

## Medical and Forensic Implications of Asbestos in Italian Law

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The Law No. 80 of March 17<sup>th</sup> 1898 (Gazzetta Official No. 175 of March 31<sup>th</sup> 1898) and art. 7 of R.G. (Gazzetta Official No. 148 of June 26<sup>th</sup> 1899), have stated the obligation of personal protection equipment for protection from dust. The Court of Turin (Proc. No. 1197/1906), rejected the claim for damages of Bender and Martiny and The British Asbestos Company Limited against Avv. Carlo Pitch and manager Arturo Mariani, editors of "The progress of the Canavese and Valli di Stura", published in Ciriè, because in articles there was nothing false in that the asbestos is "among the dangerous industries [...] particles [...] damages the respiratory apparatus, [...] to the lung, predisposes them to the development of tuberculosis, facilitating the spread and increasing severity". The decision was confirmed by the Judgement No. 334 May 28<sup>th</sup> 1907, Court of Appeal of Turin, because *"the processing of any material that gives off dust [...] aspirated by the worker, is harmful to health, could easily produce the illness, it is practical knowledge to all common, as is knowledge of easily discernible from any person with basic culture, that the aspiration of the dust of siliceous minerals such as asbestos materials [...] may be the most dangerous effect, because the microscopic needle-like molecules are evaporated, or at least filiform but certain hardness and so sharp and well inclined to produce lesions and alterations of the delicate mucous membranes of the respiratory system."* The Royal Decree of June 14<sup>th</sup> 1909 442 included spinning and weaving of asbestos in unhealthy or dangerous work. Benedetto Croce, in June 11<sup>th</sup> 1922 presented to the Senate of the Kingdom the proposal-Law No. 778 "for the protection of natural beauty and buildings of particular historical interest", that "modern civilization felt the need to defend them, for the well of all ... that give man spiritual enthusiasm so pure and inspiring works are actually excelled. " The general regulation for occupational hygiene (RD n.530 of 14/4/1927, Approves the general regulation for occupational hygiene, Gazzetta Official 25/4/1927 No. 95) has dictated rules for the prevention and protection and for dust in art. 17 to require the extraction and limit the spread in the environment and the protection of workers with individual devices. Convention No. 18 of May 19<sup>th</sup> 1925, ratified by R.d.l. 1792 of 12/04/33 (Gazzetta Official 10/01/1934) extended also to the social insurance occupational diseases, which were well compensated, and Convention No. 19 of May 19<sup>th</sup> 25, ratified by Law n.2795 of December 29<sup>th</sup> 1927 (Gazzetta Official n.38 of 05.15.1928), it also sanctioned the recognition of foreign workers, together with the accidents at work, in line with Recommendation No. 24 of May 19<sup>th</sup> 1925 issued by the International Labour Office, concerning the compensation of occupational diseases (assurance-maladie The - BIT assurance-maladie The No. 4, Geneva 1925). "It 's... certain and indisputable that the man's personal integrity and his health (the chief goods that transcend the sphere of the individual to rise to social importance, as a necessary premise of conservation and improvement of the species) are not only protected the contract, but also by numerous laws to health and even the Criminal Code "(Supreme Court Civil Case No. 2107 of 28.04.1936, published on 17.06.1936), and" the forms of insurance in place to ensure the workers against certain diseases which are exhaustively listed, do not exempt employers from the obligation of contract to use due diligence in their business, to prevent damages to workers (even if included in the pension insurance), taking all protective equipment prescribed or suggested by the technical and by science. The duty of prevention, that Art. 17 r.d. April 14, 1927, No. 530, on the hygiene of work necessary for the particular work that is conducted in 'closed areas' should be observed in all those cases in which the place of work, while not fully closed, is not such as to allow easy access without threatening output of harmful vapors and any material ": the fault is in absence of" vacuum cleaners" in the " not completely closed rooms "and" masks for the workers' negligence and imprudence respect "by the scientists gave warning" about the dangers of dust (Cass. Sent. No.682 of 20.01.1941, published on 10.03.1941, Soc electric steelworks. vs. Panceri ) because the "occupational diseases are not guaranteed by compulsory insurance, the employer can not exempt themselves from liability if the harmful event were to be produced through his own fault "(Court of Cassation, Judgement 17.01.1941, Soc. off .elettroferro Tallero vs. Massara), not may constitute a waiver of the fact that" the workers had never denounced disorders [...] because silicosis gradually undermines the body of the worker to the serious events that cause the inability to work so that the employee is not able to notice it before, "because Art. 2 of r.d. No.530 of 1927, "requiring the employer to warning advance the workers about the danger, to indicate the appropriate means of prevention" and Art. 17 "requires the intake of dust immediately next to the place where it is produced" (Court of Cassation, Section II ^ Civil Case No. 686 of 17.01.1941), which corresponds to the norm closure in art. 2087 Civil Code (Royal Decree 16.03.1942, No. 262), which requires the employer to "adopt measures in the performance of the company, according to the particularities of the work, experience and technique are necessary to protect the 'physical integrity and moral personality of the work. " On January 25<sup>th</sup>, 1943 The Minister of Corporations at the Chamber presented the draft Law No. 2262 for "extension of compulsory insurance against occupational diseases, silicosis and asbestosis," "objective: 1. protection in the prevention ... .. technical workers, drawing and

imposing to entrepreneurs a rational plan and complete prevention, 2. To protect the health of workers entering a decision in the field of pulmonary diseases ", with compensation for workers, which was approved by l. 455 of April 12<sup>th</sup> 1943.

