

“The EU should by rights harmonize the law for victims”

Clémence Druilhe talks to Jean-Paul Teissonnière, 13 February 2009.

Lawyer Jean-Paul Teissonnière knows the “Eternit” case back to front. A specialized defender of victims of public health scandals in France, he has won a series of resounding victories in asbestos cases in recent years.

The causal link was made between asbestos and cancer in the mid-20th century. Reports prove that all asbestos cement industry leaders knew about the health risks. So what defence can Eternit feasibly put up?

It’s hard to see what defence Eternit can offer given that they were broadly central to the pro-asbestos lobby: they knew perfectly well how toxic the fibres were and took steps to keep that knowledge under wraps. They continued using it for as long as possible in least-cost conditions, i.e., the least safe conditions for the workers.

I imagine that Eternit will argue that the dangers were not known until later than has been shown by the different expert reports. I don’t think this plea will wash, because the asbestos cement industry knew what the danger consisted of. It hid the truth and even kept on using asbestos under extremely dangerous conditions in full knowledge of the facts.

Eternit could also argue that chrysotile is relatively harmless – and this in fact is still the main plank of the asbestos lobby’s argument, especially in Canada, although it would be hard to sustain that in the Casale Monferrato cases, because of the extremely high number of victims. In cases like these, this kind of argument won’t work because it doesn’t stack up against the pain and sheer numbers of the victims.

There is already a solid body of civil case law in France, and it is building up in the criminal courts. If the Turin verdict goes in favour of the victims, could that set a precedent in European law?

There are still some concerns about the criminal aspect in France. This is what makes the Turin trial important: we think it could give an impetus to bringing criminal liabilities to the fore on a European and even world level. Italian criminal law is more robust than other laws that you can compare it with: the penalties are extremely stiff – over twenty years - and it can actually get to the ones who are responsible, the real policy makers not just some local decision maker who only applies an international strategy. The ones being called to account in Turin are the CEOs of the international groups who benefited from this system.

Going on with that, would this be a recognition of the “probable cause” theory that you talked about in an interview with the European Trade Union Institute¹?

When you’re talking about endangerment, the risk of developing cancer is pretty much the “classic” modern risk. Culpable exposures produce consequences years down the line. The risks can even be handed on down the generations, as with glycol ethers, and nuclear hazards. But holding a trial three generations after the fault was committed makes no sense: there’s no-one left to hold to account, those responsible are long gone and the firms no longer exist. So, if the administration of law is to impact the real world, the question of fault

¹ “Asbestos Attorney” wants to put industry offenders in the dock, on

absolutely has to be uncoupled from the compensation issue. Compensation must be near automatic as soon as the harm appears, whenever that may be. More thought certainly needs to be given to improving the compensation fund system.

Also, prevention and punishment are related issues, because for prevention to happen, you need effective and expeditious punishment: it must be brought to bear very soon after the fault without waiting for the harm to appear. But the fault and the harm are not contemporaneous here. In a traffic accident, for example, the driving offence and the harm are contemporaneous and concomitant. Similarly, in an industrial accident like that at AZF, there is an explosion, and people are killed; we are on the same stage, in the same place at the same time... so, the court procedures are relatively straightforward. With modern cancer risks, by contrast, there is a “temporal disconnect” which requires the punishment issue to be organized differently.

Some European States have set up funds to compensate asbestos victims, but they are clearly very different. What’s your view on setting up a European compensation fund for asbestos victims?

There is a right to be safe at work in Europe: it’s clear to see how the 1989 European directive has permeated asbestos case law in France. But what is striking to lawyers is as you say the very unequal situation of victims in countries as near to one another as France, Belgium and Italy when the basic legislation is very much akin. If you look at compensation for work accidents and occupational diseases, you find that the French and Belgian systems are inspired by the same principle. But the devil is in the detail: the word “inexcusable” used in French law was replaced in Belgian law by the word “wilful”, and that has far-reaching consequences.

The European institutions should by rights harmonize the law for victims, and as a matter of urgency, because the toll is now in the hundreds of thousands, and that’s for asbestos alone. Also, European public opinion will increasingly see it as intolerable for victims to be treated so differently depending on which side of the border they live.

The European Commission recently extended the authorization given to six chemical manufacturers to continue using asbestos. At the same time, the European Union is lobbying for a global asbestos ban. Isn’t this a “them and us” policy?

International unwillingness to outlaw asbestos increases the insecurity and lack of clarity felt at international level about what needs to be done to ensure workers' safety. It is clear to see how the asbestos risk has been exported to Third World countries. Recent figures even suggest that overall asbestos use is actually rising in the world, precisely because of this transfer of the risk to developing countries. So the international situation still remains utterly intolerable.