

# **Law, Science and Technology**

2

**Nadia Coggiola - Michele Graziadei**

**The Italian “Eternit Trial”:  
Litigating Massive Asbestos Damage  
in a Criminal Court**

**Suggested citation**

Coggiola, Nadia, Graziadei, Michele, "The Italian “Eternit Trial”: Litigating Massive Asbestos Damage in a Criminal Court.", CDCT working paper 20-2013/ Law, Science and Technology 2, available at <http://www.cdct.it/Pubblicazioni.aspx>

### Abstract

**IT** *Italy is one of the countries where the production of materials made out of asbestos has caused a high number of deaths, massive damage to human health, and to the environment. This paper is dedicated to the biggest case ever litigated in Europe in this matter, namely the so-call Eternit Trial (processo Eternit) which has been unfolding before the criminal courts of Torino. The case is not yet closed, and a further appeal is pending before the Italian Corte di Cassazione, but the first instance judgment and the ruling of Court of Appeal in this matter call for attention, because of the high number of claimants involved in the case, and the large amount of damages awarded by the Court. The paper introduces the context of this litigation, and discusses its features for the benefit of foreign readers.*

**EN** *Italy is one of the countries where the production of materials made out of asbestos has caused a high number of deaths, massive damage to human health, and to the environment. This paper is dedicated to the biggest case ever litigated in Europe in this matter, namely the so-call Eternit Trial (processo Eternit) which has been unfolding before the criminal courts of Torino. The case is not yet closed, and a further appeal is pending before the Italian Corte di Cassazione, but the first instance judgment and the ruling of Court of Appeal in this matter call for attention, because of the high number of claimants involved in the case, and the large amount of damages awarded by the Court. The paper introduces the context of this litigation, and discusses its features for the benefit of foreign readers.*

**Keywords:** asbestos, Eternit trial, civil liability for asbestos related damage

## THE ITALIAN “ETERNIT TRIAL”: LITIGATING MASSIVE ASBESTOS DAMAGE IN A CRIMINAL COURT.

NADIA COGGIOLA  
MICHELE GRAZIADEI

### Indice

1. Introduction - 2. Facts of the Case - 2.1 The accusations - 2.2 The stakeholders - 2.3 Public resonance - 3 Legal issues - 3.1 Jurisdictions involved - 3.2 The main legal questions - 4 Procedure - 4.1 Out of court procedure - 4.2 Court procedure: the proceeding of the trial - 4.3 Court procedure: the first instance Court findings of fact - 4.4 Court procedure: the trial and appellate Court decisions

### 1. Introduction

The so called 'Eternit trial' is the biggest criminal case ever prosecuted in Europe for asbestos related deaths, injuries and damage<sup>1</sup>. News on the trial were published on the most important European newspapers, as well on the Italian TV for months, because of the resonance of the facts, the stakes involved in the litigation (including the recovery of damages by the very high number of victims and other civil claimants appearing before a criminal Court), the communication campaigns of the victims' associations, with the support of a range of non profit associations, including the unions.

The first instance proceedings of the 'Eternit trial' ended on the 13<sup>th</sup> February 2012, with the conviction of the defendants, the two top managers accused of the crimes, the Belgian Jean Luis De Cartier de Marchienne and the Swiss Stephan Schmidheiny, by the *Tribunale di Torino* (the first instance court of Torino), in Italy, to sixteen years of imprisonment and an award of damages for millions of Euros to be paid jointly and severally by them and by some companies that were held civilly liable for damage suffered by a very large number of claimants for damages who participated in the proceedings in the quality of *parti civili* (see below nr. 15).

---

<sup>1</sup> The full text of the first instance decision is available on the following web site: [http://www.diario-prevenzione.it/docbiblio/sentenza\\_eternit.pdf](http://www.diario-prevenzione.it/docbiblio/sentenza_eternit.pdf) (last consulted on the 25<sup>th</sup> of July 2013)

The second stage of the proceedings ended the 3<sup>rd</sup> June 2013, with the condemnation by the *Corte d'Appello* (Court of Appeal) of Torino of Stephan Schmidheiny to eighteen years of imprisonment, and an award of damages in favour of about half of the claimants which were successful before the first instance court. Meanwhile, the other defendant, Jean-Louis De Cartier de Marchienne, had died at the age of 92. At the present moment, the *Corte d'Appello* released only its ruling. The full judgment of the appellate Court will be published later on this year. Therefore, given that the appeal decision confirmed at least in part the rulings of the first degree judgment, this report will concentrate on it and will briefly mention the few points of the first degree decision which were overturned or modified by the appellate court, which explain why the number of successful claimant on appeal was not as high as before the first instance court.

A further appeal before the *Corte di Cassazione* (Court of Cassation) is pending, hence the criminal case is not yet closed. Furthermore, many civil claimants will still have turn to civil courts to collect their money, or to pursue full compensation, because both the first instance and the appellate court ordered interim payments of damages to the victims or their successors, and left the determination of the precise quantum of their damages to the civil courts.

The Eternit trial is surely not the first case in Italy on this matter, although is unprecedented for the extent of the damage that the Court had to consider. Eternit was not the only company in Italy which, by working asbestos, involved its managers in committing criminal offences related to the violation of rules on safety at work. In the last two decades or so, many criminal Courts in our country have pronounced on the criminal and civil liability of Italian entrepreneurs and managers who have caused deaths or illnesses related to the production or the use of asbestos products in Italy<sup>2</sup>,

---

<sup>2</sup> See, e.g., Cass. 22 March 2012 n. 24997; Cass. 17 September 2010, n. 43786, Cass. pen. 2011, 5, 1679, annotated by BARTOLI; Riv. it. medicina legale 2011, 2, 489 annotated by BARNI; Cass., 1 aprile 2010, n. 20047; Trib. Milano, 4 June 2007, Corriere del merito 2007, 11, 1289; Cass. 9 May 2003, in *Foro it.*, 2004, II, 69, annotated by GUARINIELLO, *Tumori professionali da legno e amianto*; Cass., 11 July 2002, in *Foro it.*, 2003, II, 324, annotated by GUARINIELLO, *Tumori professionali da amianto e responsabilità penale*; Cass., 30 March 2000, in *Foro it.*, 2001, II, 278, annotated by GUARINIELLO, *Dai tumori professionali ai tumori extraprofessionali da amianto*, *Dir. e pratica lav.*, 2001, 1151, *Riv. critica dir. lav.*, 2001, 519; App. Venezia, 15 gennaio 2001 in *Rass. giur. lav. Veneto*, 2001, fasc. 1, 68, annotated by PAROLIN, *Nesso di causalità nelle malattie professionali causate da esposizione all'amianto*, *Riv. trim. dir. pen. economia*, 2001, 439; App. Milano, 29 June 2001 in *Riv. critica dir. lav.*, 2001, 781; Trib. Milano, 20 December 1999 in *Foro it.*, 2001, II, 53; Cass., 2 luglio 1999 in *Foro it.*, 2000, II, 260, annotated by GUARINIELLO, *Malattie professionali, tumori da amianto, asbesto*, *Dir. e pratica lav.*, 2000, 706; Cass., 5 October 1999 in *Foro it.*, 2000, II, 259, annotated by GUARINIELLO; *Malattie professionali, tumori da amianto, asbestosi*; *Riv. trim. dir. pen. economia*, 2000, 1096; *Ragiusan*, 2000, fasc. 198, 108; *Giur. it.*, 2001, 1709; Pret. Milano, 20 December 1999 in *Riv. critica dir.*

although more recently civil courts have also decided claims concerning the civil liability of defendants for similar facts.<sup>3</sup> Readers who are not so familiar with the Italian legal system should keep in mind that Italian criminal courts are empowered to deliver compensation to the victims under of art. 185 C.P.. This article provides: “Every crime requires restoration according to the civil law. Every crime which has caused patrimonial or non patrimonial damages obliges to compensation the perpetrators and the persons who, according to the civil law, are responsible for his or her actions.”<sup>4</sup> This power of the Court is exercised on the impulse of the *parte civile*, who may be present in the proceedings as mentioned below under nr. 15.

