without any pause between the two figures; b) the irregular outline of the two buildings on the outside edge of the figure on the left, upsetting the usual straight-line external profile of the mannequin's body, splitting it waist high in two unrelated elements, one dropping downwards, the other to rising upwards; c) the absence of a base - a chair or pedestal - on which the figures sit, a fundamental element used by de Chirico that alludes to the partial amalgamation of natural and artificial elements, so that our literal understanding of the nature of the forms we see is suspended in favour of a generalized deformity of every structure relative to that presumed, such that it is ambiguous and in a state of continuous 'metaphysical' metamorphosis; d) the appalling condition of the paintwork on the surface which proves the poor quality of the painting technique and which is difficult to attribute to the bad preservation of the painting. In the alleged year of reference for the painting - 1926 - which is the true beginning of the "Archaeologists" theme, de Chirico was at the apex of his fame (see exhibitions in Europe and even in the U.S.) and it is most unlikely that a work of such notable monetary and artistic value could have been kept by some negligent owner - either an art dealer or collector - in such conditions as to enormously damage its value (the crevices and cracks on the surface which cover the entire painting, reveal, in fact, an intentional damaging of the painting); e) the lifeless colour of the yellowed greys and the stifled blue. The effect of the indistinct lines of the buildings, normally clearly defined as ink-like marks and distinguishable as real 'writing'.

Additionally, from a perspective angle the position of the two mannequins is uncertain - note the frontward movement of the figure on the right which produces an awkward inclination of the buildings at the top -; its shoulders tend consequently to stretch towards the left in a rigid and unnatural movement. The characteristic of De Chirico's statues and mannequins is, instead, that of combining the greatest human spontaneity in gestures and movements with the greatest artificiality in the forms and in the combination of objects.

The signature and the date are derived from paintings of 1926 but some kind of false note can always be found such as an inclination of the letters.

The measurements 46 x 37 and the indication B 25 Demt are written by hand on the back of the

canvas at the top; the stamp 27 Jan 27, written on the central wood stripe, would hint at a French origin, the ink is recent and has not undergone natural ageing.

The following conclusion derives from the professors' extensive analyses, which must be considered absolutely consistent with the experts' observations resulting from the extensive work done, jointly with the ex parte consultants (who took part in the inspection of 6 December 2007 considering that the first inspection made by the experts on 10 October 2007 was only of acknowledgement and finalized at understanding the types of works to be examined jointly with the parties).

Conclusions: "it is evident from the stylistic analysis gathered from the data collected from the direct verification of the work and the technical report (attached hereto [annex 1]) made by the assistant to our expertise, the restorer Ms. Cecilia Bernardini – as authorized by the previous Judge Elena Pulici – that the work is a forgery of the subjects and painting of Giorgio de Chirico, made with inadequate materials, poor and rushed techniques, with a style not adequately interpreted"

The judgement is net and uniform, does not raise any doubt and consequently cannot be put under discussion by the critiques made by the ex parte expert, Professor Luigi Cavallo, whose arguments have rightly not been shared by the experts appointed by the Judge.

Examining now the painting **"Still life with landscape" cm 47.5 x 65 identified in the present proceeding as large still life**, it should be noted that even the ex parte expert, Professor Cavallo, does not attribute it to De Chirico.

The expertises show the following elements to identify the non-authenticity of the painting.

"The style of painting tends to exaggerate and compact the volumes, with no transparency between the background and the surface, and with no interlacement of brush strokes, i.e. without pauses and without the kind of vitality produced by variations in the texture of the paint and by the liberty with which de Chirico invents each detail and continuously changes the rhythm of the brush strokes, with the intention of 'revealing', of 'suggesting', permitting a glimpse of the existence of things more than 'presenting them'. This is particularly clear also in the folding of the white and yellow drapery, with its concentrated shadows, in a soulless exercise that is more pop or cartoon-like than metaphysical. With slavish accurateness, lacking in motion and disquiet, the shadows define the curving movement of the drapes in a merely descriptive way; the same is true for the details on the peels of the various fruits, the details of which the painter described without allowing them any casualness, like someone that imitates something already known, without however being able to interpret its profound meaning. In De Chirico's poetics still life is thought of as 'silent life' (in line with the spirit which the German 'still leben' or the English 'still life' suggest) thus transferring the accent from the recognition – if one can say, of 'death' to the presence of 'life' which continues to transpire under the alleged death, being a fundamental characteristic of the Master and of his 'metaphysical' painting, which is that of rendering a presence of absence, of leaving a margin of mobility to life – even when life starts decomposing – rather than freezing it in the academic rigidity of death.

