

ETERNIT BIS, the MOTIVATIONS OF THE NOVARA JUDGES: WHY THEY FOUND HIM GUILTY AND ISSUED A 12 YEAR VERDICT, ACQUITTALS AND STATUTE OF LIMITATIONS  
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*"The complexity of the legal arguments, the 392 homicide counts, and the significant difficulties of the technical, scientific and civil issues being addressed required more time [than usual] to draft the motivations of the decision":* Novara Assize Court used these words to explain why it took one hundred and eighty days rather than 90 to motivate the verdict, issued on June 7 against Stephan Schmidheiny, the only defendant in the Eternit Bis trial. He was called to answer for the deaths of 392 citizens of Casale due to mesothelioma (\*).

#### THE PARTIES' DEMANDS

Prosecutors had charged the defendant with multiple intentional homicide aggravated by a number of circumstances: PPs Drs Gianfranco Colace and Mariagiovanna Compare had sought a life sentence. Plaintiffs' lawyers had backed the PPs: victims' families, authorities, unions, and associations. Instead, defence attorneys Astolfo Di Amato and Guido Carlo Alleva had called for acquittal.

The trial started on June the 9<sup>th</sup>, 2021, and the Court of Assizes redefined the indictment to a lighter count, manslaughter – with the aggravated circumstance of the foreseeable nature of the event (so-called wilful negligence) -, sentencing the defendant to 12 years' incarceration, referred to a small number of deaths, and acquitting him for 46 victims. The trial lasted 41 hearings, held over two years.

The reasons for the decision, motivating the verdict read in the courtroom in Novara six months ago, are now argued in the recent 1020 pages. A "volume" of more than 1,000 pages containing a detailed, humanly poignant, and heartbreaking account of a fundamental and distinctive piece of the history of Casale and the surrounding area. The time described was marked by indiscriminate and criminal industrial behaviour that caused pain and death: mesothelioma, the malignant cancer caused asbestos, found fertile soil: not only in the decade when the defendant managed Eternit in person (between 1976 and 1986), but also in the decades that followed, to this day.

#### VERDICT

The Court, presided over by Dr Gianfranco Pezone, with Judge Dr Manuela Massino and six members of the jury (aka popular judges) had downgraded the crime to aggravated manslaughter from murder. The detailed examination of the individual cases led the judges to formulate three types of decisions:

- i) 12 years' imprisonment with disqualification from holding any public office for 5 years for a group of 9 victims (for whom the crime of manslaughter is doubly aggravated: by having committed the act by violating the regulations on the prevention of accidents at work and by having acted despite foreseeing the event) and for a group of 138 victims (with only the aggravating circumstance of having violated the regulations on the prevention of accidents at work is recognized);

- ii) the twice aggravated manslaughter of 199 victims fell under the statute of limitations. The crime, therefore, was declared expired, and
- iii) 46 acquittals

### **CONVICTIONS AND ACQUITTALS: WHY?**

In the Court's verdict (President Pezone and Judge Massin) the trial is explained step by step that, through the arguments argued by the prosecutors, the witnesses such as family members and trade unionists, and the technical-scientific explanations of the consultants of the prosecution, defence, and plaintiffs, culminated in the decision of this verdict.

Verdict that will certainly be appealed: the Eternit Bis trial story is not over.

What led the judges, to distinguish between cases which leading to a conviction or an acquittal? As I skimmed through it – as the one thousand pages require more time - the difference is related to the specific case.

Each life has been scanned and examined minutely, summarizing, and reporting the "main historical data on the victim": birth, death, type of mesothelioma, work history (if former Eternit worker) and housing (one or more domiciles), analysis of the disease outcome and the types of diagnostic tests performed, circumstances of exposure to asbestos (from the plant or from alternative sources: waste, dust...).