## 2. Facts of the Case

### 2.1 The accusations

Following a long investigation, a pool of prosecutors of the *Tribunale di Torino* led by Raffaele Guariniello accused a Belgian and a Swiss citizen, Jean Luis De Cartier de Marchienne and Stephan Schmidheiny, to be the managers of the Eternit companies established in Italy. In this capacity, they were held liable for the 2191 deaths and 665 cases of personal injuries, caused by the manufacturing of asbestos products in the four Italian factories

---

*lav.*, 2000, 483, annotated by CULOTTA, CANTONI, RICCI; Cass., 11 maggio 1998 in *Foro it.*, 1999, II, 236, annotated by GUARINIELLO, *I tumori professionali nella giurisprudenza*, *Dir. e pratica lav.*, 1998, 2509; Pret. Torino, 2 June 1998 in *Riv. critica dir. lav.*, 1998, 1066; Pret. Bergamo, 3 April 1997 in *Foro it.*, 1998, II, 484, annotated by TRAMONTANO, *Ancora in tema di morte per intossicazione da amianto: brevi rilievi problematici sulla «ri-descrizione dell'evento» nella verifica del nesso causale*; Cass., 28 January 1997 in *Riv. critica dir. lav.*, 1997, 657; App. Torino, 15 October 1996 in *Riv. it. dir. e proc. pen.*, 1997, 1448, annotated by PIERGALLINI, *Attività produttive e imputazioni per colpa: prove tecniche di diritto penale del rischio*; App. Torino, 24 October 1996 in *Giur. piemontese*, 1997, 131, annotated by CAROSSO, *Orient. giur. lav.*, 1997, I, 261; Pret. Torino, 9 February 1995 in *Foro it.*, 1996, II, 107, annotated by TERMINI, *Riv. critica dir. lav.*, 1995, 1059, annotated by MARIANI; Pret. Crema, 12 February 1996 in *Nuovo dir.*, 1996, 529; Trib. Bologna, 11 May 1994 in *Riv. pen.*, 1994, 1025, annotated by PALLADINO, *Malattia professionale ed omicidio colposo: brevi note in margine ad una interessante pronuncia*; Trib. Casale Monferrato, 30 October 1993 in *Riv. critica dir. lav.*, 1994, 697; Pret. Pordenone, 7 July 1992 in *Foro it.*, 1992, II, 720; Pret. Milano, 16 July 1984 in *Riv. giur. lav.*, 1984, IV, 486. For commentary, see the literature cited below fn. 11.

<sup>3</sup> The first decision of a civil court awarding damages for death caused by a mesothelioma of a worker exposed to asbestos is: Cass., sez. lav., 9 maggio 1998, n. 4721, in *Orient. giur. lav.*, 1998, I, 651, *Giust. civ.*, 1999, I, 593. There is also a very high number of cases concerning social insurance issues related to asbestos, which will not be consider here.

<sup>4</sup> Art. 185 c.p.: “Ogni reato obbliga alle restituzioni, a norma delle leggi civili. Ogni reato, che abbia cagionato un danno patrimoniale o non patrimoniale, obbliga al risarcimento o al risarcimento e le persone che, a norma delle leggi civili, debbono rispondere per il fatto di lui.”.

ultimately owned by Eternit. The factories in question were located in the cities of Casale Monferrato, Cavagnolo, Rubiera, Napoli Bagnoli. This charge involved the proof of a range of facts that implicated both defendants in taking or omitting decisions about safety and preventive measures to be implemented in the above mentioned plants.

The alleged crimes referred mainly to acts and omissions that took place long before the indictment of the defendants, although the consequences of those acts and omissions have lasting effects, or produce effects which will provoke more injuries and deaths in the future. The peak of deaths related to the production of asbestos products in Italy will occur in 2020. All the Eternit companies based in Italy were declared insolvent by the *Tribunale di Genova* between December 1985 and June 1986.

## ***2.2 The stakeholders***

While the accused were only two, the claimants for compensation were a multitude.

First of all, there were those suffering from asbestos related diseases, who were exposed to asbestos dust in the Italian factories, either because they were employed by Eternit, or because they worked in Eternit plants, even though they were employees of other employers. Secondly, there were those who had been exposed to asbestos dust, but who had not worked in those factories, such as those living with the workers exposed to asbestos, or near the Eternit factories, and all those exposed for other reasons to asbestos dust produced by Eternit. Thirdly, there were the relatives of the victims of the asbestos, who either claimed compensation for harm suffered as a consequence of their relatives' death or personal injuries, or as successors to the victims' rights to compensation.

An ulterior class of claimants consisted of a variety of legal entities. These included local governments, such as the Regione Piemonte and Emilia Romagna, the Provincia di Torino and Alessandria, the Municipalities where the factories were located (or those that were close to them). Their claims aimed at obtaining compensation for the environmental pollution and the reclamation of land as well as for non material damages. Other entities such as INAIL (the public insurance for work injuries and illnesses) and INPS (the national social insurance for retirement and disability pensions) introduced claims to recover sums paid as pensions to the workers suffering diseases caused by exposure to asbestos. The ASL of Alessandria (the local Nation Health Service Unit) claimed for the extra money spent because of the epidemic of asbestos related diseases. Lastly, some Unions, environmental associations, and associations of families of the victims claimed for their losses as well.

The number of lawyers involved in the trial was quite large. Before the Court appeared 3 general prosecutors, 82 lawyers for the *parti civili*, 6 for the defence, and 3 for the companies which were held to be jointly liable with the criminal defendants for the civil wrongs ascribed to them. Equally noteworthy was the number of medical and scientific experts consulted. Such a huge investment in a criminal investigation is to be explained by taking into account certain features of criminal and civil proceedings in Italy, which shall be clarified in the following pages.

### ***2.3 Public resonance***

The case had great resonance and media coverage, although, as mentioned above, it was not the first case in which managers of a company were convicted for deaths and illnesses caused by asbestos. The theme of asbestos damages has been indeed at the centre of public debate for a long time in Italy by now. The large number of victims caused by asbestos exposure due the activity of the Eternit factories in Italy and the profiles of the defendants certainly contributed to the resonance of this case in particular. The high professional reputation of the chief prosecutor, Raffaele Guariniello, who is well known in Italy for his previous investigations dealing with the protection of workers' and consumers' health, also explains why the case in question attracted so much attention.

