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# The Rough Path to the Compensation of Asbestos Damages in China

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**Abstract:** The article investigates the issue of asbestos damages compensation in China. Today, China is a major player in the global market of asbestos production and consumption. Therefore, a large number of Chinese workers are employed in the asbestos industries and an even larger number of individuals are exposed to asbestos for non-occupational reasons. Although there is no official data on the numbers of asbestos-related diseases in China, it is estimated that a significant part of the population developed asbestos-related diseases and that there will be an augmentation of those diseases in the future. This article examines the Chinese legal provisions on the prevention, control, and compensation of asbestos related diseases; both in cases of environmental and occupational exposures, and analyzes if and when those provisions are applied. This research shows that although the laws and the regulations enacted by the Chinese government provide protection for those exposed to asbestos dust, and entitle them to some compensation or indemnity where those exposures caused damages, the implementation of those rules is actually very difficult, due to a variety of different reasons. Those reasons can vary from problems in the interpretation and implementation of the laws and regulations, to difficulties in the access to justice and in the adjudication by the courts, regarding occupational and environmental damages. In most of these cases, the consequences of these problems are a poor and inefficient protection of the victims of the asbestos exposures for the damages suffered.

**Keywords:** China; asbestos damages; compensation; bodily damages; health damages; occupational damages; environmental damages; law and society; law and politics

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## 1. Asbestos Use in China and Its Consequences

Today, China is a major player in the global market of asbestos production and consumption.

In fact, its asbestos resources, that is to say the asbestos deposits that can be economically exploited, are the largest in the world, estimated in 62–90 million tons [1]. Two-thirds of the reserves are located in the north western provinces of Qinghai, Xinjiang, Gansu, and Sichuan, and 99% of them are of chrysotile, which is the only asbestos currently mined in China [2].

China is the second asbestos world producer after Russia [3]. Even though asbestos production in China only started in the 1950s, and its industrial use in the 1960s, it has since steadily increased, especially from the 1990s, that it could eventually lead China to become the largest world's producer.

Moreover, in 2011, China was the first world asbestos consumer, representing the 30.5% of the total world consumption [4]. As domestically mined chrysotile cannot meet the increasing Chinese demand, imports have steadily augmented from the early 1990s, with Russia acting as the leading supplier [5] (p. 248) and [6]. There is no sign that this large asbestos consumption will slow down in the near future [7].

Most of the Chinese products (70–80%) are asbestos cement products. The others are asbestos friction products, sealing/gasket products, heat-insulating products, and textiles or others [8,9]. The Chinese export of asbestos products, mainly asbestos cement, in 2002 and 2010, was on average of 70,000 tons, for a value of USD 12.5 million [10].

The exact number of asbestos workers in China is unknown. Although an official number of 598 mining and milling enterprises and 169 asbestos products enterprises is estimated [11,12] (pp. 26–27), a large number of workers are employed in the informal sector, generally in small mining, milling and processing enterprises, or in enterprises that use asbestos products, such as constructions, shipbuilding, automotive repair, plumbing and reparation enterprises.

The working conditions of asbestos workers are often characterized by high levels of asbestos exposure [13,14], frequently exceeding the Chinese official occupational exposure limit (OEL), although those exposure limits have steadily decreased over time [5] (p. 549).

Specifically, asbestos dust levels in China largely vary in different working places. For example, albeit the maximum permitted exposure limit is 2 mg per cube meter, while in the Mang Ya Asbestos Dressing Plant (a factory located in Qinghai Province) and Qi Lian Asbestos Plant (in Inner Mongolia) the ascertained asbestos concentration was of about 2.5–3 mg/m<sup>3</sup>, mostly of the other Chinese factories had concentrations of asbestos powders of 10–15 mg/m<sup>3</sup>, and asbestos plants in Akesai area, Xinjiang Province, had a concentration of around 100 mg/m<sup>3</sup> [15] (p. 29).

Besides cases of workers injured by asbestos exposures because of their professional activities, cases of persons that were exposed to asbestos outside of a professional exposure were also reported, such as those of persons living with asbestos workers [5] (p. 251) and [16], or living near asbestos mines or factories or in environmentally polluted places [17,18].

The total number of asbestos victims is difficult to ascertain, as China lacks a centralized national cancer registry, a large-scale system of surveillance for asbestos related diseases, or readily available statistics related to the incidence, prevalence and mortality of asbestos related diseases. Nevertheless, we can gather some information on the issue from research publications and government sources.

To consider the actual amplitude of the data offered by these sources it should be kept in mind that many asbestos related diseases, such as mesothelioma or other cancers, are often characterized by a long latency between the moment of the exposure and the insurgence of the illness, which can be between 20–40 years. Therefore, the number of persons affected by an asbestos related disease is inevitably going to skyrocket in future years, following the curve of augmentation of asbestos use in the 1990s [19].

The first case of asbestosis was diagnosed in China in 1954 [20]. From 1957, asbestosis has been eligible for compensation as one of the thirteen illnesses classified under pneumoconiosis according to the “Occupational Diseases Prevention and Control Act of the People’s Republic of China” (ODPC-Act) [21,22]. Annually there are 12,000–15,000 cases of pneumoconiosis reported [23], and 653,000 cumulative cases by the end of 2010, accounting for around 87.06% of all the reported occupational cases [24]. Most of them are coal workers pneumoconiosis, as coal is the country’s major source of energy [25], while data on asbestosis are probably under-reported, because the Chinese standard used for their diagnosis is different from that used by the International Labor Organization (ILO) [26]. The epidemiological estimates are of at least 100,000 asbestosis cases, not including those that already have died and that total number is probably largely underestimated, whereas only 8237 cases were actually reported by the end of 2004 [11,27].

