

## **Eternit bis January the 30<sup>th</sup> 2023 Hearing**

**By**

**Silvana Mossano**

*'Originale'* (unusual, original but also quirky in Italian T's N), Public Prosecutor Gianfranco Colace's indictment: the meaning of the word *'originale'* used by the defence lawyer Astolfo Di Amato (for the accused Stephan Schmidheiny, together with his colleague lawyer Guido Carlo Alleva) to define the indictment where his client 'as the actual manager of the company Eternit spa, operating the asbestos processing plants in Cavagnolo, Casale Monferrato, Naples-Bagnoli, Rubiera (...)' must answer, before the Court of Assizes of Novara, for the wilful voluntary murder of 392 people from Casale: 62 former workers from the plant that was based in the Ronzone district (via Oggero) and 330 who simply lived in and around the town.

Lawyer Di Amato was very careful and accurate in his choice of words: 'An original indictment,' he said. Prosecutor Colace considered this definition and made it his own, not associated with the indictment: 'What is original,' he began, 'is the Casale Monferrato case. Since, by definition, an original is the exact opposite of a copy, well... there is no case of asbestos-related diseases that is a copy comparable to this one: the Casale case is a unique case in the world'.

He speaks clearly spelling it out, his language is calm, because the situation does not require emphasis: 'Casale is a martyr town where a silent massacre of 392 victims took place - and is still taking place. 392 lives. 392 families'. He adds, casting a brief glance behind him: 'The composure of the people mourning their dead is striking. You can see it here, witness it, wafting in silence, and outside displaying signboards, not in protest, but more as a warning to the young people who attend university in this building, where we are holding the trial'.



Prosecutor Dr Gianfranco Colace

### **THE CLOSING SPEECHES START**

After 36 hearings, the Eternit Bis trial closing speeches started on Monday, January the 30<sup>th</sup> 2023 with the indictment of prosecutors Colace and Mariagiovanna Compare. They will continue on Friday, 10 February; then, there will be hearings for the civil plaintiffs' lawyers (February the 20<sup>th</sup> and 27<sup>th</sup>) and those for the defence lawyers (March the 10<sup>th</sup> and 29<sup>th</sup>).



Public Prosecutor Dr Mariagiovanna Compare

0000 Colace wants to make the judges (Chief Justice Dr Gianfranco Pezone, with magistrate Dr Manuela Massino and the six members of the Jury –*giudici popolari*- ) understand that 'whatever the outcome, this trial is a page of history for workers and members of the community not only in Casale, but in all the world'.

The estimate is that mesotheliomas worldwide are in the order of magnitude of 50,000 to 100,000 a year.

Colace speaks of a massacre: 'They say it was caused by asbestos. No,' he points out, 'this is a man-made massacre, and it is the macabre symbol of a certain kind of entrepreneurship that has the nature of colonialism'. Then, with his gaze fixed on the court: 'We believe there is evidence that Stephan Schmidheiny is responsible for these deaths. And we propose to explain why'.

## **INDICTMENT IN 4 PARTS**

The indictment is divided into four sections: 1) the conduct (under what conditions asbestos was used and treated); 2) the event (the demonstration that all 392 were deaths due to mesothelioma); 3) the causal relationship (how exposure to asbestos in the decade 1976-1986, when the defendant owned and managed Eternit, affected those deaths); 4) the subjective element, i.e. the analysis of Schmidheiny's attitude: "Did he know and accept that all this was happening or was he just careless? We are confident that we can prove conduct amounting to wilful misconduct," said the prosecutor.

## **DIFFICULT TRIAL**

Scientific and legal problems have to be faced and solved.

PP Colace dwells on the first of the two sections: 'Technical experts are the bearers of science in the courtroom, but they must be neither accusers nor defenders, because judges need the support of science, not personal points of view. He adds 'consultants can do whatever they want, but if they do not stick to science, they are not credible'. In the prosecutor's opinion, 'the defence experts, on the other hand, demonstrated an excess of defensive zeal that made a mockery of logic'. And again: 'We

have often witnessed a juxtaposition between science and eccentric, sometimes personal, points of view, always and only aimed at challenging the scientific studies set out by the prosecution's expert witnesses who, instead, made these studies not for the trial, but before, observing and analysing phenomena according to scientific criteria. Yet, in this courtroom, they were attacked as if they had got everything wrong...!.

