

November the 22nd, 2021 Eternit hearing

By Silvana MOSSANO

All it takes is a tiny – albeit significant – comma or other punctuation mark to change a sentence, and hence the concept it enshrines, turning it from a certain into a doubtful statement.

Certainty: "All 392 persons named in the charges listed against the defendants in the Eternit Bis trial died of mesothelioma, caused by the asbestos fibres they breathed in". This is the statement expressed by the prosecutor's experts at the hearing on 15 November with documented certainty.

Doubt: "Are all the 392 cases certain diagnoses of mesothelioma?". This was the question raised at the hearing on Monday, 22 November in the Assize Court by the defence, that is by Stephan Schmidheiny lawyers, who were cross-examining the prosecution's expert witnesses.

That question mark is like a sharp dagger painfully penetrating the flesh and memory of those who have seen a loved one die, with suffering and anguish, because of "*that*" diagnosis. If only it had not been "*that*" diagnosis for the 392 names listed for which the Swiss businessman is called to answer, for all cases, of voluntary homicide, with possible wilfulness. If it is justice that is being invoked here - as has been written for years, in large letters, on the Italian flags "**ETERNIT GIUSTIZIA**" - then we must follow the rules of the trial, aware that we will have to bear even the hardest passages, no discounts on the bill to pay.



And this is what is happening. Moreover, it is not surprising that Guido Carlo Alleva and Astolfo Di Amato, Schmidheiny's defence lawyers, are doing what they had stated ever since the beginning of the trial, i.e. they are asking for an absolutely rigorous account of the validity, beyond all reasonable doubt, of each diagnosis.



Lawyers Guido Carlo Alleva and Astolfo Di Amato (seated, not far away)

On the other hand, the indictment is not joke: voluntary murder. Multiplied by 392: that is, 392 murders to defend. So as I was saying it is not surprising it is legitimate that Alleva and Di Amato, meticulously recalling case by case - and sometimes accompanying the name of the victim with a charitable "the poor woman..." -, asking for an account of the truthfulness of the charges. -, ask for an account of an unquestionable diagnosis: is it really mesothelioma? Or was it a metastasis that spread to the pleura, but developed from another type of tumour not attributable to asbestos? On the strength of the arguments of its expert witnesses (who will be heard later in the trial), the defence raised another matter: in order to be accepted as a definite diagnosis of mesothelioma, confirmation of an immunohistochemical analysis, based on certain markers, is required. Without immunohistochemical confirmation, with those specific markers, the case, according to their position, is to be removed from the list of 392 victims. The point is that immunohistochemistry is a relatively recent diagnostic methodology (starting in the 1990s, and therefore did not exist when the disease occurred before that time) and whose guidelines continue to be refined over time. So?

The objections of the defence as it cross-examined the PP's expert witnesses (pathologists Drs Donata Bellis and Narciso Mariani, and, to a degree , Massimiliano Buggiani and Pavilio Piccioni, pneumologists, and Ferruccio Perrelli, occupational physician), aim to group the diagnoses into those established by immunohistochemical tests and those that have no such test.



Pathologists Donata Bellis and Narciso Mariani

Is the dividing line clear? Does the lack of immunohistochemical tests mean that those victims are to be placed in a limbo of diagnostic uncertainty and, in any case, according to the defence, to be removed from the Eternit Bis trial? Drs Bellis and Mariani replied with a certain scientific panache: no, if the only excluding decisive factor was the staining of the slides with the immunohistochemistry, "*a machine that performs this function would be sufficient and there would be no need for a pathologist*", Donata Bellis stated with politeness and determination. **The diagnosis, Bellis added, is formed and confirmed by evaluating and comparing several aspects: from the morphology of the tumour, to the radiographic (X-ray, CT, PET), cytological and histological tests, with further, verification through immunohistochemistry if the specialists deem it necessary.** The defence lawyer also referred to apparently identical situations for which, however, the pathologists followed different paths to diagnose, showing that they were familiar with each medical file. The expert witnesses' explanation: '*We evaluate case by case what is necessary to find or exclude confirmation*'.

Another issue: some of the victims had had another tumour (e.g. of the intestine) diagnosed years before treated and from which, after a certain codified period, the patient had been declared in remission or even cured. Subsequently, a pleural effusion appeared. Instead of mesothelioma, could it not have been metastases developed from the previous neoplasm? Indeed, this is the first reasonable hypothesis, but it is then the anatomical pathologist, who provides a definite answer by comparing all the results. If the victim's name now appears among the 392 it is because the prosecutor's experts confirmed the mesothelioma diagnosis. Furthermore, while survival rates for a first tumour increase, the occurrence of two different tumours appearing at different times in the same person is not so common. Another case concerned a man who had worked at Eternit for a very short time since Schmidheiny took over in 1976; how can that case of mesothelioma, limited to a work exposure of a couple of weeks, be traced back to the defendant? History has shown, however, that the patient lived in Casale and that, regardless of the very short professional exposure, he is one of the so-called (many) "environmental cases": the occasion of exposure to asbestos is different, but the tumour is identical.

OBJECTIONS

The fact that the unquestionable and detailed diagnosis represents is the heart of the Eternit Bis trial is also shown by the rigorous attention paid by the lawyers Di Amato and Alleva to the use and access to the organic material (the so-called "slides" and "blocks" of tissue taken, at the time, from the patients with the biopsy), viewed and analysed by the prosecutor's experts. "*Our experts were not given access to them to examine them in the same way*", they had already complained in July, raising an objection of nullity that the Court, presided over by Dr Gianfranco Pezone (as well as by Dr Manuela Massino and the six members of the jury aka *popular judges*), had rejected, inviting the prosecution and the defence to agree so that the organic materials, stored at the Turin Public Prosecutor's Office, could be accessed albeit with all the necessary security precautions to protect crime evidence. The objection was raised again on Monday the 15th of November, when pathologists were first hears as in their report they had referred to the investigations they had carried out on the slides.

"*It can't come back through the back door*," complained defence lawyer Alleva, raising an objection referred to the fact they maintained they had not been able to access. Prosecutors Gianfranco Colace and Mariagiovanna Compare replied that there had never been precluded in any manner in making those materials available. Having considered the objection, the Court, rejected it, stating there had been "*misunderstandings and poor mutual cooperation*" between the Prosecution and Defence, "but there was no negative intention on the part of the Prosecutors," said President Pezone rejecting the objection.

Since Professor Massimo Roncalli, the defence's expert agreed and installed two microscopes in the Turin prosecutor's office, proceeding and progressing with the investigations deemed necessary. It seems that his work is well underway.

NEXT HEARINGS

On Monday 28 November, three other prosecution consultants will be examined: epidemiologists Drs Corrado Magnani and Dario Mirabelli, and geneticist Prof Irma Dianzani.

On the 6th of December it will be the turn of the experts listed by the plaintiffs' lawyer Laura D'Amico: the Dr Mauro Papotti (pathologist formerly at San Luigi Orbassano Hospital, now at the Turin Molinette Hospital, and the occupational physician Pietro Gino Barbieri.

On December the 13th, the defence will cross examine consultants Buggiani, Piccioni and Perrelli, and Magnani, Mirabelli and Dianzani.



Consultants Massimiliano Buggiani, Pavillo Piccioni and Ferruccio Perrelli[

The last hearing before Christmas will be on December the 20th 2021.

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