The signature on the shelf on the right is coldly spelled out and cannot be considered authentic. It would seem to have been added after the underlying painting had completely dried. The body of the paint is dense and jelly-like, the skeleton of the drawing cannot be perceived underneath. It seems to be painted and re-painted resulting in a crust on the painting's surface. In various areas at

the centre of the painting this crust is becoming detached and is falling off, indicating a rehashed and makeshift technique. Under the superficial layer of gluey paint ample craquelures are found on the entire surface of the painting. In the back at the top of the supporting frame the handwritten indication in italics ‘natura morta Firenze’ [still life Florence, *ed.*] and at the bottom ‘g. De Chirico NATURA MORTA’ (by hand; both handwritings are faded exactly in the same way). The wood of the supporting frame seems older than the canvas of the painting as can be seen from the threads of the canvas on the margins. If seen in transparency, the painting’s front seems without any preparatory work. An unreadable seal appears at the bottom, a factor often present on forged paintings. The entire back of the canvas is rippled with craquelures as happens when a canvas is exposed to a strong emission of heat aimed at giving it an antique look.”

The experts’ conclusion is the following: “the painting in question is to be considered a fake of the subjects and painting of Giorgio de Chirico, made with inadequate materials, poor and rushed techniques, with a style not adequately interpreted”.

As to the last painting being the object of the analysis, **Still life with fruit and vegetables against the sky, tempera and oil on board, 1922** it should be evidenced that for this last painting, Professor Cavallo, ex parte technical expert of the defendant Baldacci, is not certain that it can be attributed to De Chirico and advances the possibility that the work could have been made in part by the disciple Sciltian and in part by De Chirico.

The expertise, on the contrary, expresses an absolute and clear judgement of forgery and also evidences the lack of experience of the author of the fake.

“The still life on the marble-white table cloth is in contrast with the stormy blue sky. It looks frozen as if under glass and is executed in a ‘neoclassic’ style which does not correspond to the dramatic and wavy fabric, as if pervaded by an intense pathos, of the still lifes by the artist. The position of the table is too linear and lacks the perspective convergences often seen in those years – where the objects are framed by curtains or moulding and executed with deep colours and Titian-like brushstrokes –. The effect is like the table of a morgue upon which the forms are sharply defined by light that arrives from the outside; the peels of the fruit are bright and clear, the peel of the lemons is too smooth, an excessive and concentrated brightness defines the black grapes and the peppers, the linear folding of the table cloth drains life from the scene. This is, in fact, the opposite of what happens in the still life paintings of those years, where the animation is all-internal and tuned more to a Dionysian sentiment rather than a rational, balanced Apollonian style –, something that is implicit in the presence of the glasses of red wine, as if an invitation to a profound and all-encompassing act of sharing. Such characteristics, however, are typical of de Chirico’s painterly style, even after 1922.

The [artist’s, *ed.*] signature of those years was not drawn up with the algid perfection shown in the one examined here. The fluctuation of the lemon leaves against the sky is not stylistically coherent with the general stiffness of the vision.

De Chirico never painted what he saw in reality, but rather he rendered real what he was painting by subjecting the visible and real to a form or an ideal style. As if to say that his idea was formed by the history of still life painting, from which he was able to render his own ‘metaphysical’ vision, never algid but pervaded instead by strong ‘spirits’ and internal vibrations. The grain of the painting

is not at all uniform and the mixture is not good, revealing a rushed technique that is clearly not homogeneous in the various areas, such as to cause craquelures and cuts in the paint. Examined under grazing light, the lack of experience of the person who applied the fixative and the various overlapping coats of paint is also clear.

In conclusion it is evident both from the stylistic analysis made from the data obtained through the direct examination of the painting, and from the technical report (attached hereto [as annex 1]) made by the assistant to our expert, the restorer Ms. Cecilia Bernardini – as authorized by the Proceeding Judge Elena Pulici – the painting in question is to be considered a forgery of the subjects and painting of Giorgio de Chirico, made with inadequate materials, poor and rushed techniques, with a style not adequately interpreted”.