Lung cancer rates in China have been increasing from 5.46 (per 100,000) in 1973–1975 to 17.54 in 1990–1992, to 30.84 in 2004–2005 [28]. Since smoker rates are, from the 1980s, 4% for women and 60% for males [29] and have stayed relatively stable during the years, the increase in the lung cancer rates could be attributed to an aging population, pollution, westernization, and occupational exposure to carcinogens, such as asbestos. As the exposure to asbestos has grown during the last few decades and there is an augmentation in the number of cases with a history of asbestos exposure, asbestos could have given an increasingly significant contribution to the augmentation of lung cancer cases.

Epidemiological studies on lung cancer in Chinese workers exposed to chrysotile asbestos started in the 1950s and several of them observed an excess of lung cancer risks attributable to chrysotile exposure. It is interesting to point out that, as most of the workers in asbestos factories in China are non-smoker women, the relationship between asbestos exposure and lung cancer insurgence is more

clearly attributable to chrysotile exposure in Chinese studies than in mostly of the western studies with a prevalence of male smoker cohorts [5] (p. 250) and [30].

Regarding mesothelioma, although there are not comprehensive statistics, some data is available at municipal levels and from individual epidemiological studies [26,31–34]. It should nevertheless be observed that the officially reported incidence of asbestos related diseases, especially mesothelioma, does not properly reflect its large use and the actual relatively high exposures to asbestos; the reason probably resides in the fact that Chinese workers employed in dangerous and laborious occupations have a lower life expectancy, and can therefore die before the mesothelioma, characterized by a very long latency, develops and in the fact that, due to a poor diagnosis quality, mesothelioma cases can be misdiagnosed for lung cancers [5] (p. 251).

The global estimated magnitude of reported and unreported cases of mesothelioma in China in the 15-year period between 1994 and 2008, on the basis of cumulative asbestos use from 1920 to 1970, is 5107 cases [35]. As asbestos use has largely augmented since those years, some Chinese researchers believe the annual rate of mesothelioma cases is 1500, with chances of a significant augmentation of the number of cases in the future [36].

Some scientific studies predicted an augmentation of the number of future cases of lung cancers [37], and other asbestos related cancers, such as gastrointestinal [38,39] although it should also pointed out that other studies observed no excess risk [34,38,40,41].

## 2. Laws on the Prevention, Control, and Compensation of Asbestos Related Diseases in China

To date, the Chinese government has enacted a large number of laws and other provisions aimed to prevent, control, or compensate the damages arising out of asbestos exposure.

Those provisions could be Laws or Codes, enacted by the National People's Congress, and endowed with a legislation status; or administrative provisions, such as Regulations implementing legislative rules or Decisions of State Council. These latter provisions, although administrative in their nature, have *de facto* legislative stand, as the State Council, is a powerful law making institution given its extensive inherent and delegated powers of law making.

Additionally, we must cite the Supreme Court's Decisions, Interpretations and Provisions, which are issued on the basis of the authority conferred by Chinese law to the Court and that could be considered as interpretive regulations. These judicial interpretations are often very detailed and extensive, and substantially treated as supplementary laws.

Although in theory these different sources abide by the traditional hierarchical system of the supremacy of law provisions over administrative acts and judicial decisions, the actual application of this hierarchy is actually sometimes loose in the Chinese system.

Among the provisions concerning our field of research, we shall mention the most important, those limiting or banning the use of asbestos.

The first of those provisions is the "Decision on Several Issues Concerning Environmental Protection of the State Council", of 3 August 1996 [42], aimed to *"further carrying out the basic state policy of environmental protection, implementing the strategy of sustainable development, executing the Ninth-Five-Year Plan of the People's Republic of China on National Economy and Social Development and Outlines of Objectives in Perspective of the Year 2010, and realizing the environmental protection objectives of bringing the worsening tendency of environmental pollution and ecological deterioration under control and improving to certain extent environmental quality of some cities and regions by the year 2000"*.

Article 4 of that provision stated that "[...] By the date of 30 September 1996 [...] Local people's governments at or above the county level shall order the following enterprises to close down or stop production [...]: plants that are using indigenous methods [...] make asbestos products [...]. In case such enterprises have not been banned, or do not close down or stop production within the prescribed time limit, concerned principal leading officials of local people's governments and enterprise managers shall be investigated for legal liability".

In general, the safety of the health of workers is protected by the “Law of the People’s Republic of China on the Prevention and Control of Occupational Diseases” of 2001 (revised in 2011) [43] and by the “Code of Occupational Disease Prevention of the PRC” of 2001 (revised in 2011) [44], while the health of workers exposed to toxic substances is protected by the “Regulations on Labor Protection in Workplaces where Toxic Substances are Used” of 2002 [45], and special provisions for asbestos workers safety are contained in the “Regulation of the Ministry of Health named Criterion for the Control and Prevention of Occupational Hazards in Asbestos Processing” of 2007. It should also be observed that the permitted occupational exposure limit (OEL) to asbestos was progressively lowered in the last years [5] (p. 249) and [46].

Over the past several years, partial bans on asbestos have also been enacted. Among these bans was the 2003 ban on asbestos use for friction materials in the automobile industry; the ban of 2005 on the import and export of amphibole asbestos, including amosite and crocidolite; the bans of 2008 on asbestos use in the building of infrastructure for the Beijing Olympics and of 2010 for the Asian Games.

