

*... and the tormented self examiner so as to account for this one fact, found himself involved in the examination of his whole life. Back he went, from feud to feud, from murder to murder, from crime to crime; each one of them came back to his new conscience isolated from the feelings that had made him want to commit them, so that they reappeared in all the monstrousness which those feelings had prevented him noticing. (...) – by Alessandro Manzoni, The Betrothed, Chapter XXI, The Unnamed - translated by Archibald Colquhoun, published by JM Dent & sons LTD London 1951*

## **June the 7<sup>th</sup> Eternit bis hearing –**

### **Chronicle of a long wait**

**By Silvana MOSSANO**

Stephan Schmidheiny, Eternit's last surviving owner, was convicted: he was found guilty of multiple manslaughter, aggravated 'by having committed the act in violation of the rules for the prevention of accidents at work' and also 'by having acted despite knowledge of the event'<sup>1</sup>.

The Court of Assizes of Novara, in the University's Lecture Hall where the Eternit Bis trial was held, sentenced the defendant to 12 years' imprisonment. The prosecution had filed for murder but the court reduced the charge to manslaughter (wilful and with aggravating circumstances). This resulted in the statute of limitations being applied to a number of cases.

Let us analyse the verdict carefully –the court's motivations will be given in 90 days. There is a first group of victims (147 in all) for whom the defendant was sentenced to 12 years; this group, in turn, is divided into a subgroup A (9 victims) for whom Schmidheiny was charged with both aggravating circumstances (violation of the rules of prevention and wilful negligence) and a subgroup B (138 victims) for whom he was charged only with the aggravating circumstances .

There is another group of victims (199 in all) for whom the statute of limitations applied. When does the statute of limitations apply? In cases where at least 15 years have passed since the date of death. This means that the 199 victims in this second group have been dead for more than 15 years. Another question: as for these 199 prescription barred cases, is Schmidheiny guilty? According to Italy's procedural law, if the court deems the defendant innocent, even when an offence is prescription-barred, the judge does not simply declare 'not to proceed due to the statute of limitations', but must specifically issue a sentence of acquittal using the formula 'because the fact does not exist' or 'for not having committed the fact'. However, this was not the case for these 199 deaths. The verdict implies that there was evidence that would have led the court to issue a sentence of conviction for the death penalty against this group as well, had the statute of limitations not applied.

On the other hand, the judges recognised that there was no evidence to convict in the case of 46 other victims, and for these the defendant was acquitted. The grounds for the verdict, which will be filed within 90 days, will explain whether the decision in these cases is to be attributed to uncertain

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<sup>1</sup> (per )aver commesso il fatto con violazione delle norme per la prevenzione degli infortuni sul lavoro» e anche «dall'aver agito nonostante la previsione dell'evento

diagnoses or to the difficulty of associating the disease with a precise period of the victims' lives in Casale.

The defendant is also banned from public office for five years, and] has also been sentenced to pay compensation in separate civil lawsuits to various parties including the national government, the Piedmont Region, the Province of Alessandria and the Municipality of Casale Monferrato. The Court ordered Schmidheiny to immediately pay enforceable provisional compensation to a long list of entities, trade unions, associations and individual injured parties. The largest sums awarded by the court were to the Municipality of Casale (EUR 50 million), the Prime Minister's Office (EUR 30 million) and AFeVA (half a million). In total, more than € 86 million, plus the obligation to pay the costs of the constitution of civil parties for an amount exceeding EUR 200,000. (TN: However, similar sums awarded in previous cases were never paid)

Thus ended, on Wednesday 7 June, the trial of the Eternit Bis trial in the Court of Assizes, after 42 hearings over two years, starting on 9 June 2021.

### **June 7 EARLY IN THE MORNING**

At 8.15, the courtroom is empty, the lights are low, the atmosphere subdued. There is only the sound engineer testing the system, wandering around the various stations, checking that everything is in order. It is a historic day. In two years we got to know each other. We say goodbye, it's a bit of a farewell: 'It's the last time we'll meet...!'

I take my seat in the chair occupied since the first hearing, the bag at my side, with the notebook for notes, something to read during the breaks, a pen, and a spare one, just in case.

