



on all employees", rues Christian Tessier of the CGT union federation.

"Just using the word "carcinogen" in an HSC creates a bombshell. Certificate of exposure: move on, nothing to see, no exposure here! So, the first thing in our book is to secure the right to know for workers exposed to carcinogens", argues the construction industry union official. An initial training meeting was held in spring 2007 for some 150 HSC delegates focused on knowledge and recognition of occupational cancers. Information resources are being worked out. Using the survey findings, the unions are drawing up a list of jobs apt to involve exposure to carcinogens.

All those involved in the GISCOOP project know that there is a long road ahead, and that the psychological barriers will not be easy to overturn. "I was recently out doing factory health checks on joiners. Workers don't want to hear it when you start mentioning words like "carcinogen" or "X-ray of the nasal passages". It isn't easy to come to terms with the fact that just doing a job you love can expose you to carcinogens. It's very difficult to ask an employee to work wearing a filter mask for seven hours a day," notes Dr Salou.

Will the development of information resources and the commitment of a few trade union activists be enough to break the wall of silence about occupational cancers? Jean-Paul Teissonnière, a lawyer well-known for his successful pressing of asbestos cases, thinks that the debate has to be taken into the public arena by leveraging the wheels of justice and public opinion. "The big battle is engaging public attention for it as the asbestos affair showed. That had been an invisible catastrophe for a century before coming into the media and legal spotlights from the 1990s", he told us.

The Seine-Saint-Denis politicians have not waited for an appearance on the early evening TV news to run awareness-raising campaigns for their local communities (lecture forums, magazines, etc.). In October 2007, Hervé Bramy presented the results of GISCOOP 93 to the Health Minister, then helped launch a "call for action on occupational cancers", supported by all French trade unions. The communist party politician also hopes to persuade his colleagues in other *départements* to follow their approach rooted in the life experience of workers because "the political battle only has meaning if the men and women it is fought for are not overlooked". ■

## "Asbestos Attorney" wants to put industry offenders in the dock



Jean-Paul Teissonnière

Jean-Paul Teissonnière has been fighting for asbestos workers for more than a decade. France's extensive body of asbestos case law owes much to his grit. It is his efforts that have finally won many victims and their families decent compensation. But because no amount of money can ever restore a life cut short, and to see that the main culprits in the tragedy no longer get off scot-free, the Parisian lawyer is now aiming to take the fight into the criminal justice arena.

**In a call to action on occupational cancers launched in October 2007<sup>1</sup>, you demand that employers' criminal liability be given full recognition. This is a new departure from the civil claims for damages usually brought for asbestos-related diseases...**

The compensation approach can only go so far, as the asbestos cases showed. The social security system and individual insurance systems have socialized occupational hazards in a way that seems extremely perverse to me, in the sense that socializing the risk has taken accountability away from the industry players. If the horrors of medical catastrophes like asbestos are cushioned, as it were, by insurance provision, so that those responsible are untouched by the consequences, other industrial tragedies will happen.

So, I think that the victims need to be assured of prompt compensation, while at the same time the courts keep working to identify liability. The upshot should be both to lay the financial consequences of the disaster at the door of those mainly responsible, and to get criminal penalties that serve as an object lesson.

The asbestos affair produced a long string of claims for damages in France from 1995. The end result was that, in 2002, the Supreme Court of Appeal gave a much stricter ruling on employer's liability. In French law, an employer now has a "strict duty to ensure safety" of his employees. There is no doubt that big strides have been made as regards compensation for victims. But we still have not got the criminal

<sup>1</sup> See article p. 15.

penalties, and, especially, social security has cushioned the worst of the crisis. On top of that, the plain fact is that the chief culprits behind the asbestos contamination are doing pretty well financially today.