According to the reconstruction of the defence experts, in fact, a picture emerged in which 'between 1976 and 1986 [the period of the defendant's management] there was almost no asbestos in the plant, everything was under control, and that outside the factory the only fibres spread were those of the beatings [pulverized asbestos waste] dust (and who had ever distributed it? Ah, well, it had been distributed by those who were in charge of Eternit before Schmidheiny!), and also that in that decade it was not Schmidheiny himself who actually managed the company but his managers, and that almost all those deaths would not even have been mesothelioma deaths... perhaps the Casale doctors exaggerated in making the diagnoses... But then,' the prosecutor's question: 'why are we here?'

### "WHY ARE WE HERE?"

'Because the picture is different,' declares Colace, 'in Casale there has been, and will still be for years, an epidemic of mesotheliomas. And there have been no overestimations or medical errors: Casale is not a martyr town of malpractice, but a martyr town of asbestos'.

What gives no peace of mind is that 'that epidemic could have been avoided, or at least the impact of the massacre could have been limited'.

Colace traces the history of Eternit, the transition from the predominantly Belgian management (of the Emsens/de Cartier family) to the Swiss one (of the Schmidheiny family); he recalls that the products (in Casale, slabs and pipes) were made from a mixture of cement and asbestos; that asbestos raw material was used in the production cycle in massive quantities. Both white asbestos (chrysotile) and blue asbestos (crocidolite, the most dangerous) were used; the latter in a proportion of 10% of total use (over 1600 bags of 50 kg each per day).

**produttività**

Anno	kg/anno di amianto	kg/giorno di amianto	Quantità di "teciperm secco" kg
1978	17.821.000	78.000	4.031.000
1979		83.000	
1981	18.403.000	66.100	
1982	13.538.000	58.000	

Dati calcolati su 233 giorni lavorativi  
e tratti da:

- Denuncia lavoratori industriali del 29/12/1978
- CT Ocella - Clerici del 1979
- CT Salvini del 1984

CTU Ocella: uso della crocidolite pari al 10% del totale dell'amianto utilizzato  
Consumo giornaliero di amianto nel 1979 - 83 ton  
1 sacco 50kg => **1.660 sacchi/giorno di crocidolite**

The table with some data on the quantities of asbestos used as raw material in the production of manufactured goods

## **'PRECAUTIONS NOT RESPECTED'**

According to the prosecution, in a production sector that is so delicate for the health of workers and the environment, 'none of the safety precautions at work (moreover, already indicated in Presidential Decree 303 of 1956) were respected'.

What was the situation in the factory? 'Catastrophic' defined one senior manager in 1973. And later? Another manager, in 1975, described it as 'a dirty, dusty environment, disorganised in the planning of maintenance and the management of vacuum systems'. And then? 'In 1976, Klaus Robock, a scientist working for the Eternit group, in an internal memo, following an inspection at Casale, notes defects and problems "on which action must be taken"'.