The activism of the associations of the families of the victims of asbestos exposure contributed to the public resonance of the case. They participated to every hearing of the case. These associations involved the media and foreign associations that represent victims of asbestos in their fight for justice. Their participation in the Eternit trial and some stories of victims and their relatives were documented in: "Polvere. Il grande processo dell'amianto" (Dust. The great asbestos trial), a documentary directed by Niccolò Bruna e Andrea Prandstraller which was released in 2011. Apart from it, several news reports of the case, and of the story behind it, went on air both before, during, and after the trial, as it regularly happens in Italy with issues of major public concern. Furthermore, the proceedings were followed by a number of victim's associations from several European countries and was extensively covered by the foreign press.

## **3 Legal issues**

### ***3.1 Jurisdictions involved***

In Italy, the criminal prosecution of managers and employers for death or serious personal injuries caused by unsafe working conditions is common. The Italian constitution (at. 112 Cost.) and the Italian code of criminal procedure (art. 50 C.C.P.) obliges public prosecutors to bring a criminal

action against the defendants in cases of homicide, or serious personal injuries, as well as for most other criminal offences. Minor personal injuries are prosecuted upon complaint of the injured parties only, following the provisions of art. 582 *codice penale* (c.p., penal code). The criminal charges for which the defendants were indicted are subject to compulsory prosecution under Italian law.

In principle, all those who are harmed by a crime can claim compensation and restitution by appearing as *parte civile* before the criminal court, in accordance with art. 74 of the Italian code of criminal procedure<sup>5</sup>. The *parte civile* is an institution which features in all codes that are indebted to the French legal tradition<sup>6</sup>. Readers who are not familiar with this institution should therefore turn to general works on comparative criminal and civil procedure for becoming more acquainted with it. The essential point is that under the Italian code of criminal procedure, the victim of a crime, or his successors, or any person or entity who has suffered damage as a consequence of a crime (e.g. an environmental association in the case of an environmental disaster), may either decide to be present before the criminal court as *parte civile*, to get compensation, possibly on an interim basis, or restitution in kind, from the defendant (and/or the parties that are civilly liable jointly with the defendant), or wait for the conclusion of the criminal proceedings to rely on the findings and the records of the criminal court, whose judgment shall be *res judicata* in this respect. The claimant who does not pursue either course may start parallel and independent civil proceedings (see art. 75, 651, 652 c.c.p.). In the latter case the criminal and civil court tracks and outcomes shall be completely separate, and may eventually lead to different and conflicting outcomes. The *parte civile* has the autonomous power to bring evidence to the criminal Court, to assist the prosecutor in proving the guilt of the defendant. It therefore can, for example, inspect documents and cross-examine witnesses at the trial, and present its own conclusions to the Court. Quite often, the reason for the claimant to be present in the criminal proceedings as *parte civile*, rather than to establish parallel civil proceedings, is to take advantage of the fact that the Court provides the often needed, but expensive, scientific and medical expert opinions, by appointing experts who shall be paid by the court (*consulenti tecnici d'ufficio*), although the *parte civile* can also appoint experts who shall be expert witnesses for that party. Furthermore, if a claimant appears before the court in the capacity of *parte*

---

<sup>5</sup> Legittimazione all'azione civile. 1. L'azione civile per le restituzioni e per il risarcimento del danno di cui all'articolo 185 del codice penale può essere esercitata nel processo penale dal soggetto al quale il reato ha recato danno ovvero dai suoi successori universali, nei confronti dell'imputato e del responsabile civile.

<sup>6</sup> M. Chiavario, Private Parties: The Right of the Defendant and the Victim, in M. Delmas-Marty, J. R. Spencer (eds.) *European Criminal procedures*, Cambridge, 2005, 541 ff.; C. Howard, Compensation in French Criminal Procedure, (1958) 21 *Modern Law Review* 386.



*civile*, the evidence garnered by the Court is formed with the material contribution of the *parte civile*, which may be important if there is to be a single decision on the issue of criminal and civil liability. As mentioned above, the claimant may also forego the right to present his case to the Court as *parte civile*, and decide to bring a separate civil action for damages before a civil court. In this case, however, the burden of proof concerning the facts of the case is entirely on him. In the light of the extensive nature of the factual enquiries required in the Eternit case, which did not concern a single action or event, but numerous actions and events over a considerable time span, it is not surprising to learn that most of the Eternit claimants presented their case to the Court as *parti civili* in the above mentioned criminal proceedings. The possibility to take active part in the criminal proceedings by cross-examining witnesses and bringing evidence to the court in such a complex case was vital, given the difficulty of replicating such penetrating and wide ranging enquiry before a civil judge once the criminal case was closed, or while the criminal proceedings were pending. From a more general point of view, it should also be considered that a criminal trial offers to the civil claimants a unique opportunity to showcase the victims' claims because civil proceedings in Italy are mostly written, and do not really offer to those claimants "a day in court". The criminal court is entitled to deliver compensation under the provision of art. 185 of the Italian penal code, which states: "Every crime requires restoration according to the civil law. Every crime which has caused patrimonial or non patrimonial damages obliges to compensation the perpetrators and the persons who, according to the civil law, are responsible for his or her actions."<sup>7</sup>

For both the criminal charges and the related claims for full or interim compensation the venue was the *Tribunale di Torino*, a first degree criminal court staffed by three professional judges.

### 3.2 The main legal questions

The defendant were accused of two crimes.

Firstly, they were accused of the violation of art. 437 of the Italian penal code<sup>8</sup>, sanctioning whoever intentionally omits to install systems, devices or signals that must be installed to prevent disasters or working accidents (or removes or damages them). Such conduct is a crime, whether

---

<sup>7</sup> Art. 185 c.p.: "Ogni reato obbliga alle restituzioni, a norma delle leggi civili. Ogni reato, che abbia cagionato un danno patrimoniale o non patrimoniale, obbliga al risarcimento il colpevole e le persone che, a norma delle leggi civili, debbono rispondere per il fatto di lui."

<sup>8</sup> Art. 437 C.P. Rimozione od omissione dolosa di cautele contro infortuni sul lavoro. Chiunque omette di collocare impianti, apparecchi o segnali destinati a prevenire disastri o infortuni sul lavoro, ovvero li rimuove o li danneggia, è punito con la reclusione da sei mesi a cinque anni. Se dal fatto deriva un disastro o un infortunio, la pena è della reclusione da tre a dieci anni.

or not an incident or a disaster occurs, but when an incident or a disaster follows the sanction is between three and ten years of imprisonment. The prosecutors charged the defendants on this count. The accusation was that they had control over the management of the production process, and were involved in decisions concerning the safety of the Italian plants of Eternit, which resulted in the omission to take the preventive and safety measures which should have been taken according to the law under the circumstances.