Outside, the first activists set the scene, they have done so, tirelessly, at the beginning of every hearing: the nation's white red and green flag hangs from the barriers and walls with the words Eternit Giustizia, and the yellow ones of Legambiente (the environmentalists), those of Medicina Democratica and Aiea, as well as those of the various trade unions, the placards from the students' work, even those who recently took part in the environmental competition 'Premio Guglielmo Cavalli', in honour of a trade unionist who died of asbestos. In the foreground, a long, new, blue banner: it is a reproduction of the base of the Eternit Flower Nursery Monument, which stands in Casale in the park built on the former site of the Eternit plant, in the Ronzone District. Printed on it is the phrase: 'The handkerchiefs soaked in our tears will put on wings and fly far away to find deep roots of justice'.

Slowly, the first lawyers arrive in the courtroom; journalists with camera crews, both Italian and foreign, compete for the best positions where they can set up their camera stands. Then the prosecutors, with their staff and consultants, other lawyers for the defence and civil parties, family members of the victims, trade unionists and health workers who have courageously accompanied so many patients in illness, activists, many arrived by special bus or in a procession of cars. They have also mobilised from the US, France, Holland, Switzerland, Spain. There is much animation, amid a flutter of togas and whispers.

### **THE COURT ENTERS**

Then the judges arrive: President Gianfranco Pezone and his colleague Manuela Massino put on their bibs and togas, the (six) members of the jury place their tricolour sashes over their shoulders. At 9.30, the roll-call begins, one name after another. "Have I called everyone? Good."

Wednesday June the 7<sup>th</sup> is, yes, the hearing of the verdict, but there is still room for replies; it is true that all the parties had been invited to file them in writing by mid-May, but the Prosecution is determined to put its case forward till the last possible minute. Dr Gianfranco Colace almost says this to himself: 'This is too important and delicate a trial, we cannot assume that we have exhausted every argument... maybe we have not said everything, maybe we still need to point out...'. And he details. He dwells on the dust, it is "a" culprit, but it is not "the" culprit'; but, in the prosecution's opinion, the most conspicuous factor was the intense and uncontrolled activity of the plant and the failure to apply the measures that should have contained the dust. Certainly, the dust was dangerous, so much so that Eternit's top management, at one point during Stephan Schmidheiny's ten-year tenure, allegedly warned the company Bagna, the waste disposal contractor, to stop distributing it to citizens who requested it. This warning was not confirmed by the contractor, but, if true, 'the population, on the other hand,' Colace emphasises, 'was never given any information about the serious danger of this material. Plaintiffs' lawyer Esther Gatti concludes: 'Where was the label stating 'Asbestos may seriously damage your health? We have never seen it!''.

On the fact, referred to by the defence, that the processing of asbestos was a lawful activity in Italy until 1992 (thus beyond the 1976-1986 decade of Schmidheiny's management), 'nothing to object to,' commented the Prosecutor, 'but a lawful activity must be carried out lawfully! There were rules to comply with, but they were not observed, as proved by the dozens and dozens of fines imposed by the labour inspectors and monitoring agencies.'

"Asbestos kills,' Dr Colace remarked, 'Schmidheiny personally had all that knowledge. He knew it, he knew it, and he went ahead anyway, at the cost of causing the damaging event'. The deaths.

Prosecutor Dr Mariagiovanna Compare insists on the certainty of the diagnoses, queried by the defence. "They were mesotheliomas," she points out, "and it has been excluded with certainty that other diseases were not the cause of death. She strongly reiterates 'the thesis, prevailing in scientific circles, of the relevance of the cumulative dose of exposure', as illustrated and argued by the consultant Prof Corrado Magnani, 'whose authority and independence of judgement is established'.

For the civil parties, lawyer Maurizio Riverditi states: 'This trial proved that, faced with the doubt that people could die, Schmidheiny did not consider stopping the production but decided to continue with the use of asbestos'. Then looking at the judges one by one: 'If one of the 392 victims was a family member of yours, you would call the defendant a murderer'. Lawyer Esther Gatti, representing the Municipality of Casale, spoke on the compensation claims. Mayor Federico Riboldi, present at the hearing, leant forward so as not to miss a word. The lawyer says: 'We have asked for 50 million in compensation and litigating the defence challenges our request because they say it refers to damage under the statute of limitations and, in addition, that it cannot be linked to the deaths. Many of the reclamation expenses were incurred after the statute of limitations pronounced by the Supreme Court in 2014 for the Eternit One Maxi-trial where the charge was creating an environmental disaster. Moreover, our claim for compensation is, yes, attributable to the deaths precisely as they were caused by the defendant's conduct".