Having done this reconstruction, a distinction must be made between occupational (i.e., those who worked at Eternit), familial (cohabitants of factory workers) or environmental (now the majority) cases. And at the end of each detailed tables, the Court ruled whether the manufacturing of asbestos products at the Eternit plant (with repercussions of pollution inside and outside the plant) had led to the onset of the disease and death and whether it was a "decisive " or "contributing cause." In all these cases the defendant was convicted. Where, on the other hand, it found a "lack of investigation" into the victim's experience, or an "uncertain diagnosis" or "exposures prior to 1976," the Court acquitted.

### **SECTIONS OF THE JUDGMENT**

The 1020 pages are grouped and arranged in an index divided into 8 chapters.

Chapter 1: analyses the defendant's case relevant to the period when Stephan Schmidheiny was the manager of the Eternit group, its largest and oldest Italian plant being in Casale ((the decade between 1976 and 1986).

Chapter 2: the historical reconstruction of the events and facts. It is the longest chapter, in several subsections that examine the conditions of pollution inside the plant and the effects on the external environment, the actual knowledge at the time of the facts about the danger of asbestos, asbestos-related diseases, and in particular malignant mesothelioma, with an analysis of the process of carcinogenesis (i.e., how cancer settles and develops in the body), the extent of exposure, the effects of cumulative dose, the anticipation of disease and death in the face of more massive exposure, epidemiological studies and their fundamental importance ("epidemiology can be applied to any individual, provided the knowledge gained from population studies is transferred to the specific case"), exposure to alternative sources uses of waste and dust for road beating, farmyards, sports fields or for insulating attics).

Chapter 3: Addresses the issue of the subjective element, with analysis of possible intent and conscious negligence. "There is no doubt," the court acknowledged, of the defendant's 'proactive role' (the defence had emphasized the expenses incurred by Schmidheiny to limit asbestos fibres, since he was aware of the serious deadly danger). The Court ruled Stephan Schmidheiny's conduct did not rule out wilfulness (aka 'culpable behaviour) despite the measures put in place to try and reduce the problem.

Chapter 4: reassessing the indictments.

Chapter 5: the extinction of the crime, as a result of the statute of limitations for manslaughter (which is what the defendant was accused of when the Court changed the indictment from intentional to culpable homicide, that is from murder to manslaughter). Unlike murder that is not subject to the statute of limitations, manslaughter is subject to the statute of limitations after 15 years; as a result, pre-2008 deaths were excluded from the trial.

Chapter 6: sentencing: the Court stated they denied general extenuating circumstances because, *"In view of the objective seriousness and large number of crimes committed despite being aware of the risks (aka conscious guilt) the defendant managed Eternit's activity for years while being aware of the significant risks to human health and the environment from the dangerous use of asbestos."* And again, *"In order to protect the interests of his own industrial group in the asbestos industry and to continue to achieve the significant profits from Eternit's production cycle, he not only planned and organised for the continuation of that activity, but also orchestrated a targeted campaign of misleading information aimed at minimizing the serious dangers related to the use of asbestos and containing any claims or reports from trade unions or the population."*

Could the Swiss businessman have behaved differently to avert this tragedy? The Court believes so because Schmidheiny *"had the relevant knowledge and responsibility, decisional and financial resources and skills to take and implement important, even drastic, decisions to annihilate the massive airborne dispersion of asbestos dust resulting from the company's production cycle."*

The 12-year sentence, plus the 5 years of during which he cannot hold any public office nor position, is explained as follows: The Court ruled it was the minimum sentence given the behaviour of the defendant, of how events developed and of the motives to commit the crime.

Chapter 7: civil matters, i.e., compensation. The most conspicuous of 50 million euros was awarded to the Municipality of Casale; 30 million to the Presidency of the Council of Ministers, 500,000 euros to Afeva (the very active Associazione famigliari e vittime amianto). As for Inail, it is recognized by the Court as entitled to compensation because, as the workers' compensation agency it provided benefits and indemnities for the deaths of workers, *"but the lack of adequate documentation on the exact computation and demonstration of the sums paid, does not allow it to recognize any settlement."* INAIL is granted permission to sue the defendant in a civil court.

Chapter 8: arguments about the six-months required to write the 1,000-page verdict

(\*) more reports will follow highlighting specific aspects of the verdict.