The Constitution of the Italian Republic of 01.01.1948, "protecting health as a fundamental right of the individual, collective interest" (Art. 32). The ILO Recommendation No. 97 of June 4<sup>th</sup> 1953, and constitutional rules are contradicted by Circular No. 91 of September 14<sup>th</sup> 1961, the Ministry of the Interior, General Management, Fire Prevention Services, which advises the use of plaster of asbestos to protect the buildings against fire in the steel structure for domestic application. The asbestos, used in way marginal and limited, paradoxically became commonly used up to be used in more than 3000 applications, on working sites, and construction, without any threshold limit. Even though Selikoff had pointed out the multiplicative synergy between smoke and asbestos from 1978, in Italy neither employees nor the Monopoly of Tobacco have ever warned against it the people who are or have been exposed to asbestos. The Directive 477/83/CEE, "about the protection of workers from the risks associated with exposure to asbestos at work", was not implemented, and the Italian Republic was condemned by the Court of Justice with the decision of December 13<sup>th</sup> 1990 (as a result of infringement proceedings initiated by the European Commission No. 240/89). Only with the rules in artt. 24 and 31 of Legislative Decree No. 277/1991 and with the Law No. 257/92 (Rules concerning the cessation use of asbestos), there was a real turning point legislative, even though they were constantly disapplied, so that the Praetor in Turin with Judgement of May 05<sup>th</sup> 1995 recognized the causal-link between the breach of standards of prevention and pleural mesothelioma arising after the inhalation of asbestos fibers and then the same Praetor in Turin, with the Judgement No. 3308/98 (Judge Dr. Vincenzo Ciocchetti), in accepting the demand for crediting contributions in favor of a worker exposed to asbestos to which the social security authority had rejected the request, stated: "*the laws exist, but who put hand to them? Nobody*" (Dante, Purgatorio, XVI, 96-98), recalling also the large number of asbestos-related diseases, for which each year die only in Italy no less than 5,000 people. The Public Prosecutor of the Criminal Court of Turin in the "case Eternit" has requested a sentence of 20 years in prison against the administrators of Eternit, and Criminal Court of Paola authorized the citation of the Presidency of the Council of Ministers, the Region of Calabria, Cosenza ASL and the Municipality of Praia a Mare, as civil liables, with the defendants for damages suffered by the victims, many of whom died because they breathed of asbestos fibers. The table in DM April 09<sup>th</sup> 2008, with subsequent updates, includes between asbestos related diseases with a presumption of occupational origin: a) the plaques and pleural thickening with or without rounded atelectasis b) pleural mesothelioma c) pericardial mesothelioma; d) peritoneal mesothelioma, and) the mesothelioma of the tunica vaginalis and of testis ; f) lung cancer; g) asbestosis; h) pulmonary fibrosis, "associated with other forms of disease of the respiratory and cardiovascular system" (Art. 4., l. 780/75). For other diseases, the burden of proof is borne by the worker: in the administrative and judicial courts were performed the acts were related to the studies of G. Ugazio [1], in Italy, and Y. Omura, [2] in the U.S.A., which led in some cases through administrative peaceful recognition of the nature of professional-related asbestos diseases not covered in the tables, a positive change in other process, with a condemnation borne of social security institutions and employers (as in the case of adenocarcinoma and other diseases, Y.Omura [1] confirmed by the Court of Auditors, the Judicial Section of Basilicata, Judgement of May 09<sup>th</sup> 2005; the Court of Cassation, Section IV ^ . Penal No. 7142 of February 24<sup>th</sup> 2011), or with an investigations depth, as the many pending cases before the Court of Auditors, the legal section of Lazio, which on the basis of the deposit of scientific publications, requested a depth to the Ministry of Health of the Italian Republic will have to decide on their scientific validity. It is surprising that even today in Italy, some scientists, and even some judges deny the causal-link between exposure to asbestos and certain tumors, including those covered in the tables of occupational diseases, and despite the unanimous acquisitions of medical science, so that the same must fulfill a role in communication through the disclosure, and is of great importance intervention of the Supreme Pontiff Benedict XVI, who at the general audience of April 27<sup>th</sup> 2011, has urged the Centre National Asbestos (O.N.A.) and the Asbestos Victims Association National Italian "*to continue their important work to protection of environment and public health.*"

Reference:

[1] G.Ugazio, web site [www.grippa.org](http://www.grippa.org), Monograph "Asbestos",

[2] Y Omura, Acupunct. & Electro-Therapeutics Res Int J 31, 61-125, 2006.