### **How does one act**

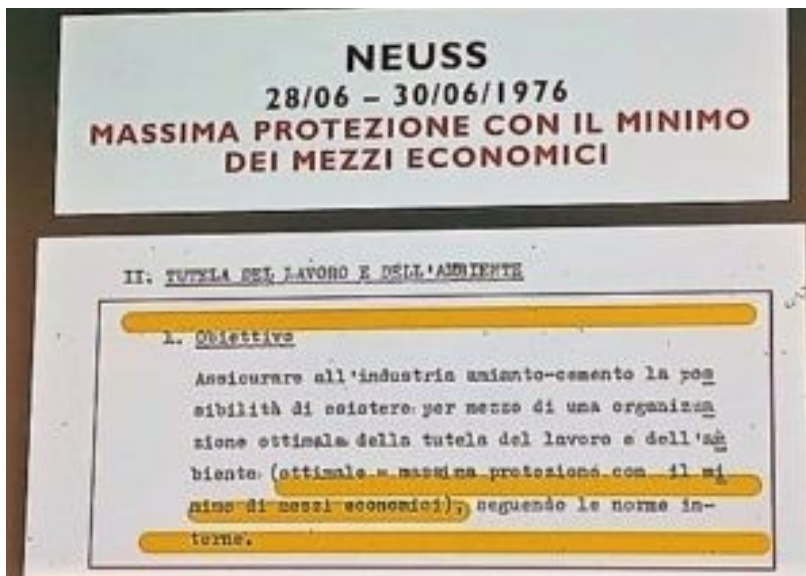
The defence, through its consultants, has asserted (and it will certainly be an argument that will be taken up in the haranguing) that Stephan Schmidheiny invested a lot of money in protective measures at Italian Eternit. Colace is sceptical; 'in the meantime, at each trial the figures indicated by the defence continue to increase'; furthermore, 'our consultant has reconstructed the entity and destination of those flows; well, they served more to cover losses than to invest in safety'. Not that there was no investment at all, e.g. certainly in new plants and in the transition from dry to wet processing; but the quantification of specific investments for safety, reconstructed by the prosecution's consultant, comes to '4 billion lire, spent over a ten-year period and spread among all the Italian Eternit plants'. An amount far less than that indicated by the defence counsels.

## **ASBESTOS BUSINESS UNDER ATTACK**

In the 1970s, the asbestos industry was beginning to feel the breath on its neck. In 1964, the scientist Irving Selikoff, at the International Symposium of the New York Academy of Sciences, had sounded the alarm (not the first, by the way) by clearly pointing out the causal link between asbestos and mesothelioma. Asbestos causes mesothelioma, and people die of this malignant cancer; and it does not only affect workers in the industry, but also those who breathe in the fibres released into the air. Reaction of the asbestos industry? Selikoff is to be ignored, his name should not even be mentioned.

The American company Johns-Manville, by the way, had been severely weakened by the stratospheric compensation payments to numerous asbestos victims it had been forced to pay (it went bankrupt in 1982). Workers, trade unionists, journalists, doctors, politicians began to ask questions, too many questions.

So what? 'The entrepreneur makes a choice: he favours the business and defends himself against the attacks on his business'. And how? Colace recalls the Neuss conference, in 1976, chaired by 'Schmidheiny in person', whose objective was as follows: 'Ensuring the asbestos-cement industry can exist by means of an optimal organisation of labour and environmental protection following internal regulations', where 'optimal', one reads in the minutes of the meeting attended by Eternit's top executives, equals (=) 'maximum protection with minimum economic means'.



And what about those who reacted?

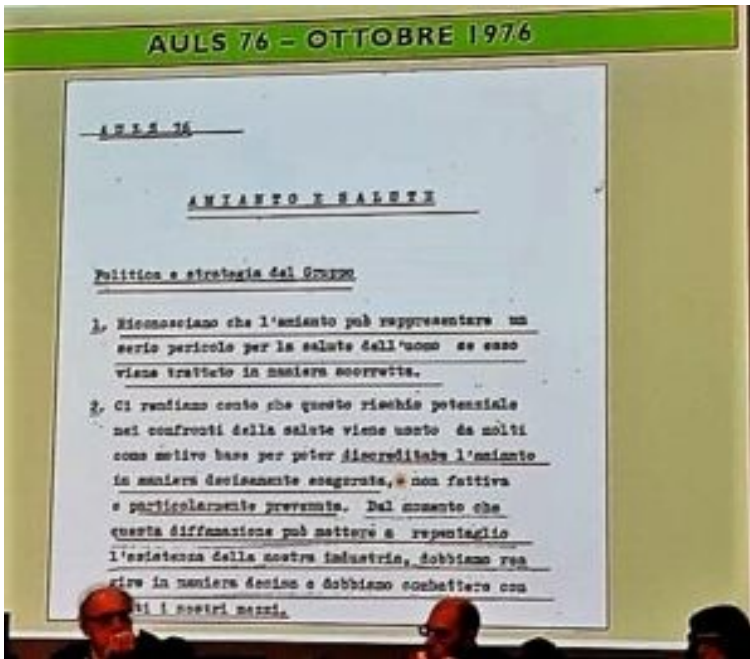
Those who rebelled (perhaps not so rationally because they are exasperated) were fired.