## **THE DEFENCE**

Defence attorneys Dr Astolfo Di Amato and Dr Guido Carlo Alleva asked for a five-minute recess. They did not expect to present extensive oral replies. They returned and referred to the written reports they had filed at the time, insisting on a couple of points. "Here it is said that Schmidheiny knew; but how: Did Schmidheiny know more than the inspectors and scientists? Not one of them ever said that the work should be stopped! Only at the 1997 Scientific Consensus was it definitively stated that it was not possible to work with asbestos safely. 1997, eleven years after the closure of the Casale plant. Before that it was believed it could go on'. Dr Alleva, while recognising 'the dramatic nature of this affair from the human point of view', insists that 'we cannot deny history: we must place ourselves there, between 1976 and 1986, and take into account the knowledge of the time. Otherwise, it is an overkill, an injustice'.

Silence. No one asks to speak any more. The President: 'with this the hearing is over and we withdraw to chambers. Before the court retires to the council chamber to decide the verdict, Judge Pezone addresses the audience: On my own behalf and on behalf of the court, 'I wish to express a great thanks to all the trial parties for the attention and skill with which you have dealt with such complex issues and for the fairness of the discussion. Gratitude also goes to the institutions of Novara and the University Chancellor.

The Court rises, Dr Pezone says that "it will take some time": he will inform the clerk at least an hour before the time when the final decision will be read out.

At 11.30 a.m. the court withdraws. The wait will last seven and a quarter hours.

## **PREDICTIONS AND SUPERSTITION**

As the judges leave, the motley crowd melts and comes alive. In the corridors and outside (in the courtroom no, it is forbidden), journalists hunt for interviews, and interviewees are tugged from microphone to camera relentlessly. Others scatter, some to eat in the canteen ('mhm, it's not so good...') others to bars and clubs not far away. A few, very few, remain in the hall. Someone whispers: 'What do you think? How do you think they will decide?' But no one gives in to the hazard of making predictions, for fear of being proved wrong. A few vague hypotheses hover, 'if they decide this way... if they should take into account...'. It is better to keep quiet out of superstition. Some university students look on uncertainly. "We are not Law students, we are from Economics,' they clarify, a little intimidated, 'but we would like to understand...'. They cross paths with Assunta Prato, asbestos widow; and she explains with simplicity and clarity, as if they were her pupils. The boys widen their eyes: 'We are here, in Novara, not far from Casale, but we know nothing about this: yes, we had heard of asbestos, but that it was so dangerous... deadly...'. They are shaken, a veil is torn. "But how old is the defendant?" Assunta says: 'Seventy-six, the same age my husband would be today, had he not died of mesothelioma at 50'.

There are those who want no food, their stomachs are closed, nor do they want to stretch their legs. It is as if continuing to preside over that secularly sacred place deputed to do justice increases one's personal contribution to the cause. 'And to think that it all started forty years ago,' murmurs Prof Benedetto Terracini, in the seat he took at the beginning of the afternoon, 'back then we had no idea about trials...'. Terracini is a 'giant' of Piedmontese and international epidemiology, one of the

leading scientists in the great mobilisation against asbestos from the very first hour. He recalls how it all began. He recalls the then young doctor Corrado Magnani, 'who worked at the Health Service of Asti and had in-depth expertise in measuring asbestos fibres. He met the Casale doctor Massimo Capra Marzani, who had done a thesis on the high number of asbestos deaths in Casale... Corrado told me about it...'. From there began the epidemiological studies from which, precisely, from a scientific point of view 'everything started' to shed light on the Casale case. 'Nothing would have happened,' adds Terracini, 'without the support of the then regional councillor for health, Sante Baiardi, who is still alive at the age of 97'.