Secondly, the defendants were indicted for the violation of art. 434 of the Italian penal code.<sup>9</sup> This article sanctions whoever intentionally commits an action aimed at causing the ruin of a building, or of a part of it, or another disaster.<sup>10</sup> The creation of dangerous conditions by the violation of this provision is enough to trigger punishment. Once more, if the ruin or disaster follows the sanction is between three and twelve years of imprisonment. The charge was that the defendants caused a disaster, by omitting the adoption of technical, hygienic and organisational devices which should have been put in place to protect the workers' health. In particular, they had omitted or carried out insufficient controls on the workers' health conditions, and had not informed them about the risks related to asbestos. Furthermore, they had supplied asbestos products and wastes to private and public administrations (for paving the streets, courtyards, and for thermal isolation of attics) without warnings of the associated risks. They had also exposed the workers' relatives and cohabitants to asbestos dust, inter alia, by failing to clean the workers' working clothes on the plants, and they polluted the environment surrounding their factories, exposing the population of several towns to asbestos. This situation lasted at least up to 1976, when some remedial actions began to be taken, although their effect was not sufficient, and did not effectively eliminate the production and the spreading of asbestos dust at work and in the environment, nor the hazards for human health related to it.

The accusations were noteworthy, because the prosecutors assumed that the defendants acted (or failed to act) with the intention to cause damage. In cases of death and personal injuries resulting out of poor working conditions, the employer is often charged for crimes that imply a lack of due care, such as *omicidio colposo* (art. 589 c.p.), and *lesioni personali colpose* (art. 590 c.p.), namely

---

<sup>9</sup> Art. 434 C.P. Crollo di costruzioni o altri disastri dolosi. Chiunque, fuori dei casi preveduti dagli articoli precedenti, commette un fatto diretto a cagionare il crollo di una costruzione o di una parte di essa ovvero un altro disastro è punito, se dal fatto deriva pericolo per la pubblica incolumità, con la reclusione da uno a cinque anni. La pena è della reclusione da tre a dodici anni se il crollo o il disastro avviene.

<sup>10</sup> The *Corte Costituzionale* (Constitutional Court) 1st August 2008, n. 327, in *Giur. cost.*, 2008, 3529, rejected the question of constitutionality raised with respect to this article, which was based on the vagueness of the concept of "disaster", holding that the proper interpretation of this article, in the light of the system of the code, makes it applicable to a form of prejudice which is extensive, complex, and very serious.

charges that do not involve the proof of such an intent. But in this case, the prosecution opted for a different approach. This choice was related to the unusual facts of the case, involving a large number of victims and claimants. The charges based on art. 434 and 437 cp. are easier to substantiate in cases with large numbers of victims, compared to charges based on individual injuries or deaths (such as *omicidio colposo* or *lesioni colpose*), which would be more demanding in terms of evidence pertaining to each victim, and possibly more difficult to prosecute due to the limitation periods established for these other crimes.<sup>11</sup> To establish the relevant intent the prosecutors proved to the Court that the directors of the plants and the accused knew of the evolving scientific knowledge concerning the dangers posed by asbestos to human health which during the 1960's, by testimonial and documentary evidence, which cannot be retrieved here in detail. Just to mention an illustrative example, internal correspondence by the director of the marketing department of the plant located in Casale Monferrato to the other directors of the Italian company contained a copy of a New York Times Magazine article published on the 13<sup>th</sup> of January 1973 mentioning the research of Dr. Irving Selikoff which, in a symposium held at the New York Academy of Sciences in 1964, had documented the relationship between asbestos dust and mesothelioma, the dangers created by even brief exposure to asbestos dust, the worsening effects caused by prolonged exposure to asbestos dusts. In that Symposium, Dr. Enrico Vigliani and others presented data documenting 172 asbestos death related cases from Piedmont and Lombardy<sup>12</sup>. Stephan Schmidheiny himself, in an internal seminar on the dangers of asbestos held in Neuss in June 1976 for the managers and the staff of the Eternit companies, acknowledged that scientific evidence concerning the asbestos, which was available since the 1960's (with a specific reference to the work of dr. Selikoff), was taken into consideration with the greatest attention by the company, although up to 1976 no investment in safety had been considered necessary. He announced that from then on the company intended to launch a program of remedial actions, but also that the problems raised for the industry by the scientific evidence was a problem to live with. The expert witnesses for the defendant gave

---

<sup>11</sup> For further commentary on asbestos related injuries and consequent judicial proceedings in Italy, see: A. DI AMATO., *La responsabilità penale da amianto*, Milano, 2003; L. MONTUSCHI L. and G. INSOLERA (eds.), *Il rischio da amianto. Questioni sulla responsabilità civile e penale*, Bologna, 2006; N. COGGIOLA, *Alla ricerca delle cause. Uno studio sulla responsabilità per i danni da amianto*, Napoli, 2011. In English, N. COGGIOLA, *Causation in Mesothelioma Cases in the Italian Courts*, (2013) 21-1 *European Review of Private Law (ERPL)*, 331-340 and N. COGGIOLA *Asbestos Cases in the Italian Courts: Duelling with Uncertainty*, (2009) 3 *InDret*, Barcelona 1-34, in [http://www.indret.com/pdf/678\\_en.pdf](http://www.indret.com/pdf/678_en.pdf),

<sup>12</sup> Vigliani e. C., Mottura G., Maranzana P., *Association of pulmonary tumors with asbestosis in Piedmont and Lombardy*, *Ann NY Acad Sci* 1965; 132: 558-574.

evidence about the fact that in the in the 1960's and in the early part of the 1970's scientific evidence concerning the dangers of asbestos was not yet "consolidated" as it is now, in part because scientific measurements of the level of exposures to asbestos and systematic observations of the effects of the exposure to it were not yet in place. On this point the court held that, although it can be conceded that such knowledge was not yet "consolidated", it was abundantly clear in the light of the evidence presented to the trial that major industrial groups such as those represented by the defendants from the second half of the 1960's onwards knew that asbestos could cause pleural cancer (and that crocidolite in particular could be lethal), affecting not only the workers of the industry, but also those who came in contact with it in other ways.

Given the long time elapsed between the alleged actions or omissions of the accused and the moment in which they were charged of the crimes, the prosecutors faced the possibility that the charges could not be upheld by the Court, because the crimes could be time barred. The prosecutors avoided this obstacle by relying on the classification of the two crimes of which the defendants were accused as continuing crimes (*reati permanenti*), in which all the actions and omissions, as well the continuing state of affairs caused by them, are considered as relevant. With respect to the crime punished by art. 437 c.p. they maintained that the limitation period began to run from the last injury suffered by a victim, while in the case of the crime punished by art. 434 c.p. the limitation period had not yet started to run, because the danger in question was considered to be still actual, in the light of the lasting conditions of the area which had been polluted by the asbestos dusts produced by Eternit. The court of first instance accepted their thesis, but on appeal the decision was reversed with respect to one of the charges, and it was thus held that limitation period for the crime punished under art. 437 had lapsed. As the full judgment of the Appeal Court is not yet available, it is too early to comment the decision rendered on appeal on this point.

## 4 Procedure

### 4.1 *Out of court procedure*

Pending the first instance trial, the Becon company, in the name of Stephan Schmidheiny, offered the Comune di Casale (Municipality of Casale) 18.3 millions € to withdraw from the position of *parte civile* in the Eternit case, and to renounce to all future claims for compensation. Initially, the town council was willing to accept the settlement, but the fierce opposition of the citizens of the town eventually led the council to turn it down. Other smaller towns also refused similar offers, while a few accepted them. On appeal the

Municipality of Casale obtained 30.934.446,37 €. Whether and when the Municipality shall be able to collect this money is open to question, however. The death of one of the defendants during the appeal had as a consequence the exclusion from the proceedings of the ETEX Group SA, a Belgian company with substantial assets, which should otherwise have answered jointly for the damage done by Louis de Cartier de Marchienne, according to the ruling of the first instance court.