The above is an excerpt from a communiqué of the labour works council, dated 18/11/1976, entitled 'Grave provocation'. The text: 'He was fired on the spot for vigorously protesting against a situation that had been dragging on for a long time. For months the works council had been reporting the spread of dust in the tube department due to inadequate equipment and its inefficiency due to lack of maintenance. It is understandable that at a certain point one loses patience and even goes so far as to say a few words of exasperation between (...) following a cloud of dust that had once again invaded the mixing area of the department. The measure seems all the more serious when one considers that Eternit is a factory where people still fall ill and die of asbestosis and cancer'.

And to whom does he insist? The placebo explanation of 'Casale 3' is given, concerning the project to build a new and safe factory in the industrial area on the outskirts of Casale. Riccardo Coppo (the mayor who, in 1987, had signed the famous ordinance banning asbestos in Casale) testified at the Eternit Maxitrial in 2011: 'At a certain point we realised that they were pulling our leg' and wrote a letter to Eternit's majority shareholder to inform him that he was 'strongly concerned about the decline in employment in the factory, the serious degradation of the plant, but above all about the serious consequences of asbestos processing on the health of workers and citizens'. The letter is dated 24 September 1985. The majority shareholder was Stephan Schmidheiny.

The public prosecutor then refers to Auls76, the 'manual of disinformation' he calls it, in which various hypotheses of critical circumstances are listed in detail with the relative answers that had to be given depending on who was asking questions about asbestos (precisely workers, plant neighbours, trade unionists, journalists, politicians and so on), and it is suggested that the German legislation, which is less restrictive than the dust limits indicated by OSHA (the American agency that deals with safety at work), should be used as a reference.



"(...) Since this defamation can endanger the existence of our industry, we must react decisively and we must fight back with all our means."

"Schmidheiny differentiated the type of information: that to be given to top management, clear about the real risks of asbestos, and that for workers, sweetened, confused". In one ('the only') communication directed to workers, it is written: 'Asbestos is not dangerous at all: manual contact with it does not cause any damage. Instead, there is smoke that ...



The misleading communication given to workers about the risk of asbestos went on:

"(...) eliminate or at least reduce smoking as much as possible. The harmfulness of smoking in itself is well known (...) and it should be borne in mind that the smoking habit can substantially raise the danger of damage to health in conjunction with other harmful factors" [No reference is made to asbestos]. Asbestos, on the other hand, on contact 'is not dangerous (...), unlike other substances or products 'whose mere physical contact may produce damage (...): radioactive substances, certain chemicals and the like'.

## **WAS THERE OR WASN'T THERE DUST?**

Prosecutor Colace recalls testimonies (including those of trade unionists Nicola Pondrano and Bruno Pesce, and of workers), documents, inspections (of the Labour Inspectorate, at last), expert reports attesting to the presence of a ubiquitous dustiness, widespread in all the spaces of the factory.

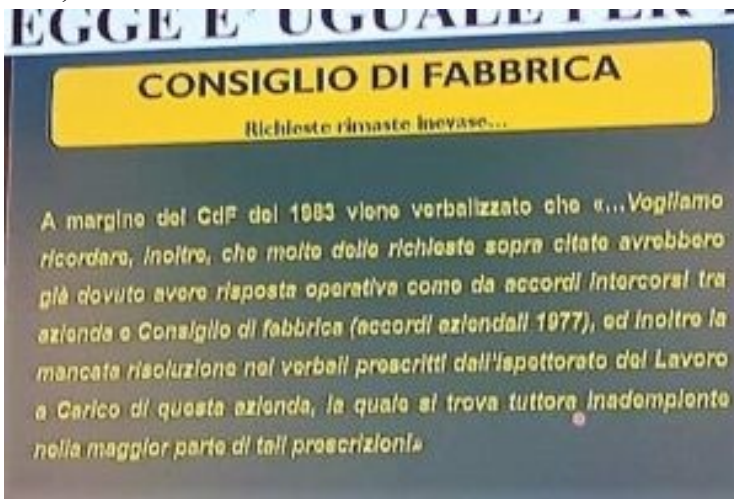
On the other hand, the defence consultants reconstructed a different situation, which the public prosecutor stigmatises as follows: 'They want us to believe that the factory was as clean as the operating room of a hospital! They have depicted an unrealistic situation, emphasising some data and keeping others silent'.