The painting in question therefore, apart from the dissertations of the parties on the presence of the colour rutile white or anatase white and of the arguments on the dating of the colours contained in the so-called “Gnudi expertise” (deposited in the proceedings’ file) is absolutely false and such falsity is identifiable by the expert eye of a De Chirico scholar.

The long explanation of the falsity of the paintings became necessary as, on this point, the motivation of the first degree, complete in other sections, had to be integrated.

The detailed expertise made, as well as the convincing explanations rendered during the trial by the three experts involved and counter-examined by the parties and their technical experts convince the Court that there is no need to request another expertise on the paintings, and a graphical expertise on the signatures on the canvas and on the Baldacci’s letter to F., considering that also the signatures allegedly attributed to De Chirico have been the object of the expert examination already made.

It is advisable to recall in addition that the expertise on the paintings during the first degree was requested at the hearing of 13 June, 2007 exclusively by the Public Prosecutor and by the Civil Plaintiff but not by the defence of Baldacci, who during this degree of the proceeding has insisted for the renewal of an act which was not requested before.

Also the second ground for appeal relating to the *bona fide* of Baldacci at the time of the purchase and authentication of the paintings must be considered ungrounded and therefore must be rejected.

As to the origin of the paintings under dispute and their authentication it should be preliminarily observed that this Court entirely shares the arguments made by the appealed Judge, which are cross referenced in full herein, considering that all the matters raised in the grounds for appeal have already been analysed and solved by the judge of first instance. The motivations of the sentences of the two degrees of the merits represent a single logical-juridical body and consequently there is no need of further motivation in the case that the judge of appeal, as in this case, has ascertained and evaluated evidence with homogeneous criteria to those used by the judge of first instance, making just reference to what stated on the point by the judge of first instance (Court of Cassation, I section 7 November 2002). The jurisprudence of the Court of Cassation is uniform in recognizing the principle of reciprocal integration in the motivation of the decisions of first and second degree in the sections where the decision is consistent. It is also consolidated principle of jurisprudence that the Judge of

appeal is not obliged to take into examination each single argument of the appealing party, but he is solely obliged to expose, through a correct reasoning from a logical-juridical profile, the reasons for which he reaches a different decision from the theories of the appealing party, which are implicitly not shared and therefore disregarded, the arguments not compatible with the complex texture of the motivation. In this sense one can say that the structure of the motivation of the decision of appeal consolidates with the previous decision so to form a unique logical body (Court of Cassation section 2 No. 1362 of 5 December 2002, Court of Cassation section 3 No. 3162 of 23 January 2003).

The reference to the reasoning of the Court consents to identify the logical-juridical process on which the decision of the Court of Appeal is based.

As recently affirmed by the Civil Court of Cassation section 2 (decision No. 11199 of 21 June 2012) there is no fault in the motivation based on the mere difference of assessment of the facts and of the evidence given by the Judge in the merits compared to that pretended by the party.

The Court in particular shares the outline of the grounds which are then detailed by the Judge of first degree during the narration of the facts on which basis the wilful misconduct of Baldacci was deemed to subsist for the contested criminal offences.

In the light of their incisiveness and relevance it seems advisable to quote the main points on which the Judge based the judgement of guiltiness of the accused as to the existence of the subjective element of the contested criminal offences.

“1) all paintings see as the first holder, in one way or another, was always BALDACCI, who would have acquired them from deceased persons/art merchants and for which he did not preserve any evidence; 2) all paintings are accompanied by the expertise of FAGIOLO DELL'ARCO, save for the last contested painting “Horses, horsemen and small temple” which carries the authentication of BALDACCI notwithstanding that in those years (1995) the defendant was part of the FOUNDATION and therefore he should have requested the authentication of the paintings to the Foundation; 3) all paintings have been shown in minor art exhibitions (such as that in Arezzo and Arona) so to create a sort of pedigree of the painting and to consent an easier sale.”

One should add that Baldacci was not a *quisque de populo*, inexperienced and without specific knowledge, considering that he was a professor and true expert of De Chirico's works as proved by his own declarations and by the examination of witnesses, and he was also part of the committee for authentications within the same De Chirico Foundation.