#### *4.2 Court procedure: the proceeding of the trial*

The trial before the Tribunale was quite long, lasting from the 6<sup>th</sup> of April 2009 to the 13<sup>th</sup> of February 2012, with 66 hearings. It was also burdensome to manage, because of the large number of victims and *parti civili* claiming compensation, and the complexity of the factual and legal issues at stake. The number of documents examined by the Court and the experts was huge, for example.

At the beginning of the trial there were more than 6.000 *parti civili*, not only the victims themselves, if still alive, and/or their relatives or successors, but also local authorities, unions and various associations. That large number of *parti civili* reflected the high number of alleged victims and the staggering economical and ecological damages that the asbestos manufacturing process caused to people and places over the last thirty years in several areas of the country. Under the Code of criminal procedure, the court could not dislodge the compensation claims of the *parti civili* to make its task easier, but to carry out its duty, namely setting the criminal punishment first, it opted for granting standardized interim payments in the range of 60.000, 35.000, 30.000 € to the victims (or their successors), depending from the respective situation, thus leaving to the civil courts the task of assessing the precise amount of damages for each claimant. On the other hand, as mentioned below, the Court awarded full compensation of damages claimed by legal persons or other entities which, such as municipalities and other public authorities, trade unions and environmental associations, which could be assessed more easily.

The accused denied wrongdoing and never appeared in court. They were never interrogated during the investigations leading to the trial and they never addressed written statements to the Court.

#### *4.3 Court procedure: the first instance Court findings of fact*

The judgment of the Tribunale di Torino is 713 pages long. The list of the victims alone is 180 pages long. The first part of the judgment sets out the historical development of the asbestos industry and the creation of international cartel among the firms involved in the production of asbestos products. This part tells the history of Eternit across the borders, and

demonstrates the real power and influence of the defendants over the management of the Italian factories at the relevant moments in time. Then, the judges move on to illustrate the law on the protection of workers against illnesses caused by asbestos exposure, which was in force during the relevant period of time. Those laws considered a criminal offence the exposure of workers to dusts in general and imposed specific preventive measures to abate them, and to avoid their diffusion in the working environment (and imposed annual medical checks for workers exposed to asbestos dust)<sup>13</sup>. In the interpretation of the Italian courts, which were at first slow to sanction these violations, the Italian legislation obliged the employers to provide every possible means to protect the workers from health dangers at work, having regard to the scientific and empirical knowledge available<sup>14</sup>. But from the evidence given to the Court, in the Eternit factories located in Italy the violations of these norms was related to the omission of minimal precautions, which the Eternit disregarded.

The judgment goes on to describe the production processes in the four Eternit factories. With the help of many witnesses, the Court thoroughly assessed the working conditions in the same factories. The presence of high levels of asbestos dust in the factories and the poor working conditions of the workers were related to the nearly total lack of aspirator fans, filters and similar devices that could have at least reduced the level of dust in the working places up until 1976, and to the insufficient safety measures which were put in place afterwards. Furthermore, the workers were neither provided with adequate means of protection against the dust, nor obliged to use or wear them, when provided. They were not informed about the dangers of the asbestos dust and of the need to protect themselves against such dangers. The overalls of the workers were washed in their homes. The medical inspections in the plants were rare or inexistent, and the workers suffering from asbestosis were not always assigned to safer jobs. The levels of asbestos dust in the working areas were regularly above the limits established by law. The improvements of the working conditions by the employers were always slow. They only followed after repeated inspections and warnings by the public authorities. In two of the factories the so called “blue asbestos”, that is to say the crocidolite asbestos, the most cancerogenic kind of asbestos, was used until the closing of the plants, and therefore also in the period of time under investigation.

---

<sup>13</sup> D.p.r. 19 marzo 1956, n. 303, Norme generali per l'igiene del lavoro (S.O.G.U. 30 aprile 1956, n. 155), art. 4, 21, 58 ff. For commentary see, among others, G. De Sanctis, *Gli effetti del tempo nel reato. Uno studio tra casistica e dogmatica*, Milano, 2006, pp. 53 ff., 77 ff.

<sup>14</sup> This is standing case law. For commentary see, e.g., A. Di Amato, *Codice di diritto penale delle imprese e delle società. Annotato con la giurisprudenza*, 2011 (the author was a member of the defence team).

Regarding the pollution of the places outside the factories, the evidence established that asbestos was transported using jute sacks. These were often broken, and thus asbestos dust was dispersed for years in the Casale railway station and in the train wagons. The sacks were also often transported on open trucks, going through the towns where the plants were located, with further dispersion of the dust. The holes of those sacks were mended in the homes of Eternit workers. The areas surrounding the factories were covered by the dust resulting from the production process, because the existing aspirators fans had no filters, and the waste products were generally crushed in the open air. No precautions were taken, as well, in the transportation of the wastes and their dumping. The overalls of the workers, covered by dust, were washed at home and worn to go back home, contributing to the dispersion of asbestos fibres outside of the factories. In Casale and Cavagnolo the liquid wastes were directly dispersed in the Po river, where the asbestos dust created artificial beaches where people used to go in their free time. The factories of the two towns and in Bagnoli were not cleaned up when they were eventually closed down. Workers and others could buy or receive without any charge the powder wastes (so called *polverino*) and other by-products of the production such as felts and used sacks. In the towns of Casale and Cavagnolo the *polverino*, or the waste products, were used to pave roads and yards. In Casale the *polverino* was used for the thermal insulation of attics. Both towns are therefore still exposed to actual danger linked to the presence of these materials. They therefore need large investments to reclaim to normal use the places where the factories were located and the buildings and places where the asbestos products were used. Presently, the air pollution levels of the towns where the Eternit factories were located is below the prescribed thresholds, however.

The judgment addresses in depth the issue of what knowledge was available about the dangerousness of asbestos fibres for human health and the policy of major industrial groups regarding it. The evidence established that, by the end of the XIX century, the manufacture of asbestos was, for the first time, considered an activity dangerous for human health. By the beginning of the XX century the relationship between asbestos exposure and asbestosis was ascertained, and as mentioned above, in 1964 an international conference presented solid evidence on the relationship between asbestos and lung cancer<sup>15</sup>. The industry was then alerted about this association, and the implications of these scientific discoveries for it were not ignored by its managers. They tried to minimize any alarming information, and to avoid the implementation of restrictive legislative measures that could have reduced

---

<sup>15</sup> Expert witnesses Mara, Thieme, Carnevale and Castleman (who is the author of *Asbestos: Medical and Legal Aspects*, New York, 4th ed., 2005) were consulted on this point in the proceedings.

the profitability of their business in some countries. The different firms of the asbestos industry acted as a lobby to carry out such purposes, as it emerges from the judgment.