### **Are prosecutions the only way to get recognition of the harm caused?**

The criminal liability provisions of employment law serve two purposes: one is to give victims the sense that justice has been done; the other is to improve prevention. If there is no criminal penalty and no financial cost, it is as if nothing had happened. But something did happen, which is an absolutely horrendous tragedy for hundreds of thousands of workers. So every criminal liability avenue has to be explored to see that those guilty of gross negligence pay the financial cost of it.

I am tempted to draw a parallel with road safety. After years of complacency, it was realized that cracking down on traffic offences had managed to halve the number of road accident victims in France. I believe that what was done to tackle road crime also needs to be thought about and applied to industrial crime, because there is a real form of industrial crime that has to be dealt with through the criminal law. Especially as, unlike driving offences, which are more about stupidity than greed, industrial offences are often motivated by objective financial reasons that will impel industrialists to be dismissive of safety rules.

### **Alstom Power Boilers was found guilty of having exposed its workers to asbestos after it was banned in France. What consequences will this first victory in the criminal courts have?**

In the Alstom case, the prosecution was brought for “criminal endangerment of life”. This was a case of asbestos stripping in breach of the asbestos removal regulations after the asbestos ban was brought in. The good thing about the Alstom case was not having to wait until people contracted the disease, otherwise it would have been a matter of waiting thirty years, which would have made the prosecutions utterly pointless because Alstom in its then form will probably have ceased to exist thirty years hence. The directors/officers will either be retired or already dead. Prosecuting for “criminal endangerment of life” without awaiting the consequences of that endangerment made the criminal law immediately effective by punishing those who still held responsibilities in the company.

The second important thing is that we brought a civil class action for all the workshop employees linked to the criminal proceedings. This was 150 workers who have not fallen ill but who we asked the court

to consider as victims because they would spend the next forty years living with the fear of developing pleural carcinoma or lung cancer.

The Lille court returned a remarkable decision, finding that those exposed were injured parties even though not ill<sup>2</sup>. This case marks a new criminal law approach to prevention, not through prosecutions for manslaughter but “criminal endangerment of life”, which enables the criminal law to swing into action immediately the offence is committed.

### **So, does this legal concept of “criminal endangerment of life” open the door to other legal actions for non-asbestos-related occupational cancers?**

The big question that occupational cancers raise for a lawyer is, “How do you make the causal link?” By definition, a cancerous tumour never contains the lesion profile of the causal agent. You can analyse the cells of a tumour, but you will never find a trace of what it was that caused it. So, in matters like this, modern science has to argue on probabilities. But the legal institutions of all European countries, with the odd exception, argue in terms of certainties: you have to make the direct, incontrovertible link between the exposure and the disease contracted.

What really matters in the coming years is that courts agree to give the reasons for their decision stating that there is a probable causal link in a particular case, that the causal link must be taken as established, and that the liability of the person implicated must enter into the equation. This is a big issue for lawyers because cases on modern hazards – and the carcinogen risk is archetypal – will be legal stage centre for the next hundred years. Lawyers have to come round to using modern legal reasoning – that of probability – and put in place a system for assigning accountability that squares with the realities of modern times.

### **The former directors/officers of the Eternit group are likely to be appearing in the dock of a Turin court before long. What are the main issues in this trial keenly awaited by former asbestos workers?**

There is a clear transnational aspect to the trial. It is about accountability for the deaths of 2900 Italian workers at the Casale Monferrato plant. The accused are Belgian and Swiss directors of the Eternit group. The trial could take the right to a safe system of work a stage further. Very often, it is only the business manager who is criminally liable under employment law under delegated authority that cannot be taken back to the higher level. Here, Italian justice has managed to put the directors/officers of a transnational group in the dock. It is clearly going to be a precedent-setting trial. ■

<sup>2</sup> The court awarded each victim 10 000 euros damages for fear and dread, i.e., a total of 1.5 million euros, against Alstom. In the appeal proceedings in December 2007, Alstom dropped its objections to the amount of compensation awarded to the civil claimants by the original trial court, maintaining its appeal only against the criminal penalties imposed on it, in particular the nine months’ suspended sentence handed out to the former plant manager.