The defence notices that in the act of appeal the Judge would have based his conviction as to the criminal liability of his client on an erroneous precondition, i.e. that Baldacci would have appeared to be the first holder of the seized paintings.

The fact that Professor Baldacci appears to be the first person to have introduced on the market the seized paintings has been proved during the trial as such paintings did not result to have been owned or held by anyone prior to their sale by Baldacci. The fact that a witness – Daniele Crippa – indicated that Baldacci purchased three of the seized paintings from Sprovieri is an interesting suggestion of the defence, which, however, did not find any support from documents or testimonies of Sprovieri himself (who also passed away) or of his heirs.

Consequently one can only confirm the argument of the Court of Milan pursuant to which

Baldacci purchased the paintings from deceased persons and that he did not keep any documentary evidence of the purchase of the paintings in question.

It is in no way relevant the fact that Baldacci insists in affirming that the paintings come from Sprovieri as there is no documentary evidence in support of that in the file, as the judgment correctly recalls.

Continuing on the question of origin, Professor Cavallo, technical expert of Baldacci's defence, reported, as to the authenticity of the painting "Large still life", that Fagiolo, looked at him with "indulgent eyes": see page 48 of the transcriptions of the hearing of 16 January 2009.

Indeed the same Fagiolo, in the technical fiche prepared for the painting to be exhibited at the art exhibition in Arezzo, upon indication of Baldacci, indicated that the painting came from the Trissino collection.

One should remember, that Ms. Elisa Albini Trissino Dal Vello D'Oro, heir of the important art collection of her father, being heard at the hearing of 10 October 2007, denied that such painting together with the other still life painting were part of her father's collection. During the trial, on the contrary, Baldacci's defence introduced the witness Crippa who said something as to the origin of the painting, forgetting, however, that Baldacci had already said to Fagiolo that the origin was the Trissino collection.

To this one should add, always with reference to the testimony of Crippa (as to which it seems advisable to dedicate a few words, considering that the Judge of First Instance almost did not make any mention to such witness, maybe considering him not relevant), what Baldacci sustained at the hearing of 5 May 2008.

Baldacci in his examination reported that he knew Sprovieri and that Daniele Crippa would have informed him that Sprovieri was the holder of a De Chirico painting and was willing to sell it. One cannot understand at this point the reason why, having purchased the first painting "The small still life" from Sprovieri, it was again Daniele Crippa to act as intermediary rather than Baldacci directly calling Sprovieri. Baldacci literally affirms at the hearing of 5 May 2008: "When I bought the small still life, i.e. the first one from Sprovieri, he told me that he would have received in the autumn two other paintings, one from Belgium and another still life from an Italian collection, which he could have been interested in for... considering that he was the first to be in contact with him, and he would have informed me. I also bought these two paintings from Sprovieri through Crippa. I collected both paintings during the month of October in Rome" (page 12 of the transcriptions).

Hence, on the basis of Baldacci's reconstruction the purchase of the other two paintings would have taken place directly between him and Sprovieri even if during his examination he still makes reference to the intermediation of Crippa. However, the witness Daniele Crippa on 7 July 2008 says as to the other two paintings: Sprovieri: "After the summer he pointed out two other paintings" (page 32 of the transcriptions). At the Judge's question "excuse me, but for what reason did he point out the paintings to you?" (page 33) he responded "because he wanted to sell them to me, I am a collector of De Chirico, but as indicated before I collect horses and horsemen ... it is not my interest, as the professor is a great historian of De Chirico, I pointed out them to him" (page 33).

The contrast between the two versions is very clear considering that Baldacci referred that Sprovieri was intending to sell to him the two paintings and that Crippa acted exclusively as intermediary.

The testimony of Crippa was intended to confirm the fact that the paintings originated from Sprovieri, but the declarations of Crippa and of the defendant are not consistent and as to the origin of the large still life, are in contrast with the original indication of the origin of the painting in question from the Trissino family, an approach then clearly denied during the examination of the defendant Baldacci, being heard (on 5 May 2008) after the witness Trissino (the defendant declared that Fagiolo dell'Arco had not understood the indications he had given him as to the origin of the painting in question).