Finally in 2011, the use of all types of asbestos, including chrysotile, was banned in siding and wall construction materials under Chinese national standard GB50574-2010: “Uniform technical code for wall materials used in buildings;” while in 2012 a new “List of recommended substitutes for toxic and hazardous raw materials” was officially published by China’s Ministry of Industry and Information Technology. In that list, asbestos was included as category 3, the most advanced class for which substitutes have been developed and are being used, and categorized as a toxic and hazardous substance which could be replaced by safer alternatives [47].

Despite these bans and limitations, asbestos is still largely used in China, following the trend of other low-income countries, so labeled on the basis of capita gross domestic product (GDP). These countries are in fact generally more favorable to asbestos use than high-income countries, which have on the contrary, generally significantly diminished or totally abolished asbestos use [48] (pp. 118–119).

It is highly improbable that there would be a Chinese total ban on asbestos, as already done by many—mostly Western—countries. It is in fact difficult for Chinese political rulers and entrepreneurs to renounce to such a cheap and easily available material as asbestos, in a period of increasing economic and industrial growth [49] (p. 656). Therefore, it comes as no surprise the news that the Chinese Non-metallic Material Industrial Association, that is to say the Chinese industry’s main lobby group, and other commercial asbestos interest groups, pressure the Chinese government to rather prefer a “controlled use of asbestos” rather than its ban [5] (p. 252) and [8].

Regarding the compensation of the damages occurred as a tortious consequence of asbestos exposure, we can cite first the new “Tort Liability Law,” enacted in 2009, which provides general and special rules on the compensation of torts [50].

Article 2 of this law provides a general liability for the infringement of “civil rights and interests” including, with regard to our field of investigation, the right to life, the right to health, and other personal and property rights and interests.

In force of articles 16 and 18, the compensation due in cases of personal injuries includes the costs and expenses for treatment and rehabilitation, the lost wages, the serious mental distress; and in the case of disability, the costs of the disability assistance equipment and the disability indemnity. If the death of the victim occurs, the tortfeasor shall pay the medical expenses, the funeral service fee, and the death compensation to close relatives.

Where the asbestos related damages are instead the consequence of environmental pollution, Articles from 65 to 68 of the same “Tort Liability Law” establish a no-fault system that excludes the polluter liability for the compensation of the damages only when he can prove that he is not liable or that there is not a causal relationship between his conduct and the harm [51–55].

Liability for environmental pollution is also provided for by a number of other laws, such as Article 124 of the “General Principles of Civil Law” of 1986, stating the liability of any person who pollutes the environment and causes damage to others in violation of the state provisions for environmental protection and the prevention of pollution [56] and formerly by Article 41 of the “Environmental

Protection Law” [57] of 1989, which provided that the unit that caused an environmental pollution damage is obliged to eliminate it and to compensate the unit or individual that suffered direct losses as a consequence of the pollution. The only chance for the polluter to exempt himself from liability was therefore to prove that the environmental pollution losses were the consequence of natural disasters that could not be averted, even after the prompt adoption of reasonable measures.

Article 41 is now replaced by the new Article 64, which provides that those who cause damages due to environmental pollution and ecological destruction shall bear tort liability in accordance with the provisions of Tort Liability Law of the People’s Republic of China [58].

The amount of compensation can be decided by the competent Department of Environmental Protection Administration or other departments invested by law, but if a party refuses to accept the decision of the department, or prefers to directly bring a court suit, he may sue the tortfeasor in front of the People’s Court.

Other special laws concerning pollution all contain similar provisions on the compensation of the damages occurred as the consequence of pollution; among them the “Law of the People’s Republic of China on the Prevention and Control of Water Pollution” [58] of 1984, the “Law of the People’s Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste” [59] of 1995, and the “Law of the People’s Republic of China on the Prevention and Control of Atmospheric Pollution” [60,61] of 2000.

All the aforementioned rules can be applied to every case concerning injuries caused by asbestos.

Instead, special rules apply to the compensation of the damages caused by asbestos related diseases suffered by workers, because those illnesses are recognized as occupational diseases by the Ministry of Health, and are therefore eligible for compensation under the “Occupational Diseases Prevention and Control Act of the People’s Republic of China” (ODPC-ACT) of 2001 (revised in 2011) [62].

Chinese workers are also entitled to compensation for the damages suffered because of their occupational activities in force of a compulsory insurance program, provided for by the “Work Injury Insurance Regulation” [63,64]. In force, this regulation dictates that the employers are obliged to participate in a nation-wide no fault insurance system, created for the compensation and support of employees for the damages caused by work accidents.

Disputes concerning workers compensation for damages can undergo an arbitration procedure in front of the Labor Dispute Arbitration Committees (LDACs) [65]. If the arbitration is not satisfactory for either party, and the case is not one of those listed in Article 47 of the “Labor Dispute Mediation and Arbitration Law” [66], each party can claim his rights in front of a court, while if no lawsuit is initiated in the prescribed time, the arbitration award is enforceable. The recourse to the court judgment is frequent, because LDACs cannot compensate personal injuries, and the new “Employment Contract Law” seems to enlarge the possibility of the alternative jurisdiction of the courts, although most probably LDACs will continue to play a predominant role in labor disputes [67] (p. 90).

In those labor cases, the general rules contained in the Civil Procedure Law, adopted on 9 April 1991, apply. Therefore, it’s on the employee to prove to the court that the damage is the consequence of the negligence of the employer.

After this short description of the existing Chinese legislation that could theoretically be applied in cases of asbestos related damages, the following sections will concentrate on the issue of compensation of asbestos damages caused by environmental exposures and by occupational exposures, as those are the cases of injuries that are the consequence of asbestos exposures that most frequently occur.