Many pages of the judgment are devoted to the various scientific issues related to the illnesses caused by asbestos. With the support of expert knowledge and of the scientific literature on the effects of asbestos exposure, the Court held that such exposure is the cause of different illnesses. The first is asbestosis, caused by the accumulation of asbestos dust in the lungs. Asbestosis is a cumulative illness. There is a direct relationship between the amount of dust inhaled and the seriousness of the illness. Another frequent illness are the lung carcinomas, that can be caused by different factors. The scientific consensus is that these can also be initiated by the asbestos alone, however, and that their occurrence is directly related to the amount of asbestos exposure, generally to high or at least medium amounts of asbestos dust. The latency of that illness is around 10 years, but can be greater or smaller in some types of cancers.

Lastly, a very frequent illness in those exposed to asbestos dust is mesothelioma. This is a cancer that is exclusively caused by asbestos, which is characterized by a very long latency, at least 10 years. It can be caused by a very small amount of asbestos dust, but it is still debated whether it is dose-dependant, or not. In the former case, any exposure to asbestos dust can be considered a causative factor of mesothelioma, because it at least shortened the latency of the mesothelioma, or aggravated the same illness. In the latter case, the defendant can try to establish previous exposures to argue the lack of causation with respect to successive exposures, as previous exposures in which he is not implicated may be the cause of the illness. In Italy, the *Corte di Cassazione* held that the three illnesses are all dose dependant. The single exception to these rulings is the *Corte di Cassazione* judgment n° 43786 of the 17 settembre 2010, Cozzini, in which the Court held that it must be ascertained if the theory of the accelerating effect of the subsequent exposure on the initiated mesothelioma is shared by the scientific community; whether it is a statistically universal or probabilistic law, and, in the latter case, if that accelerating effect actually occurred in the concrete case; and, lastly, if the previous exposures initiated the mesothelioma with certainty. This last point is not a minor one, in the light of the margins of uncertainty surrounding the scientific knowledge available with respect to precise aetiology of mesothelioma. The *Tribunale di Torino* held that the preponderant opinion in the scientific community is that mesothelioma is a dose dependent illness, considering that the alternative model of causation, involving the hypothesis of a trigger dose, which would be the sole causal factor, is not to be substantiated by the available data and scientific opinions. Therefore, it considered that every exposure has causal impact until the development of



the mesothelioma, and that the increase of the exposure cannot be ruled out as irrelevant to the development of the pathology.

#### 4.4 *Court procedure: the trial and appellate Court decisions*

The *Tribunale di Torino* then examined the judicial precedents concerning the provisions of art. 437 and 434 C.P., and their applicability to the facts of the case. The following paragraph covers only on those issues that are more relevant to a foreign reader.

Undisputedly, a long period of time intervened between the first deaths and injuries related to the activity of Eternit and the prosecution of the above mentioned crimes by the prosecutors of the *Tribunale di Torino*. On this basis, the defendants objected that the crimes for which they were charged were time barred for lapse of the limitation period fixed by the penal code. The *Tribunale di Torino* held, however, that the defendants were charged of a continuing crime (*reato permanente*), and the acts and omissions constituting a violations of art. 437 c.p., taken together with their consequences, constituted a single crime. Under this approach, the limitation period for all of them runs from the date of the last diagnosis of the illness formulated on 13 August 1999 for the cohort of victims for which the criminal charges were brought. Regarding the second crime, punished by art. 434 c.p., the Court held that in the towns of Casale and Cavagnolo the dangers created by the presence of asbestos was still real. Hence, the limitation period for the crime in question had not yet run out. The crimes committed in the towns of Napoli Bagnoli and Rubiera were, on the contrary, time-barred, because the dangerous situation created by the violation of that article was no more actual.

The *Corte d'Appello* overturned this last decision, holding that the crimes committed in Napoli Bagnoli and Rubiera were not statute-barred. The accused was therefore condemned for them and consequently held liable for them under art. 434 c.p. However, as mentioned above (nr.20) the *Corte d'Appello* also held that the crime punished by art. 437 c.p. was statute barred. At the moment, the full judgment of the appeal Court is not yet available and therefore the basis for this holding is not fully clear. As a consequence of this ruling the number of claimants for which damages were awarded was less than half of the claimants compensated by the first instance court.

The Court then examined the relationship between the positions managerial covered by the two defendants and the occurrence of the facts for which they were charged. The defence lawyers tried to establish that the two defendants never had any control over the operations carried out in the

Italian factories<sup>16</sup>. The *Tribunale di Torino* rejected this defence. According to the documents and witnesses examined in the course of the hearings the accused knew the conditions of the factories, and omitted taking or imposing precautions and safety measures in violation of the law. Therefore, considering that the pathologies and deaths caused by asbestos exposure are dose dependant, the court held that the accused had committed the crime sanctioned by art. 437 of the Italian penal code. As already mentioned, the appeal judgment reversed this holding, maintaining instead that the limitation period for this crime had lapsed. The first instance Court held that the accused had also committed the crime sanctioned by art. 434 of the Italian penal code, because they did not take measures to avoid what was happening in the Eternit factories in Italy and in their surroundings (the cession or selling of the “polverino” and other production wastes and their use by the population, and so on). Given the gravity of the violations and of their consequences, they were sentenced to sixteen years of prison by the first instance Court. As already mentioned, this ruling was modified on appeal, because of the death of one of the two defendants, and the decision to consider that the limitation period for these crimes had not expired for the plants of Napoli Bagnoli and Rubiola. This explains why the sentence inflicted to the only surviving defendant – namely Stephan Schmidheiny – was increased to 20 years of imprisonment.

Civil liability for the wrongs committed by the defendants raised the question of the applicable limitation periods. The Court applied to the facts art. 2947/III of the Italian civil code, which provides that if a civil wrong is also a crime, the limitation period applicable to it is that of the crime, if more favourable to the aggrieved party, as it is usual in similar criminal cases. Therefore the limitation period applicable to the compensation claims for damage caused by the violation of art. 434 had expired for the wrongs done in Rubiera and Napoli Bagnoli. The same was true for the consequences of the violation of art. 437 with respect to deaths caused by illnesses that had been diagnosed before the 13 August 1999. All the other compensation claims could still be pursued, because with respect to them the limitation period had not yet lapsed.

The appellate Court reversed the first instance judgment on the point of the lapse of the limitation period for the crimes committed in Rubiera and

---

<sup>16</sup> Italian law did not contain provisions on the criminal liability of firms up to the reform introduced with d. lgt. 8 giugno 2001, n. 231, Disciplina della responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica, a norma dell'articolo 11 della legge 29 settembre 2000, n. 300 (G.U. 19-6-2001, n.140). Even before that date, however, claims for the civil liability of firms for wrongful acts or omissions of their managers were allowed on the basis of the *respondeat superior* rule, as it is explained below nr. 38.

Napoli Bagnoli, and consequently affirmed the liability of the only surviving defendant for them as well.