## **AFTER LUNCH**

Little by little people dribble in, those who take their seats, those who return to set up tripods and cameras, Mayor Riboldi, who had returned to the town hall in Casale, returns to Novara and sits next to Afeva President Giuliana Busto. Riboldi says: "The sash I wear here represents the whole Casale community and above all the victims". And then the family members take their seats, looking around in the hope of catching some glimpse of a reassuring forecast. They remember, they are moved, they hope. "What if they acquit him as the defenders have asked?", "You mean? But after what we have heard?" Schmidheiny's lawyers had asked for the acquittal of their client 'for lack of proof on the causal link', and had set up their defence strategy mainly by instilling doubt on certain scientific theses supported by the prosecution. Nervousness grows, even among magistrates and lawyers. They walk up and down, in and out, put on and take off their bibs, put on and take off their robes, sketchy smiles. Will Stephan Schmidheiny too, at this moment, be pacing up and down the rooms of his mansion, apprehensively waiting to know his fate? Anxiety is democratic and universal.

The buzz of whispers is interrupted, every now and then, by the rustle of a candy box or the sound of an unmuted mobile phone.

## **IN AN HOUR**

All eyes are on the court clerk: every time she grabs her mobile phone, everyone holds their breath. False alarm. There are more than one. Until 5.10 p.m.: 'The Court will be out in an hour,' she announces. From time to time, doors creak in the corridor, breaths are chorally held, which, after a few moments, flow out again accompanied by shaking of the head. "Still nothing." Until, 'here we go, here they come'. The court clerk goes to personally check the microphone in the centre, tapping the fingertip of her index finger on it. She nods in assent to the technician.

## **THE COURT ENTERS**

We are ready. At 6.45 p.m., the judges sit in a row, the president or Chief Justice at the centre. Everyone stands up, even those who struggle and hold on to their sticks. The moment is sacred. At 18.46, Pezone begins the reading. Everyone holds their breath.

"In the name of the Italian People, the Novara Assize Court has pronounced the following sentence in the criminal case against Schmidheiny Stephan Ernst. Having regard to the articles...". Those with some familiarity understand and murmur: 'It is the preamble to the verdict. Then follows the list of 392 names: those names - for those who know, for those who are in this story to some degree of proximity - are figures who suddenly seem to appear, right there in the thronged crowd, with

looks and glances. They are friendly and beloved faces. One swallows saliva, tears shyly remain sealed inside. Some remember that, in 2012, at the Eternit One Maxi-trial in Turin, the late Judge Giuseppe Casalbore pronounced 2857 names: the reading of the judgment lasted several hours, all this time the judges and the audience remained standing. Someone smiles remembering: 'To resist, I used to do the bear's step, swinging and shifting my weight from one foot to the other'. Pezone's voice betrays fatigue, thinning, sometimes scratchy in the throat, but he proceeds swiftly, without pause for 16 minutes. Then the final words: 'The hearing is over. Thank you all'. It is 7.02 p.m.

Final greetings. The Prosecutors: 'Our indictment held. The existence of the murders has been recognised, including the environmental cases'. The plaintiffs' lawyer Laura D'Amico, who, among others, represented Afeva: 'After years and years of commitment, we can only be satisfied: this ruling affirms the soundness of the evidence gathered by the prosecution. Finally a point in favour of justice'. Lawyer Esther Gatti: 'Justice is done, for now. But we are moving forward'. Lawyer Laura Mara, who defended Medicina Democratica: 'This ruling is an important message in the Italian legal landscape, a message of hope for all pending asbestos trials.

It is important to emphasise that the Eternit trials (Maxi and Bis), characterised by the tenacious will of magistrates, consultants and collaborators to investigate and learn, have had the enormous merit of bringing to light a tragedy that, for years, had confined its dramatic nature to the narrow remit of the city of Casale. Without the trial spotlight, such widespread sensitivity would not have matured and, most likely, so much attention and resources for medical research and reclamation would not have been activated. And then we must salute the defence lawyers; they fought with scrupulousness and unquestionable legal competence. A stretched smile barely masks their disappointment. And now? Can we say goodbye? Drs Di Amato and Alleva: 'Goodbye, yes of course goodbye - they nod - : we will meet again at the Appeal'.