### 3. The Compensation of Asbestos Damages Suffered as the Consequence of Environmental Exposures

The noteworthy efforts made by the Chinese government in the enactment of laws and regulations to protect and compensate people for asbestos damages caused by environmental pollution, is often not rewarded with an efficient implementation of those same laws and regulations.

The reasons for this situation are many and all intertwined together.

It is important to underline that both the general public and professionals concerned (such as environmental and legal NGO operators and law and health scholars or researchers) are seldom fully aware and are sensitive toward the dangers of asbestos. In fact, many of the Chinese professionals and researchers I interviewed during my residence in Beijing were unaware of the dangers related to the use and exposure to asbestos.

China has certainly more pressing environmental and health emergencies than those related to asbestos, also because of the long latency occurring between the exposure to asbestos dust and the insurgence of most of asbestos related diseases, and this situation certainly largely contributes to underestimate the number and entity of future asbestos damages. Therefore, it was no surprise to me when the eminent leader of the defense of environmental victims, Professor Wang Canfa, Professor at the China University of Political Science and Law and founder and director of the Center for Legal Assistance to Pollution Victims (CLAPV) [68], explicitly told me that asbestos is not to be considered the most dangerous substance and the biggest environmental problem these days in China [69]. Nonetheless, the tragic lesson learned by western countries regarding the consequences of asbestos exposure [70–73] should not be underestimated.

To date, no large cases of asbestos environmental pollution have emerged in China and no recorded case of compensation for damages caused by asbestos environmental pollution could be found during my research. Therefore, it is only possible to imagine how environmental asbestos compensation cases would most probably be dealt with by courts, if and when they should occur, on the basis of previous analogous cases of damages caused by other kinds of environmental pollution.

One first obstacle to the judicial awards of a compensation for damages caused by environmental asbestos exposure could reside in the frequent recourse of Chinese non-judicial resolution methods, which could be either conciliation procedures or mediation procedures.

The conciliation procedure consists in the settlement of the dispute by the same parties of the dispute and can occur before or during the judicial or administrative procedures [74]; only in the last case the conciliation needs to be approved or reviewed by a third party [75–77].

This method of dispute resolution often suffers from the disparities of bargaining powers of the parties and from the lack of external bindings on the conciliation outcome [77] (pp. 160–161).

Mediation procedures, which are traditionally largely used, are instead lead by a third party, whose role should be to help the disputants to achieve an acceptable settlement [78–85].

Mediation procedures could be carried out by different authorities.

People's mediation is led by a person without administrative or judicial functions, in mostly of the cases People's Mediation Committees of the Resident's Committee of urban areas or of the Villager's Committees in rural areas [86–88], which are supposed to resolve civil disputes in accordance with the law. The agreement signed by the parties is treated as a civil agreement; therefore, it cannot be repudiated or modified, although it can be disputed in a court, and its performance can be enforced by the People's courts [89].

Although the recourse to People's mediation is diminishing in more modern and affluent contexts and among more educated people, People's mediation is still largely used, especially in rural areas, less affluent villages, and cultured households and certain tortious cases [87] (p. 755) and [90].

The main limitation of People's mediation resides in the often poor legal abilities of the mediators [77] (p. 162–164) and in the large space left to criteria that are not drawn from positive legislation and could be highly sensitive to the individual personal powers and social position. On the other side, it should be stressed that People's mediation reduces litigation costs for the parties, although it said to be often used by the government as a tool to reinforce its power and control over the people [88] (p. 759).

Administrative mediation, administered by the competent administrative departments, is equally largely used, and could be in some cases quite efficient, as when it is administered by the Environmental Protection Bureaus (EPBs), because of the expertise and investigative powers of these administrative bodies [77] (pp. 164–170) and [91].

Judicial mediation is instead the out-of-court dispute resolution method practiced by Chinese civil courts, which can be carried out either before or during the trial, and in appellate procedure, has binding authority on the parties or could therefore be enforced by the same courts if one of the parties fails to perform his obligations. Based on a long standing juridical tradition going back to the 1930s [81] (p. 150), [88] (pp. 272–278) and [92,93], judicial mediation was established in its actual formulation by the “Civil Procedure Law” 1982.

The settlement reached with judicial mediation must be voluntary reached by the parties and comply with the law [94]. Nevertheless, according to some scholars, as judges are required to give prominence to mediation when adjudicating cases, judicial mediation is not always the consequence of an actual free choice of the parties, but rather the fruit of the warm suggestion, if not imposition, of the judge [93] (p. 959). Moreover, the double role played by judges, as mediators and adjudicators of the same dispute, could influence their judgments, and the mediation could be the cause of substantial injustice due to the lack of any formal procedural requirement or a mean used by lower court judges to avoid the application of a positive law they don't know well enough [77] (pp. 170–175).

It is therefore important to underline that, after a short period in which the number of judicial mediation cases declined steadily, because of the efforts to reform Chinese justice [92] (pp. 25, 39–43), the same institute was recently revived, as a tool to limit the large number of “*xinfang*,” petitions directed to the central authorities in Beijing against the court decisions (which we shall discuss later) and to control the social conflicts that surround those petitions [92] (pp. 25, 48–54), [93] (p. 937) and [95] (pp. 303–306).

Although this large recourse to extrajudicial means of dispute resolution, the number of cases disputed in front of the judges is constantly growing [96] (p. 196). This constant growth, in the opinion of a notorious Chinese scholar, is important because it disseminates to the larger public the idea that environmental damages could be compensated by courts [97] (p. 17).