Within the same ground for appeal, with reference to the statement of the defence that the lack of the psychological element on the defendant may be inferred from the circumstance that the defendant relied on the expertise of Maurizio Fagiolo dell'Arco, it should be noted that Professor Baldacci was classified as the maximum expert of De Chirico (as it is documented also in the publications and articles written by him) while the same Baldacci indicated Fagiolo dell'Arco to be scarcely reliable (on the point see the letter sent by Baldacci to the De Chirico Foundation dated 27 April 1993, acquired in the file and recognized as authentic by the same defendant at the hearing of 16 January 2009).

In said letter, which regarded a painting that is not an object of this proceeding, Baldacci had highlighted to the Foundation that "Fagiolo had expressed different opinions on this painting, maybe also from memory, etc. I mean verbal opinions" (see page 118 of the transcriptions of the hearing of 16 January 2009).

In the letter he was harsher on Fagiolo dell'Arco, writing that "Fagiolo, depending on who had called him, said different things. To Z. he said it was a fake, to Vastano he said it was authentic, to me he said that he had not published it in his *Bagni Misteriosi* [Mysterious Baths, *ed.*] as he had many doubts".

Said letter was dated 1993 and therefore already at that time Baldacci was aware of the unsure trustworthiness of Fagiolo dell'Arco in identifying the origin of a painting and also the ease with which he changed views.

In addition Fagiolo dell'Arco as indicated in the judgement of first instance was condemned on a definitive basis for facts similar to those for which we are proceeding.

One should lastly recall that from the acts of the proceeding to Fagiolo dell'Arco results to have been the person having incredibly acknowledged as authentic all the seized paintings, including the tempera covering a print "Chevaux devant la mer" (Horses by the seashore) which De Sanna declared to be of extremely poor make and that the experts judged a clear fake as it was a reproduction of a painting by the artist on which tempera diluted with greasy and oil material was passed on (page 16 of the expertise).

As to the third ground of appeal relating to the revocation of the interim compensation provisionally enforceable, it should be noted that the original interim compensation of euro 25,000 was reduced during this proceeding to euro 14,000 keeping into account that for the painting "Horses, horsemen and small temple" the civil rulings against Baldacci were revoked and also keeping into account the revocation of the civil rulings against Z.

As to the other criminal offences ascribed to the indicted persons Baldacci, L. and F., the De Chirico Foundation incurred damages to its image and moral damages consequent to the defendants'

acquisition and introduction to the market of the painting by the defendants of the fakes in question attributed to De Chirico's name, as well as by the abetting behaviour of F. himself.

As to the damages under analysis, which have not been liquidated by the Judge of First Degree, it seems advisable to confirm the sentence against said indicted persons for the payment of an interim compensation provisionally enforceable to be quantified in euro 14,000.

The third ground for appeal, relating to the failure to grant the generic mitigating circumstances and the application of a lighter punishment, must currently be considered superseded bearing in mind that against all indicted person the criminal action was declared barred as the criminal offences come under the statute of limitations.

Moreover, the accessory penalty of the publication of the judgement is revoked, and it is ordered that the indicted Baldacci, L. and F. are condemned, on a joint basis, to the payment of the legal expenses incurred by the civil plaintiff which are liquidated in the amount of euro 5,520 plus VAT and compulsory contribution to lawyers pension fund.

FOR THESE REASONS

*Having seen Articles 605 of the code of criminal procedure and 157 of the criminal code
Partially reforming the judgement issued on 9 March 2009 by the Monocratic Court of Milan*

DECLARES

not to proceed against the indicted defendants Baldacci Paolo Filippo, Z.A., L.N. and F.F. in relation to the criminal offences respectively attributed to them under the statute of limitations.

REVOKES

The civil rulings against Z. and Baldacci Paolo Filippo for the painting "Horses Horsmen and Small Temple" 1932 and consequently re-determines the interim provisional compensation in euro 14,000

REVOKES

The accessory sanction of the publication of the judgement.

CONDEMNS

The indicted persons Baldacci, L. and F. on a joint basis to the payment of the legal expenses liquidated in the amount of euro 5,520 plus VAT and compulsory contribution to lawyers pension fund.

Motivations within ninety days.

Milan, 20 May 2013

The Drafting Judge
Cornelia Martini

The President
Edoardo Veronelli

Translated by Susanna Beltramo, Attorney at law