The two accused and the companies to whom civil liability for their wrongs could be ascribed were held jointly and severally liable by the *Tribunale di Torino* for the compensation of all the damages that were the consequence of the violation of art. 434 C.P. and of art. 437 C.P., during the respective periods of management. These companies were held jointly liable for compensation with the two defendants because they were held vicariously liable under art. 2049 c.c. and art. 2395 c.c. for the civil wrongs committed by their managers. The first is the provision which makes employers liable for wrongful acts and omissions of their employees on a respondeat superior basis, without need of proving negligence in their hiring or supervision. The second provision extends the same regime to company managers with regard to the companies employing them. With respect to most claims brought by the victims or their successors, the Court awarded interim payments of damages. The precise determination of the quantum of damages owed to each claimant was thus left to the civil courts, being too complicated to be determined in the criminal proceedings. Before the civil courts, the *res judicata* effects of the criminal judgment will most likely preclude further inquiry into the acts and omissions of the defendants and their relevance in terms of causation of damage with respect to the victims which were represented in the proceedings (see also below).

Following the death of one of the two accused while the appeal proceedings were still open, the *Corte d'Appello* convicted Stephan Schmidheiny for the crime sanctioned by art. 434 C.P. and held him responsible for the compensation to be paid to the injured parties, jointly with the companies which are civilly liable for the corresponding wrongs committed by him, but had to declare the extinction of the proceedings with respect to the other defendant. As a consequence, the Appeal Court revoked as well the ruling of the first instance court concerning the civil liability of companies which had been held liable for wrongs committed by the deceased, such as the ETEX Group SA.

Both *INAIL*, the national insurance for workers injuries and illnesses and *INPS*, the national social insurance for retirement and disability pensions, received a interim compensation for the indemnities and pensions paid because of the illnesses that were the consequence of the criminal facts (respectively € 15.000.000 and a sum to be quantified by the civil court) in the first instance, but on appeal their claims were rejected, probably because of lapse of the relevant limitation periods.

*Regione Piemonte, Provincia di Alessandria, Provincia di Torino, Comuni di Casale Monferrato, Mirabello Monferrato, Morano sul Po, Coniolo, Villanova Monferrato, Pontestura, Balzola, Ozzano Monferrato, Cavagnolo, Motta de' Conti, Caresana, Stroppiana, Candia Lomellina and ASL di*

*Alessandria* obtained compensation for both economic and non economic losses<sup>17</sup>. In particular, they were compensated for the prejudice to their historical, cultural, political and economic identity, and for environmental damage concerning the specific territory. The *Regione Piemonte* obtained an interim award of € 20.000.000 covering the expenses laid out for land reclamation, for the maintenance of Mesothelioma Register, for the Regional Asbestos Centre, for the care of asbestos related pathologies by the Regional Health Service. The *Comune di Casale Monferrato* was compensated with an interim award of € 25.000.000 for the costs of land and buildings reclamation. The *ASL di Alessandria* was awarded € 5.000.000 for its loss of prestige and the frustration of its tasks, and for the loss caused by the general increase of the medical expenses caused by the exposure of workers and citizens to asbestos dust. *Regione Emilia Romagna, Provincia di Reggio Emilia* and *Comune di Rubiera* received compensation for the prejudice to their historical, cultural, political and economic identity, and for the expenses laid out by their health services to provide care for the people affected by diseases caused by asbestos.

The workers' unions, who claimed damages as well, were compensated for the economic and non economic losses related to the loss of confidence in them – a formula that is a leeway to obtain general damages - provoked by the systematic violation of the regulations that should have protected the workers' health and safety (€ 100.000, or the different sum to be awarded in a civil suit). This motivation does not involve any derogatory appreciation of their standing on this issue. Compensation for non economic losses was also awarded to five associations for the defence of the environment and the health of the people exposed to asbestos and their relatives, namely the *Associazione italiana esposti amianto* (€ 100.000), *Associazione familiari vittime amianto* (€ 100.000), *Legambiente* (€ 100.000), *WWF Italia* (€ 70.000), and *Medicina democratica* (€ 70.000) obtained compensation for the prejudice caused to their interests and aims, either because of the moral prejudice they were assumed to have suffered, or because the resources and the efforts devoted to preserve the environment or the health of the victims of asbestos was frustrated by the actions and omissions of the defendants.

The workers and/or their relatives were compensated for the harm caused by the exposure to asbestos. On the issue of causation, the Court held that the causal link between the intentional exposure of the victims to asbestos and those pathologies and deaths was proved by the expert evidence made available to the Court. The evidence presented to the court in this

---

<sup>17</sup> Non economic losses are now recognised as a matter of course in Italian law to legal persons and associations as well: see N. Coggiola, B. Gardella Tedeschi, M. Graziadei, *Essential Cases on Damage* ed. by B. Winiger, H. Koziol, B. A. Koch, R. Zimmermann, 2011, p. 1016

respect involved an analysis of the level of exposure to asbestos dust linked to the personal life of each individual, as attested by the available data collected for each individual over the years, the diagnosis of the pathology formulated while the worker was alive or post mortem, and an epidemiological study of the cohort in question. The workers were compensated as well for the documented cases of pleural plaques. To hold the defendants liable for this type of prejudice the Court maintained that it sufficed to ascertain the exposure of the workers to the asbestos dust, which was known to cause prejudicial consequences. To understand this part of the judgment it is necessary to keep in mind that the crimes for which the defendants were charged allowed compensation for moral damages as well under art. 185 C.P. The compensation awards covered once more only deaths or injuries caused by illnesses diagnosed (or which had become manifest) after the 13th of August 1999, because the relevant limitation period for the civil claim had expired for damage that had become manifest prior to that date. Given the long period of latency of mesothelioma this explain why victims exposed to asbestos dust decades ago or their successors were to get compensation. The defendants were, however, also held liable if workers initially suffering from asbestosis were subsequently diagnosed a lung cancer. Harms which could not be ascribed to the actions or omissions of the defendants were left uncompensated. In other words, the Court took into account the specific periods in which each of the defendants carried out managerial tasks for each plant to pronounce on their liability.

The defendants were also held liable for the prejudice suffered by the citizens of Casale Monferrato, Cavagnolo and Brusasco who developed a pleural mesothelioma and other illnesses related to asbestos (such as pleural plaques and lung cancer), on the same causal basis which supported the compensation awards in favour of the workers and their relatives. Moreover, the defendants were also held liable all non pecuniary damages suffered by the citizens of Casale Monferrato, Cavagnolo and Brusasco and their successors, for the so called “danno da esposizione”, that is to say the fear of contracting an illness caused by the exposure to the dusts. The claimants who obtained an award of interim damages which recognizes the civil liability of the defendant and of companies that are jointly liable with him were around 3000.

Although this case was covered by a large number of articles in the press and received considerable attention by the media, the judgment the *Tribunale of Torino* on the Eternit case so far has not been commented extensively in Italian law journals and reviews<sup>18</sup>. More comments will

---

<sup>18</sup> The comments available so far are: A. PALMA, **In primo piano**, *Studium iuris*, 2012,1181 – 1191 , V. MUSACCHIO, **Eternit, diritto penale e morti da amianto: una breve opinione sull'argomento**, *Rivista penale (Riv. Pen.)*, 2012, 472 – 473; M. FORMICA,

probably be available after the publication of the judgment by the Court of Appeal and the Court of Cassation.