First, although many of them concern the compensation of damages to property or health caused by environmental pollution [49] (p. 641), [96] (p. 203) and [98,99] (p. 323) the victims are not always so easily compensated as the lettering of the laws and regulations would suggest to a western jurist.

The actual enforcement of legislative rules in China could in fact sometimes be difficult [100] (pp. 128–129) and [101], mostly because of the competing and confused national and local legislative powers and jurisdictions, and of the large discretion in enforcing laws and enacting local rules enjoyed by the administrative authorities [88] (pp. 138–147) and [102–104] (pp. 171–174, 180–198). Similarly, interpretation powers are still shared among different and often contrasting authorities [88] (pp. 145–146), [103] (741–742) and [104] (pp. 198–203).

For example, although Article 41 of the “Environmental Protection Law” of 1989 provided the strict liability of the polluters, that could be held liable for the compensation of the damages when (also lawfully) discharged wastewaters or emitted air pollutants or caused other environmental pollution if it was proved that such (even lawful) act caused a harm [77] (p. 178) and [105–108]. This strict liability rule has not been fully and immediately implemented. Many enterprises, administrative bodies and some courts, in fact, rather preferred to stick instead to the idea that the discharge of pollutants in compliance with the state standards or permit limits did not constitute a source of civil liability, even when environmental harm was actually caused [96] (p. 204) and [109,110].

A number of laws and provisions had to be enacted, just to reaffirm this principle of the polluters' strict liability. All of them could, in theory, be applied to the same cases. Among these, we can cite the law enforced interpretation titled “Reply on Deciding the Compensation Liability for Environmental Pollution”, issued in 1991 by the former Environmental Protection Agency (now State Environmental Protection Administration) [111], in which it was clearly stated, with binding effect on all the environmental protection bureaus, that the environmental damages are to be compensated, notwithstanding the existence of a fault of the defendant or of a discharge of pollutants exceeding the established limits, in any case in which the polluter caused an environmental harm and the claimants suffered damages because of that harm.

That principle was shortly after reaffirmed, especially with regard to the courts, when the “Supreme People’s Court’s Opinion on Several Issues in Applying the Civil Procedure Law of the People’s Republic of China” of 1992, stated in Article 74, that in cases of environmental pollution is on the defendant to bear the burden of proof against the tortious allegations of the petitioner.

Lately, in 2001, a further step was made, when the Supreme People’s Court issued the “Several Provisions on the Evidence of Civil Litigation,” whose Article 4 states that, “*if the litigation of environmental damage compensation is caused by the environmental pollution, then the injurer shall bear the burden of proof of the statutory exemptions and the fact that there is no causation between his act and the damages*” [112] (p. 162).

Lastly, the “Tort Liability Law” 2009, provided respectively in Articles 65 and 66, that “Where any harm is caused by environmental pollution, the polluter shall assume the tort liability” and that “Where any dispute arises over an environmental pollution, the polluter shall assume the burden to prove that it should not be liable or its liability could be mitigated under certain circumstances as provided for by law or to prove that there is no causation between its conduct and the harm” [113].

Therefore, the Chinese system of liability for damages arising from the environmental pollutions has moved from a strict liability system, where it is on the petitioner to prove the causation but not the fault of the defendant, to a system in which is on the defendant to prove both the lack of causation between his conduct and the damages and the exclusion of his liability.

Despite these legal provisions, it is still quite common for a Chinese court to ask the plaintiffs to demonstrate the liability of the defendant, as Chinese courts apparently did not easily accepted the rules on the ascertainment of the liability in cases of strict liability. The application by Chinese courts of the rules provided for by laws and regulations is in fact not always so straightforward, as it should be expected, due to a number of social and cultural reasons, which allow them to act without taking into consideration legal provisions, to favor instead social and political instances. In those cases, it is almost inevitable that the petitioners in cases of compensation for asbestos damages shall not be able to prove the liability of the defendant, especially with reference to the causal link between the pollution and the harms occurred. In fact, those damages are generally multifactor damages or could be attributed to different and distinct asbestos exposures, and it is generally very difficult if not impossible for the victims of those damages to prove that, without the asbestos exposure due to the defendant, those damages would not have occurred [96] (p. 205).

As an example we can cite a case concerning the pollution with chromium of the waters of the river Nam Pam, near the Xing Long Village in Yunnan, produced by a local factory, that caused the death of the goats of the villagers. The discharge of the polluting substances in the river was stopped in 2011. The case was narrated to me during an interview with a local environmental NGO. At the moment of the interview, the compensation of the expenses for the cleaning of the water and soil was still under discussion in front of the court, and no other compensation was asked by the victims, while the compensation of the damages suffered by one of the villagers living near the river, for the contraction of a cancer that was the alleged consequence of the pollution was denied by the court, because the court held that he was not able to prove that his cancer was actually caused by the chromium pollution [114].

Proving causation in cases of damages caused by environmental pollution can therefore represent an obstacle difficult to overcome for petitioners. The existence of the damages and of the causal link is generally assessed in front of the courts by official or certified authorities, and these assessments could be costly or easily influenced by the most powerful parties, that is to say the polluting industries. Generally, the courts completely rely on these official assessments [115].