## **ARE YOU CONCERNED?**

As soon as the reading of the verdict is over, someone asks me: 'Are you happy?' The question embarrasses me. I cannot be happy that twelve years' imprisonment has been given, regardless of the length, it represents confirmation that multiple manslaughter and aggravated murder were committed of which the defendant was found guilty. All this is to say that this trial came about because hundreds of people died. I cannot be happy about this terrible tragedy that has befallen my town, Casale Monferrato, hapless and brave; a tragedy that is not over, because there are many other lives scarred by asbestos disease, mesothelioma. And I see them, I know them, of several I have shared and share suffering, fears, resignation, dignity and poignant hopes. No, I cannot be happy. In the night leading up to Wednesday and in the subsequent very long hours of waiting in the courtroom, I felt twisted inside. And yet, while my soul was shaken by powerful anxiety, my conscience was calm. But these feelings did not conflict, on the contrary. I cannot be happy, but the conscience, yes, is calm that one has done all one could. Many did. Many have done, in their own role, all they could by uncovering and making visible a human and environmental disaster that is of Casale, but which recurs in many parts of the world; they have taken this desperate cause to heart, giving meaning to the immense and unjust pain of the sick and their families. I am talking about the commitment of tenacious magistrates, consultants and collaborators, lawyers, doctors and their assistants, scientists and researchers, activists and trade unionists, journalists and popularisers, public administrators of all ages, teachers and students.

In the end, the general commitment was transferred into a verdict that means justice: it was ascertained in a sentence, 'pronounced in the name of the Italian people', that this community had suffered a wrong (as serious as death, as tremendous as the suffering of those left behind, as distressing as the fear we all have of falling ill with mesothelioma) and that someone had committed a crime, damaged us. This someone has a name: Stephan Schmidheiny.

We rebelled against a wrong, with composure and respect we laid that tragedy on the secular altar of Justice and, finally, this principle of responsibility has been sanctioned. This gives us the knowledge that we are in the right, gives us some peace, and opens the way to peace-making. Which, I keep repeating as long as I have a voice, will only find fulfilment with a concrete act of restorative justice on the part of Stephan Schmidheiny. The word 'pleased' is not adequate. But relieved yes, I am, and proud of the collective mobilisation that led to this result, from which any [?? gallows vocation] is exempt. I perceived a sense of relief in the people, the ones for whom this trial was held, soothing the awareness that nothing will be able to return those who have died.

The indictment held, even though the judges attributed a different psychological profile to the defendant. It held, however, not only for the former workers, but also for the victims of environmental exposure, who are now the majority. More in-depth reflections are postponed to the reading of the court's motivations. As of now, a magistrate of great authority such as former Chief Mafia Prosecutor and Judge Giancarlo Caselli, who is well acquainted with the Eternit trial events, in an analysis published in La Stampa (9 June 2023) defined this sentence as 'a milestone on the path towards a new sensitivity and culture, in terms of investigative-judicial protection, of those fundamental rights of citizens that are safety at work and health' even though it can be appealed.

### **A NEW WAY, NOBLE AND POSSIBLE**

On 7 June, one chapter ended, but the trial will have other stages (Appeal, Cassation...). In addition, however, there could be further criminal or civil trials against the 76-year-old Swiss entrepreneur; in fact, in addition to the 392 victims listed in the Eternit Bis indictment, there have been new sick people, new deaths for whom justice must be sought. Perhaps the time has come for Schmidheiny to think that there are other paths to take: the noblest is to finance and coordinate research into a therapy for mesothelioma, until a cure is found. Buy a pharmaceutical company, Mr. Schmidheiny, you have the economic strength to do so, make this decision and, as the entrepreneur that you are, invest the necessary resources - by hiring authoritative, capable and independent researchers - to save lives. This is the path of restorative justice, the antithesis of revenge. It is its only chance for ethical and human redemption. And when that medicine is found then, yes, I will be happy. So happy.

*At such a doubt , at such a risk, a blacker, deeper despair came over him, a despair from which there was no escape, - not even in death. He let his weapon drop, and began clawing his hair, his teeth chattering, trembling all over. All of a sudden the words he had heard repeated again and again a few hours before came back to his mind: - God forgives so much for a deed of mercy! And they no longer came back to him in those accents of humble supplication in which they had been uttered, but with a tone of authority, which induced at the same time a far-away hope. That was a moment of relief (...)*Alessandro Manzoni, *The Betrothed, Chapter XXI, The Unnamed* - translated by Archibald Colquhoun, published by JM Dent & sons LTD London 1951

<https://www.silmos.it/eternit-bis-la-lunga-attesa-del-verdetto-e-ora-signor-schmidheiny-compri-una-casa-farmaceutica/>



the defence





The prosecution



The court



the verdict