Pending an appeal to the Court of Cassation on such a complex litigation, it would be unwise to provide here more than an outline of the reflections that the Eternit trial may stimulate. First of all, is hardly surprising to learn that substantial resources went into the investigation of conducts and facts that caused a stunning loss of lives, an epidemic of very serious or fatal diseases, and large scale environmental pollution. True, recourse to a criminal trial to do justice in such a case may surprise readers who know little about Italian law. This is why this case was selected for the foreign reader: it is surely an instructive litigation. It is worth recalling that from the point of view of Italian law the case is an outlier only in so far as it dealt with the largest industrial disaster caused by the asbestos industry in Italy. The criminal prosecution and the conviction of defendants accused of violation of rules on safety at work is not rare under the law in. Of course, it is impossible to provide in this context a full account of the law in action in Italy in this respect. With regard to asbestos litigation, it is nonetheless worth recalling that Italian criminal Courts have absolved defendants from liability for lack of causality when their causal contribution to the production of damage done was not beyond doubt<sup>19</sup>. In the Eternit plants, however, disregard for basic preventive and safety measures was the rule over decades, and investments in safety were consistently null or insufficient. The trial Court in Torino examined the scientific evidence available at the relevant periods of time in depth. This examination was carried out with the help of experienced prosecutors and leading defence lawyers, with a impressive team of experts at work. The risk of imputing knowledge with the benefit of hindsight was averted, but was also avoided. This evaluation can be supported by abundant elements of fact that this litigation documented in detail. The industry was alert to the dangers that asbestos posed to human health, and deeply troubling scientific evidence was available to its leaders years before any remedial action to save lives or spare the environment was taken by them<sup>20</sup>. On the other hand, it is still too early to know whether the claimants will be able to collect their monies. Some doubts are justified in this respect, after the death of one of the defendants brought with it the revocation by the *Corte d'Appello* of the order to pay damages which

---

Omissione dolosa di cautele destinate a prevenire patologie da amianto e disastro doloso, in *Danno e responsabilità*, 2012, fasc. 8-9, 908, S. Zirulia, *Caso Eternit: luci ed ombre nella sentenza di condanna in primo grado*, *Rivista italiana di diritto e procedura penale*, 2013, 471 ff.

<sup>19</sup> Cass. Pen., sez. IV, 12 luglio 2013 (ud. 28 marzo 2013), n. 30206.

<sup>20</sup> In other words, this is not the case of parents smoking in the presence of their children when smoke was not considered by the population a toxic habit. It is rather the case of the tobacco industry selling its products knowing that they are toxic, without releasing warnings about them.

would otherwise been shouldered by Etex group SA as well. Nevertheless money was not all that was at stake for many parties in this trial. The uproar caused by the offering of 18.3 millions euro in settlement to the Municipality of Casale was caused by public outrage at the idea that the town would have not been represented in the criminal proceedings, if the settlement had gone through. Although it was clear to all that that recovery of damages under the circumstances was uncertain and costly, the decision was still not to forego an opportunity to ask the Court to do justice and to put on the judicial record the tragedy of an entire community.

An assessment of the case in broader perspective would require a separate contribution, given the numerous questions that a litigation like this raises. What are the pros and cons of the ‚mass claim procedure‘ through the criminal courts: is this an efficient and fair alternative to civil court adjudication? Are there drawbacks? Advantages? In addition, is it appropriate to shift industrial injuries into the sphere of the criminal law? Civil litigation relating to a complex set of facts involving a very large number of people, over such a long time span, would have been extremely difficult to manage before an Italian civil court as well. Italy does not have a comprehensive and efficient regime for group litigation or class actions in civil cases. The reform of group litigation first introduced in 2005, to deal with mass litigation in consumer cases (*azione di classe*: art. 140bis, codice del consumo,) even in its latest version would not have covered this type of litigation. Furthermore, the lack of efficient discovery of evidence and the burdens relating to the acquisition of complex scientific evidence in a civil trial in Italy would have put the claimants at serious disadvantage anyhow, given the fact that in Italy one would look in vain for a plaintiff’s bar ready to finance litigation on a large scale, although the burden of proof is not the same in criminal and civil cases, of course. Surely, relief to the victims by workers’ compensation systems, the social security system and by the national health service alleviated at least some of the plights of the victims of asbestos and their families and this is not to be forgotten, because litigation and the judicial process is a very expensive mean to compensate those who have suffered damage. From a more general point of view, there is not doubt that the prosecution of industrial accidents in criminal courts is an inefficient way to enforce safety regulations at work<sup>21</sup>. A good question would be, therefore, why prevention and inspection services did not do more to stop what was going on in Casale Monferrato and in the other Eternit plants in Italy. Not all kept silent, or did nothing. Among the scientific teams that first documented the dangers of asbestos and its lethal nature in 1964 there was a team of

---

<sup>21</sup> As a matter of fact, when the Torino prosecutors took up the case, they were not acting to enforce safety measures in active industrial plants. Criminal law often arrives too late to provide specific prevention.

Italian scientists who dealt with cases that must have come from Casale as well. The trade unions at the level of the plant of Casale in 1974-1975 raised the question of the pollution of the workplace, and of the seriousness of the dangers for human health associated with asbestos. The latter initiative may be at the origins of the decision of the owners of the plant to begin to address the issue of safety at work. But prevention of health risks at work which do not end up in isolated incidents runs into glaring conflicts of interests, set by the corporate search for profits, the push to maintain workers' occupational levels, and the demands of protection of public health. In France it has been noted, for example, that medical doctors employed by the industry to check the health of the workers exposed to asbestos did not react promptly to the threats posed it asbestos, and that inspection services in the factories where asbestos entered the production process were not up to task assigned to them<sup>22</sup>. In the Eternit case, this was true as well. At the end of the day, if nothing else works, it should be kept in mind that willful violations of preventive and safety measures at work may be considered serious offences under the criminal law applicable in the country, and that convictions for these offences may open the way to awards of damages. Actually, such violations of the law are incriminated in several countries, and certainly not only in Italy<sup>23</sup>. Tort law scholars may still object that a criminal courtroom is not the ideal place to discuss compensation for personal injuries and deaths. The wisdom of this observation is reflected in the fact that in this case the criminal ruling and the interim orders for payments handed down by the court are just a peg for a more precise determination of the damage to be compensated by the civil courts, if no settlement is offered. Nonetheless, this wise remark should not make us blind to the range of solutions that are available in Europe on this point<sup>24</sup>, unsatisfactory as they may otherwise be: the Eternit case has something to teach in this respect too.

---

<sup>22</sup> *Le drame de l'amiante en France: comprendre, mieux réparer, en tirer des leçons pour l'avenir (rapport au Senat Français)* Rapport d'information n° 37 (2005-2006) de MM. Gérard DÉRIOT et Jean-Pierre GODEFROY, fait au nom de la mission commune d'information, déposé le 26 octobre 2005, (« Le silence de la médecine du travail et de l'inspection du travail »)

<sup>23</sup> Nonetheless some legal systems may hinder actual recourse to criminal law in a variety of ways, to the dismay of those who have suffered serious consequences for those offences. See further on this point the report to the French Senate cited in the previous footnote.

<sup>24</sup> For more on this in comparative perspective, see e.g., M. Dyson, *Connecting Tort and Crime: Comparative Legal History in England and Spain since 1850*, (2008-2009) 11 *Cambridge Yearbook of European legal studies* 247-288.