But we should not forget that, in other cases, the strict liability rule of the polluters was instead firmly applied by the courts, and the same could therefore occur in cases of asbestos environmental pollution. One of the first examples of the application of the strict liability rule is the Leping County pollution dispute in Hebei Province, in 2002. Following the discharge of an excessive amount of wastewater from nine pulp factories and chemical plants, the Tianjin Maritime Court held the defendant



polluters jointly and severally liable for the compensation of the damages suffered by the fish and shellfish farmers, as the consequence of the death of their fishes and shellfishes [77]. The only industry that had proved its compliance with the laws concerning the waste of polluting waters was equally condemned to pay the compensation but, as a sort of bonus, not held jointly and severally liable with the other industries [77] (pp. 179–180)

The principle of no fault liability was also applied in a later case, quite notorious, both for its outcome and because of the involvement of the Beijing-based Center for Legal Assistance to Pollution Victims—CLAPV [68], directed by professor Wang Canfa, in the dispute, the case *Zhang Changjian et al. v. Pingnan Rongping Chemical Plant* (the “Rongping Case”).

In that case, although the defendant proved that the factory’s equipment was modern and its air and water emissions in accordance with the standard, as stated by the provincial environmental protection bureau inspection, the same defendant was held liable for the compensation of the damages caused by the pollution produced by his factory, because he was not able to prove the lack of a causal connection between his behavior and the harmful result, and had not demonstrated that, as he alleged, the harm to crops, bamboo, fruit trees and timber strands was caused by another nearby factory [96] (p. 214) and [116,117]. Although the compensation of the “emotional damages” asked by the petitioners was refused, and the amount of compensation paid for the losses of the petitioners was actually modest, the decision of the court was labeled as landmark in environmental law implementation, and selected as one of the “ten most influential Chinese lawsuits of 2005” [118].

Notwithstanding these positive judicial outcomes, doubts remain on their actual representativeness of Chinese case law in such affairs. In fact, the same professor Wang Canfa, that represented the petitioners in the case, told me in the aforementioned private interview that the positive decision of the court could perhaps also to be credited to the specialized environmental training received by the judge of the court thanks to the cited Center for Legal Assistance to Pollution Victims—CLAPV, and to the presence of experienced environmental litigators as counsel for the petitioners.

Another problem that could be faced in cases of asbestos damages compensation, in which frequently the injured persons have a history of multiple exposures to different sources of asbestos dust, is that of joint and several liabilities of the defendants.

Article 130 of the “General Principles of Civil Law” provides that joint and several liability of the defendants, where two or more persons infringe another person’s rights, causing damages, although generally Chinese courts do not apply that principle, rather preferring to apportion the liability among the different defendants [77] (pp. 184–185).

On the contrary, in cases of environmental damages, Article 67 of the “Tort Liability Law” 2009 provides that “Where the environmental pollution is caused by two or more polluters, the seriousness of liability of each polluter shall be determined according to the type of pollutant, volume of emission and other factors”.

Although the rationale of this last rule probably resides, as suggested, in the idea that the polluters do not have a joint intent and the pollution is caused by independent conducts, and that a joint and several liability could instead be imposed where the polluters collaborated in causing the pollution, or if it is impossible to determine each polluter’s share of liability [51] (pp. 488–489). This provision is certainly disadvantageous in cases of asbestos damages, especially when those damages are physical injuries or the death of the person exposed to an environmental asbestos pollution. Due to the long latency of most of the asbestos related diseases, suing all the defendants and proving their liability could be very difficult, and severely limit of the amount of compensation that the injured parties shall be able to recover.

Other hurdles that can be met by the petitioners in asbestos damages cases could consist in economical restrains in accessing the courts. In fact, we should remember that to file a case it is necessary to pay a “case acceptance fee,” which can vary from 0.5 to 4% of the amount of compensation asked, and “litigation costs” that could be levied at the discretion of the court. These additional costs

can easily discourage the injured parties from suing, and sometimes they can be purposefully used by the same courts to avoid adjudicating uncomfortable cases [96] (p. 207).

And even when the petitioners obtain a favorable court decision, its enforcement on the defendants is not always an easy task [88] (pp. 266–269) and [119–121].

Moreover, sometimes the decision of the courts could be largely influenced by non-judicial considerations, such as the strong personal relationship between the parties and their lawyers and the judges, in force of the “guanxi” tradition. “Guanxi” is an established and respected tradition of doing business through reciprocal favours and gifts based on personal relationships, either in the private or in the public sector. Although it is regarded as respectful in China, nonetheless it is undisputedly able to interfere with the application of the law, as in fact frequently occurs, and produce a judicial decision that is far from the prescriptions of the law [122] (pp. 88–89) and [123].

Lastly, the decision of the court could also be influenced, in some cases of damages caused by dangerous substances emitted by local industries, by the pressure that could be put by the local governments on local courts, which are dependent from the former for their financial support [96] (p. 210), [112] (p. 172), [124] (p. 207), [125] (p. 128) and [126] (pp. 272–279, 299–300).

Local industries are often in fact the major taxpayers and, therefore, supporters of local economies, when they are not even actively participated by the local government [127] (p. 125). It should in fact not be forgotten that the recent economic reforms deeply changed the allocation of powers in favour of local governments, conferring them a large economic and political independence and making them apparently quite insensitive to every reform effort for centralization [88] (pp. 103–106, 109–110) and [128].

Therefore, there may be cases where judges misapply the law, because of the pressures from the local government. In those cases, they rather prefer to adjudicate on the basis of the substantial outcome of the case than on the provisions of the law, fearing complains or social instability [125] (pp. 128, 162–163).

The income produced by the industries is generally reputed by local governments as a more important asset than the environmental or general health protection [96,112] (p. 172), [125] (p. 128) and [126] (pp. 272–279, 299–300), and this situation can frequently create a conflict between local government and central government decisions or policies [124] (p. 207) and [125] (pp. 132–134). Especially when, as it often occurs, public officers are evaluated by their superiors only on the basis of economic growth statistics [127] (p. 125).