He showed two photographs on the screen: one is a still from a Luce film showing the working environment between the years 1928 and 1932; the other is an interior view of the factory when it was closed and abandoned in 1986. He addresses the judges: 'Would you take your children to play there?'



Among other things, the works council, in 1983, recalled a series of unfulfilled requests and urged action that had been promised and ignored, including prescriptions issued by the Labour Inspectorate on which the company, years later, was still in default.



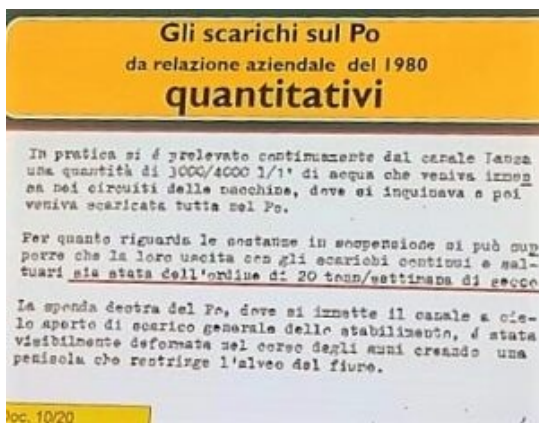
And yet, INAIL had become convinced that the Casale plant was virtuous, with dust perfectly below the legal limits, so much so that it had exempted the company from paying the 'surcharge' related to the risks of asbestos-related diseases. The consequence was that workers were no longer entitled to the so-called 'transition annuity', which allowed them to retire a year early. The trade unionists Pondrano and Pesce mobilised, lawsuits were brought against INAIL before the labour



judge, and there the issue of the surcharge no longer paid by the company was discovered, on the grounds that the environmental conditions had improved and the risk of falling ill with asbestosis (a dose-dependent, asbestos-related disease) had been reduced. Judge Giorgio Reposo was faced with the dilemma: 'But is there dust inside the factory or not? The answer was given by consultant Michele Salvini, a university professor from Pavia, who found the dust, and how right he was; where? Where it had not been thoroughly cleaned in anticipation of the inspection. Incidentally, all the cases for the extra *annuity* due to significant exposure that went to court were all won by the workers.

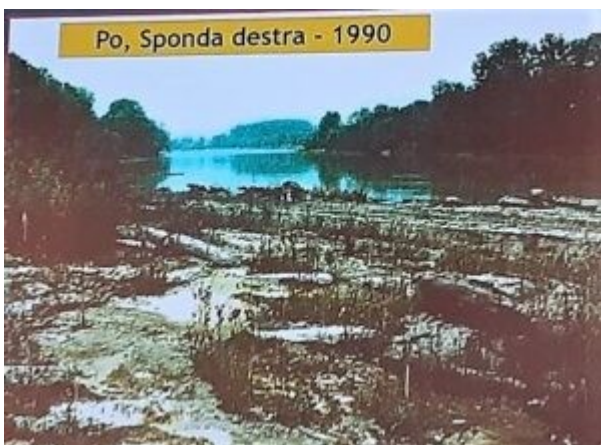
Colace insisted: 'Asbestos dust was widespread inside the plant and outside'.

He lists monitoring results and shows photographs: the suction fans positioned on a wall of the factory that threw out the dust without filtering; the former Piemontese area of the waste crushing with a bulldozer under the open sky; the absence of internal laundries to prevent the workers and female workers from going home in their work clothes ("stopping to buy bread, to pick up their children from school and to hold them in their arms with all those white specks of dust in their hair... "); the transport by truck, along the streets of the city, of the sacks containing the raw material arriving at the railway station and the finished products transferred to the warehouses in Piazza d'Armi; the dumping of waste water containing asbestos on the right bank of the Po: here they formed a very thick crust, the famous 'spiaggetta', a Sunday destination for many families who considered it their 'Riviera' on the river.



