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The Turin asbestos trial: How political pressure leads to wrongful convictions

Background

Several risk factors for wrongful convictions have been identified through recent cross-national studies. Among the prominent causes are "simplified", "accelerated" procedures with negotiated outcomes, such as plea bargaining in America and penal orders under the continental system. Through these procedures, facts are assessed only summarily and largely beyond control by courts (Gilliéron 2013). Other known sources of errors include unreliable witnesses, particularly in connection with eye-witness identification, incompetent or corrupt forensic experts, preconceived police investigators or prosecutors and, last but not least, incompetent defense councils (see the essays assembled in Zalman and Carrano 2014, or in Huff and Killias 2013).

Over the last year, the author has been confronted, as an expert to the Defense, with a high-profile case in Italy that sheds light on risk factors that have received less attention in the recent literature. Heavy political pressure and media campaigns, often orchestrated by public prosecutors, can lead to serious distortions of facts in the administration of law. At this moment, the Turin Eternit case is in the hands of the Italian Supreme Court (Corte di cassazione), and it may end at the European Court of Human Rights. It may, therefore, take several more years before the final ruling in the case to be reported here will be known. However, the damaging consequences of a politicized climate in and around the court room are sufficiently clear by now to allow discussing such factors independently of the trial's final outcome.

The author has known the defendant, Dr. Stephan Schmidheiny, as a fellow-student at Zurich University Law School during the years 1968-70. At that time, we both belonged to the students' parliament, involved in two competing political groups that can be characterized as "conservative"

(the defendant's group) or "liberal" (the author's group). After that common experience, our ways did not cross ever since. Descending from an old industrial dynasty, the defendant soon joined the family's top management for the various business activities, whereas the author lived a life between an academic and a judicial career. Recently, our paths crossed again when the defendant approached the author in search of a legal expert on wrongful convictions.

Having this personal connection is both an advantage and a handicap in writing an essay like this. The obvious disadvantage is the fact that an expert to either the prosecution or the defense will always be considered one-sided, whatever the effort at overcoming an excessively partisan point of view. This handicap should be assessed against the advantage of a greater familiarity with the file. Most documents used are, at this point, not publicly available. Given the size of the file, it is obviously beyond a short essay to give an account of all details of the case. Rather, the focus will be on a few aspects that are particularly relevant for the study of wrongful convictions. By this term, we understand, as in earlier publications (Huff & Killias 2008, 2013), convictions based on false factual assumptions. Of course, errors in the administration of substantive criminal law or violations of procedural safeguards are just as likely to end up in miscarriages of justice. In the case to be reported here, many errors occurred indeed in the interpretation of laws, but they will be discussed here only to the extent they led the court to distort relevant facts.

This essay has been prepared independently of the defense of Stephan Schmidheiny. The views expressed are exclusively those of the author and do not engage any of the parties involved in any of the current proceedings.

Schmidheiny and asbestos industries in Italy

The defendant, Stephan Schmidheiny, was born in October 1947. He belongs to the fourth generation of a family that has successfully produced cement and asbestos-cement products since the beginnings of the 20th century. In 1976, at the age of 29 years, he became chairman of his

family's asbestos-cement producing Swiss Eternit industries. Only a few months after having taken office, he called all managers from all the asbestos-cement producing industries of the Group in over 20 countries to a conference to be held in Neuss (Germany). During this conference, participants were informed about the state of knowledge on risks related to asbestos and adequate measures of prevention. By that time, it was known that asbestos can produce several diseases, the worst of which, mesothelioma, is a cancer that often breaks out decades after exposure to asbestos dust. The dominant view at that time was among scientists and international bodies, such as the International Labour Office (ILO), that risks related to asbestos could be reduced to acceptable levels by several preventive measures[1]. Later, however, and certainly after the facts that have given rise to the Italian criminal case, it was discovered that these hopes were ill-founded. Mesothelioma is, in all likelihood provoked by exposure to extremely thin fibers of asbestos that could not be detected through traditional microscopy, but only through electronic microscopes that became available towards the end of the 1980's. This scientific development and other factors led a number of industrialized countries, as well at the European Community to the conclusion, as of 1992, that the risks of mesothelioma can be prevented only by abandoning completely the use of asbestos in industrial production. By that time, all production had ceased in the Italian Eternit industrial plants which closed down in 1986.