#### **4. The Compensation of Asbestos Damages Suffered as the Consequence of the Working Exposure**

As mentioned before, asbestos related diseases are still an underestimated problem in China, it is not easy to find cases concerning the compensation of damages suffered by workers because of asbestos exposures [129], asbestos damages are not treated (as they should, due to some of their characteristics) as a special category of occupational damages, and most of the damages suffered by their victims are not compensated.

Therefore, we shall again often make reference to the compensation of occupational damages in general or to cases others than asbestos cases to ascertain what happens or would happen when a worker ask for the compensation of the damages suffered as the consequence of asbestos exposure.

Chinese workers are entitled to workers’ compensation for occupational diseases in force of the “Work Injury Insurance Regulation and some other provisions” [23,130], which oblige the employers to participate in a nation-wide no fault insurance system, for the compensation of the damages caused by work accidents and diseases, and inform the employees on the same compensation program. Additionally, asbestos related diseases are recognized as an occupational illness by the Ministry of Health, and are therefore eligible for compensation under “Law of the People’s Republic of China on the Prevention and Control of Occupational Diseases”, of 2001 (revised in 2011) [131].

Unfortunately, these provisions are seldom applied, although the efforts made by the Chinese government to protect workers’ health [24,132], for different and correlated reasons.

Many employers, especially in the informal sector, do not comply with the provisions of the Work Injury Insurance Regulation; therefore, their employees are denied any insurance against occupational diseases [133] and could also lack any documental prove of the existence of an employment relationship [132] (p. 301).

Due to the long latency of asbestos related diseases, especially mesothelioma and others asbestos related cancers; often the injured employees no longer work for the employer responsible for the asbestos exposure when the disease develops.

On the other hand, where the working relationship between the sick worker and the employer responsible for his disease is still existing, it is not unusual for the employers to terminate their relationship with the sick employee, or withhold the worker the documentation or deny the existence of an employment relationship when the injured employees ask for the compensation, to avoid to pay the compensation for the worker's illness and his medical care [134]. In some cases other illegal or unfair means are adopted by the employers to avoid any payment to the injured worker, such as colliding with the hospital to falsify or conceal post-employment medical examinations, changing the identity of the employer company, using economic power and political connections to influence the outcome of the workers actions or to delay the judicial procedures to weak the petitioner's aim [134].

It is also not uncommon for the employers to convince the workers to agree to the payment of lump sum compensation. These agreements are generally disadvantageous for the workers, but as they are legally binding, preclude further actions for damages compensation [134] (pp. 24–25).

The situation could even be worse for migrant workers, generally working for lower wages in the most dangerous and strenuous activities [135].

To grasp the dramatic situation of those employees deprived of the workers' compensation, it should be underlined that those workers and their families not only are deprived of their means of support, but are also obliged to provide the expenses for their medical care, in a country where there is not a totally free health care system and specialized and prolonged cares could be extremely expensive. While in cases in which the employers compensate the injured worker for the medical costs with a lump sum, calculated on the previous earning power, the workers needing a continuous medical treatment could not be able to afford all the medical care expenses [134] (pp. 12–15) and [136,137].

Practical problems can also affect the compensation of the injured worker, as public officials of the employer's place rarely accept occupational illnesses diagnosis made by officials of other regions, although there are regulations in force, to simplify workers' incumbencies, state that workers can choose to perform their work-related injury or illness diagnosis either at the employer's location occupational disease center or where they reside. Maybe, the reason for this behavior resides in the mistrust that local governments have among each other and in the protective tendencies they nurture toward local economic interests [134] (pp. 31–33).

Although there is no official data on asbestos related diseases compensation, we can infer some from information and data regarding pneumoconiosis (the general name given to diseases caused by mineral dust inhalation), as that data also includes cases of asbestosis and asbestos related diseases, published by independent observers.

A report recently published by the Beijing Yilian Legal Aid and Research Center of Labor, the "Survey Report on Occupational Disease Victims", states that pneumoconiosis is the most prevalent occupational disease in China, accounting for 70.2% of the cases, and that almost 40% of the victims of occupational injuries and illnesses were not compensated at all [138].

Similarly, independent unions observers state that in cases of pneumoconiosis, the workers and their families are in most of the cases unable to obtain any compensation for the damages suffered [134] (p. 8) and [139].

In fact, the Labor Dispute Arbitration Committees (LDACs) appointed of all the labor arbitration procedures, can not compensate personal damages. But the same Chinese courts are apparently often reluctant to compensate other specific claims such as long-term continuing medical care, regular medical check-ups, family dependents' living allowances, emotional and psychological injuries and costs of

nursing care, and expenses that are often common and relevant in asbestos related cases [134] (pp. 26–27) and [66,140] (pp. 127–129).

Moreover, we should not forget that, in force of the general rules contained in the “Civil Procedure Law”, the workers must prove that the damages for which they are asking the compensation are the consequence of the negligence of the employer. That burden of proof is often an impossible task for many injured workers, both for the cost of the needed scientific expert opinions and for the actual difficulty to demonstrate that the disease is the consequence of the negligence of the employer.

## 5. Final Considerations on the Compensation for Damages Caused by Asbestos Exposure in China

As we have seen in the previous sections, both the victims of environmental and occupational exposure to asbestos can face a number of hurdles in seeking compensation for their damages.

Those hurdles vary from problems related to the interpretation and implementation of laws and regulations, to difficulties in the access to justice; to the way Chinese courts adjudicate cases of occupational and environmental damages.

The consequences of the present situation are, inevitability, a poor and inefficient protection of the victims of the asbestos exposures for the damages suffered.