"As far as suspended substances are concerned, it can be assumed that their output (...) was of the order of 20 tons/week dry. The right bank of the Po where the plant's general open drainage channel enters has been visibly deformed over the years, creating a peninsula that narrows the riverbed".

The 'spiaggetta' is indicated with a blue outline



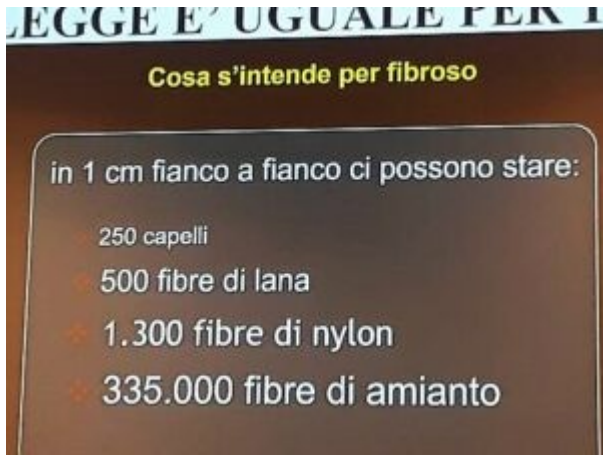
The 'spiaggetta': a photo taken in 1990 by Stefano Silvestri, one of the Prosecutor's expert witnesses (from his report)

And, on the left bank of the Po, there was the Bagna dump. Enrico Bagna was the operator who had the contract with Eternit to take away and dispose of scraps and waste from the plant, including large quantities of powder.

## THE DEFENCE

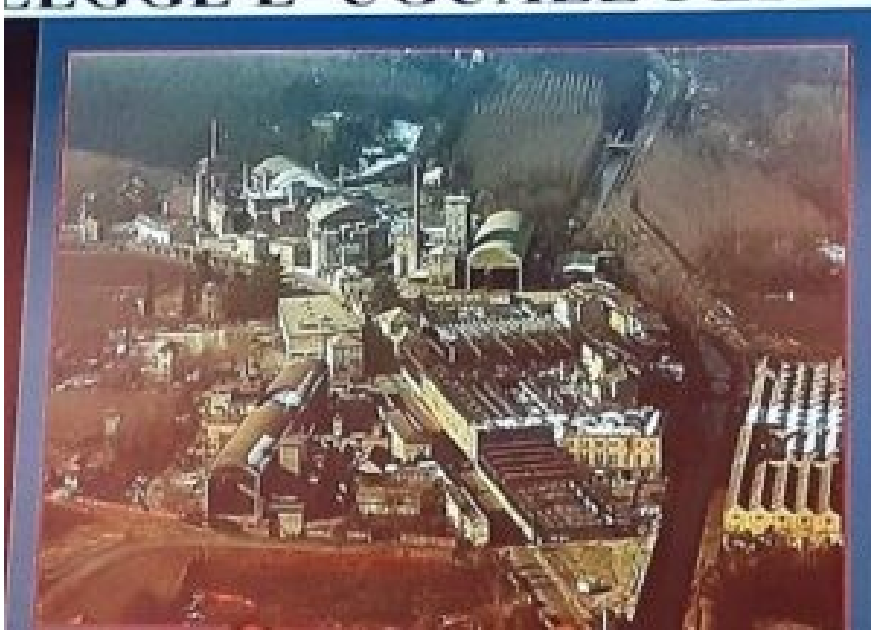
"In 1979, Eternit sent a warning to Bagna so that he would no longer sell the powder to citizens who used it for battens (of sports fields, courtyards, roads...) and as an insulating material in attics. 'Meanwhile,' the public prosecutor explains, 'the notice shows that the distribution of dust had not been banned with the beginning of Schmidheiny's management, in 1976, contrary to what the defence consultants said about the fact that the dust from the "improper uses" in the city had been sold by those who had managed Eternit before Stephan Schmidheiny. Moreover, if Bagna is forbidden to hand it over it is because it is known to be very dangerous... it contains crocidolite among other things... And what is done? Bagna is warned, but the population is kept ignorant instead of being warned of the grave danger!' And that's not all: the poor thing, taken away as waste and discarded by the factory, even when it was no longer given to the population, continued to be dumped, 'at least until 1984', in the dump on the left bank of the Po: 'Under the open sky, free to disperse into the air...' the public prosecutor remarks.

