

ASBESTOS-RELATED DISEASES: PENAL, CIVIL AND NATIONAL HEALTH INSURANCE RESPONSIBILITY ACCORDING TO ITALIAN LAW

Tommaso Savi¹, Claudio Costantino², Salvo Parisi², Livio Milone³

SUMMARY

In this commentary, the authors describe the most important and current issues about the responsibility in asbestos-related diseases according to the Italian Law. In particular, the authors comment the principal implications of Penal, Civil and National Health Insurance laws on occupational and preventive medicine. This brief report represents an useful tool for medical doctor specialists in Occupational, Public Health and Forensic Medicine to support their evaluation of causality in asbestos-related diseases.

Causality explains the relation that links (from Ancient Latin “*nectere*”) naturalistically an “*actum*” (from Ancient Latin root “*ago*”) with a fact (from Ancient Latin “*eventum*”). It includes the dynamic perspective from which any phenomena is observed: the action from the observation to understand the meaning of a fact from its assumption.

The causality in penal responsibility is reported in the articles 40 and 41 of the Italian Penal Code (1).

Therefore, the fact is ascribable only if is fully link to active or omissive action of responsible subject and this conduct is evaluate according to “*condicio sine qua non*” theory and based on *beyond reasonable doubt* argumentation (2).

The judgment is strictly connected with scientific evidence, that lead investigation and support the juridical sentence. Only if the scientific proofs are in *reasonable* doubt, the conclusion will be absolutory.

Instead, civil causality confirmation is different because needs a double connection: between the illicit conduct and the concrete lesion of interest (so-called material causality) and between concrete lesion of interest and its health consequence (so-called juridical causality) (3).

In these conditions is in force the *most probable that not* rule, due to the different juridical level of prosecution and advocacy in the penal trial and the equivalence of the

Address of the authors

¹ Medical Doctor Specialist in Forensic Medicine

² Department of Science for Health Promotions and Mother-Child Care “G. D’Alessandro” – University of Palermo

³ Department of Biopathology, Medical and Forensic Biotechnology – University of Palermo

Send correspondence to: Tommaso Savi, tommasosavi@gmail.com

Received: December 13th, 2014 — **Revised:** December 26th, 2014 — **Accepted:** December 30th 2014

same parts in the civil trial (4, 5).

Finally, in National insurance (social security and health care), occupational diseases was classified by National Institute for insurance against occupational accidents (INAIL) in *listed* and *not listed* disorders, introducing a double social security level.

Concerning the *listed* diseases is enough a correlation supposition; concerning the *not listed* diseases is required a probatory obligation from the defense (6).

In particular, as shown in table 1, there was an unanimous consensus about asbestos-related diseases and the most important disorders were included in tables redacted by INAIL (8).

As reported in table 1, the classification of occupational asbestos-related diseases was on 1943 for asbestosis, on 1994 for all mesothelioma types and lung cancer. Nevertheless only on 2008 plaques and pleural thickening and lung fibrosis were included by INAIL in the listed diseases.

In this context, the Health Prevention and Occupational Epidemiology Operative Unit of the Local Health Authority play a key role in monitoring, modifying and eventually changing the judgment of occupational physicians, that could influence the juridical proceedings (7).

Literature and scientific evidence show that asbestos-related risk is related to exposure intensity and time, according to the *body burden* theory (9, 10).

However, on the basis of the sentence of Italian Penal Cassation Court, the thresholds should not be considered absolutely valid but only as a legal limit: "... *the thresholds are considered as a warning, which, if exceeded, notwithstanding the duty to make objective measures to eliminate or minimize the risks, requires other complementary activities of individual prevention, including information, control and supply of personal protective equipment to limit the exposure to hazards...*". (11).

Therefore, the Penal Court seems to contradict the Legislative Decree 81/2008, regarding prevention of psychophysical integrity of workers, decreasing the importance of thresholds (11).

The Italian Law fully accept the multi-step cancerogenesis model of asbestos in order to support the scientific causality. As recognize by scientific and juridical community, the increase of asbestos exposure is related to an anticipation of the disease with a dose-response rate correlation (9, 10).

In conclusion, in order to correspond the

<i>Listed Diseases (INAIL)</i>	<i>Year of introduction</i>
a) Plaques and pleural thickening with or without rounded atelectasis	2008
b) Pleural mesothelioma	1994
c) Pericardial mesothelioma	1994
d) Peritoneal mesothelioma	1994
e) Vaginal or testicular tunic mesothelioma	1994
f) Lung cancer	1994
g) Asbestosis	1943
h) Lung fibrosis	2008

Table 1: Listed occupational diseases according to INAIL in Italy and year of introduction in tables

insurance services, the causality is implied for *listed* diseases, while for other diseases is enough to exclude other risk factors associated. In Civil framework the recurrent subject should bring probatory elements to support the correlation between asbestos exposure and disease, according to the *most probable that not* rule.

Conversely, the Penal framework, considering scientific evidence, is based on *beyond reasonable doubt* argumentation, confirming the assumptions reported in the 27th article of Italian Constitution Law (12).

References

1. Italian Penal Code: articles 40 and 41. Available from: <http://www.altalex.com/index.php?idnot=2205> (Last accessed 30/12/2014)
2. Italian Court of Cassation: sentence n° 30328 of 11.09.2002. Available from: <http://www.altalex.com/index.php?idnot=5256> (Last accessed 30/12/2014)
3. Benedetti A. Causal link in civil responsibility.
4. Italian Civil Court of Cassation Unite Sections: sentence n° 581 of 11.01.2008. Available from: <http://www.indennizzolegge210.it/default.asp?> (Last accessed 30/12/2014)
5. Italian Civil Court of Cassation: sentence n° 975 of 16.01.2009. Available from: <http://www.giuristiediritto.it/civile-responsabilita/302-giurisprudenza-di-legittimita-/260-responsabilita-medica-rilevanza-delle-patologie-pregresse.html> (Last accessed 30/12/2014)
6. Italian Constitutional Court: sentence n° 206 of 25.02.1988.
7. Marsala MG, Morici M, Anastasi G, Costantino C, Tramuto F, Lacca G, Curcurù L, Costagliola E, Ilardo S, Trapani E, Caracausi R, Firenze A. Analysis of appeals against the ruling of occupational physicians lodged with the Prevention and Occupational Epidemiology Operative Unit, ASP Palermo (Palermo Health Authority), from 2008-2010. *Med Lav.* 2013 Sep-Oct;104(5):393-399.
8. ISPESL. Classification of occupational diseases labelled by INAIL. Available from: <http://www.ispesl.it/infmp/mp93.htm> (Last accessed 30/12/2014)
9. Peto J, De Carli A, La Vecchia C, Levi F, Negri E. The European Mesothelioma Epidemic. *Br J Cancer* 1999 Feb; 79(3-4): 666-672

10. Costantino C, Amodio E, Costagliola E, Curcurù L, Ilardo S, Trapani E, Calamusa G. Asbestos-related diseases observed in Palermo (Italy) among workers exposed to asbestos. [Patologie asbesto-correlate osservate a Palermo e Provincia tra lavoratori esposti ad amianto]. *Ig Sanita Pubbl.* 2011 Jul-Aug;67(4):455-466.

11. Penal Cassation Court: sentence n.38991 of 04.10.2010.

12. Italian Constitution Law: article 27. Available from: http://www.governo.it/Governo/Costituzione/1_titolo1.html (Last accessed 30/12/2014)