Although it cannot be denied that many efforts were made by the Chinese government to improve the judicial system and reinforce the implementation of national rules and regulations in the field of workers’ compensation and environmental damages compensation, certainly these efforts did not totally meet their purposes, as they were (and still are) often contrasted by local or personal interests and diverging political strategies.

The tension between two visions of China, one that efficiently and impartially applies its rules and regulations to protect all his citizens and one that distorts the use of laws and tribunals to serve personal and political interests, is easily perceived in the field of the compensation of the victims of tortious damages.

In fact, if one only reads the black letter law, the impression given by the Chinese system is that of an efficient web of rules and courts, aimed to protect individual rights with a smooth functioning. But if one examines how this system actually works and its outcomes, it is readily apparent that individual rights are seldom protected.

Under the cover of the rules and of the courts’ proceedings, one may sometimes have the impression that nothing is probably really actually changed since the times of the traditional Chinese law, which assigned to the group or class to which the victim belonged the duty to redress the violation of his personal rights and lacked of law-related techniques for interpreting and applying general rules to specific facts.

That system was lately adopted by the Communist party, as it allowed all the needed space to exercise an absolute power [82] (p. 1208) and [141] and, in the words of Lubman, “*inhibited the further development of basic rights that the individual could vindicate to give his existence greater predictability and stability*” [88] (p. 65).

That same system, as we have seen in the previous sections, still ordinary dominates today in cases of damages caused by environmental or occupational exposures to toxic substances.

The large recourse of the Chinese to “*xinfang*,” a non-judicial remedy [84] (pp. 383–384) and [127] (p. 144) which can precede, substitute, or even pre-empt the judicial procedure, can probably further confirm the impressions arising out of our investigation.

“*Xinfang*” consists in a petition directly made to higher level bodies, called “*xinfang* bureaus.” These “*xinfang* bureaus” are formally established but are not formal legal institutions, draw their power directly from that of the Communist party and its individual officials [88] (p. 40).

It should be noted that these “*xinfang*” bureaus have a capillary diffusion in China, as they could be found in almost all Chinese government organs, included courts, local government offices and Party committees [142] (pp. 431–432), and that many provincial “*xinfang*” regulations oblige courts to hear a wide range of petitions along with their judicial duties, so expanding their powers outside of

the provisions of the law. Courts can therefore be approached by petitioners before, during and after judicial hearings on the same issues, and their judiciary and “xinfang” bureau functions can easily overlap [143] (pp. 103, 126, 136–139).

Chinese largely use this petition system, for a variety of reasons: (1) it could be easier to access compared to courts; (2) they have no confidence in the independence and impartiality of the judicial system; or (3) they want to influence it [144] (p. 25); (4) they repute the “xinfang” a special power, superior to those of the legal channels [144] (p. 24) and [145] (pp. 214–215). Whatever the reason for choosing it instead of suing the person responsible for the injury in front of a court, it is interesting to note that the number of these petitions to the central authorities in Beijing alone against court decisions is greatly increased in the early 2000s. Partially due to the reform of the Chinese judicial system, which did not meet the goals it pursued and the expectations of the citizens [92] (pp. 25, 44–46).

The actual problem with the large use of “xinfang,” even in compensation cases, in place of the judicial action, resides in the fact that it is not an institution of popularized justice based on legal norms, although it often replaces the legal system [146]. On the contrary, it is essentially a multi-purposes political governance tool [143] (p. 107) and [144] (p. 24), also used by litigants to pressure courts in their favor or to alter courts decisions, rehear the case, pay compensation to quiet petitioners or ignoring the letters of the law [95] (p. 286). As a consequence of political concerns about social stability, Chinese courts are in fact extremely sensitive to populist pressures [95] (pp. 269, 272), [130] (pp. 169–171) and [147].

Moreover, it must be underlined that the recourse to “xinfang,” against courts decisions, is often encouraged by the state that use it to avoid social unrest, increasing the number of petitions and often delegitimizing Chinese courts through the invalidation of the authority of their decisions [95] (p. 306) and [143] (p. 107). Therefore, the same government that enacts rules and regulations providing the compensation of tortious damages and reform the court system can undermine the decision taken by its courts when those decisions do not fulfill its political or even sometimes personal purposes.

To conclude, due to the actual lack of a sufficient number of cases and experiences, and to the difficulties to fully understand the way those problems are worked out in China, it would be too hasty to give a definitive judgment on the issue. Nonetheless, we can infer from the examined cases that today, the compensation of the victims of asbestos exposures in China is, from the legal side, often hindered by difficulties in interpreting and implementing the law and by the lack of a complete independence of the courts from the other powers. From the non-legal side, it is sometimes hampered by the large recourse to non-judicial dispute resolution systems, which do not always guarantee the impartiality of their outcomes, and by the prevalence of political and opportunistic evaluations of the cases.

It is yet to be seen whether the revised version of the Environmental Protection Law, entered into force in 2015, and the establishment of the Environmental and Resources Tribunal of the Supreme People’s Court will have any affect of the issue of compensation and protection against asbestos damages. It should in fact be underlined that the new law provisions, which are part of the efforts made on environment protection by the new administration, are mainly aimed to punish the violations of the law with more severe penalties. Additionally, the new laws implement a governmental pollution management system, publicly disclosing the information on the pollution and allowing for nongovernmental organizations to take legal action against polluters on behalf of the public interest, but is apparently not concerned with the purpose of strengthening the position of those harmed by asbestos.

Only time will tell if these innovations are actually capable of changing the Chinese situation regarding the compensation of asbestos damages in China suffered by those that were exposed to asbestos dust.

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