## WHAT DOES ASBESTOS DO?



How does asbestos behave? Says Colace: 'We have caught contradictions between the defence consultants: those who maintain that inside the plant the dust falls and settles around the workstation without dispersing; and those who, referring instead to the outside environment, affirm that the fibres of the dust and the beatings spread widely'. What is the issue? 'What is good to say for the inside of the factory is not good for the outside?' And then he doesn't like the comparison between the intensity of the pollution produced by dust and beatings and that of the factory and the crushing area: are they really comparable? Is the incidence of fibres from the work sites really equal (or even lower, according to the defence expert witness) to that of the so-called 'improper uses'? "Are we to believe," the prosecutor asked, "that the asbestos pollution problems at Casale originated mostly from those 'little holes' between one tile and another on the roofs, as a defence consultant claimed? And the broken tile, then... a fall in style that I would not have expected from a university professor!" He was referring to the fact that one of the experts had shown a photograph of a broken tile as a concrete example, according to his thesis, of a damaged roof and the possible leakage of fibres from the underlying insulation. Only that that reconstruction was unreal; in fact, the Arpa technicians who had taken that picture had explained that they themselves had been forced to remove the tile in order to be able to position the instrument needed to carry out the sampling.

## WHAT REMAINS?



What is left, now, after 80 years of activity ('the last surge in production was in 1981, with the conspicuous sale of artefacts for reconstruction after the earthquake in Irpinia') and after the factory has ceased operations and been abandoned (and then reclaimed with public money from the community)?

"What remains on the territory?" The public prosecutor spoke for four hours. It is difficult to summarise and make understood such a complex tragedy using simple words. Before he sits down, he looks at the judges one by one and gives an answer: 'What remains? The 392 cases of death from mesothelioma remain'.

### **THE DEATHS REMAIN**

'In this trial there are 392 victims,' points out public prosecutor Mariagiovanna Compare, 'but it is only a selection of a much higher number.

In total, at least 3,000 deaths are estimated in Casale and the surrounding area. The current increase is around fifty new cases a year. Some time ago, the mayor Riccardo Coppo said: 'Here you do not have an immediate perception of the scale of the tragedy, because it is a slow and continuous trickle.

Men and women, younger and younger, are leaving, one by one, in silence, without noise, sadly and with resignation, because, as the public prosecutor reiterated, 'every diagnosis of mesothelioma is a death sentence'.

Yet, 'the diagnoses were questioned by the defence consultants: according to them, without recourse to the latest immunohistochemical markers, one cannot be certain that they were mesotheliomas and not instead metastases of other primary tumours'.

Compare endorses the scientific arguments of the prosecution's consultants and the civil parties: 'It is not true that diagnosis cannot be made without immunohistochemistry, and it is not true that older diagnoses are to be thrown out'.

Meanwhile, 'there is no specific marker for mesothelioma, but rather markers, more or less sensitive, indicated by international guidelines'.

In any case, the public prosecutor points out, 'it is always a multidisciplinary diagnosis, in which various types of investigations are involved, and it is necessary that a good pathologist interprets the results of the investigations'.

Regarding the insinuation that the doctors at Casale may have exaggerated with their diagnoses without investigating whether or not the mesotheliomas were primary tumours, Ms. Compare replies that many of them were not made at Casale, but in hospitals in other cities or other regions, even in the Lombardy centre where the defence anatomist Massimo Roncalli practised ('and his colleagues had no doubts about the certainty of that diagnosis!').

He goes through, card by card, name by name: life, habits, passions and death of many of the victims listed in the indictment. He insists: 'Every increase in exposure increases the risk of falling ill and this increase also results in an anticipation of death.'

'They are all 392 mesotheliomas,' concludes Prosecutor Mariagiovanna Compare. No doubt we have. And - addressing the judges - no doubt you can have'.



The Court of Assizes in Novara, Monday 30 January, during the closing speeches

The Prosecutors continue on Friday, 10 February.