In the context of the time, Dr. Schmidheiny's initiative to sensitize the managers of the Eternit industries for the risks of asbestos was certainly courageous. At that time, the dominant attitude among asbestos industrials was to minimize or deny risks associated with this mineral. Many of the managers present at the Neuss meeting had served the Swiss Eternit Group for decades, but never had been exposed to this kind of "brutal" message before. For them, the contrast with the previous

[1] The International Labour Office, the permanent secretariat of the ILO issued, for example, a detailed manual recommending safety measures, entitled "*Safety in the use of asbestos*", adopted in 1983 and first published in 1984 (last printing in 1990). It can be found under http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@safework/documents/normativeinstrument/wcms_107843.pdf. An earlier version called *"Asbestos: Health Risks and their Prevention"* was published in 1973.

discourse of denial must have been dramatic. Taking this context into account, Dr. Schmidheiny understandably adopted, in a final statement, a somewhat more optimistic view by calling for a comprehensive range of state-o-the-art and costly industrial hygiene measures designed to dramatically reduce asbestos fiber concentrations at the workplace. and to promote the health and safety of the workers.. He was convinced, at that time, that with these measures health hazards could be reduced to an acceptable level. With the benefit of subsequent scientific findings and developments, we now know today that the only safe option would have been to stop using asbestos altogether. However, Dr. Schmidheiny's belief in the possibility to prevent health hazards through adequate measures was, at that time, shared by government authorities, medical experts, the European Union and the International Labour Office, i.e. the main international standard setter in this field.

There were also massive conflicts of interest at work. At that time, no efficient substitute to asbestos in fiber-reinforced cement products was available – actually, Dr. Schmidheiny was one of the pioneers in the development of alternative products that later allowed to move away from asbestos. Before the early 1980ies, however, asbestos-cement products were considered indispensable in the construction industry. Asbestos-cement resisted to all fires and did not corrode. That industries, policy-makers, governments and health authorities were less than keen of closing asbestos production is, therefore, understandable. Even in the Italian town of Casale Monferrato where one of the Eternit plants was located, the Mayor expressed, in a personal letter to Dr. Schmidheiny at the time (i.e. in 1985) when production at that site was about to be abandoned, more concern about the effects on the local labor market than about health and pollution. In the end, asbestos production was outlawed, in the European Union, only in 1999[2]. In Italy, the ban came in 1992, i.e. relatively early, but no exposure limit values and no specific safety measures were adopted. For example,

[2] See Directive 1999/77/EC of 26.07.1999, legally effective (only) as of 1.1.2005. As of 1.1.2004, Greece and Portugal had not yet implemented the directive. France was also very late too.

European Union safety standards (of 1983) were adopted there only in 1991. Today, asbestos is still being used in many countries on a large scale[3].

As in many other countries, the Schmidheiny family was a significant share-holder in a few asbestos-producing factories in Italy. From 1973, four Italian factories formed part of the Swiss Eternit Group, the most important being located at Casale Monferrato in Northwestern Italy. After the conference held at Neuss in 1976, the Swiss Group made available considerable amounts for investment in the modernization of the plants (see below). These investments promptly led to the failure of the Swiss Eternit plants in Italy where other industries avoided investing in safety and, therefore, produced at far lower costs. In 1986, most of the Italian Eternit companies went bankrupt and production in Casale Monferrato was abandoned

The Turin procedure against Stephan Schmidheiny

In 2001, a former worker of an asbestos factory owned by the Schmidheiny family at Niederurnen (Switzerland) had passed away of mesothelioma Orbassano (province of Turin). A doctor from Padova (near Venice who came across this case reported it to the prosecutor of Turin, Raffaele Guariniello. Dr. Guariniello was well-known for his tough prosecution policies against managers and his focus on workplace safety. Promptly, he opened a file and started prosecutions. He redirected the focus of his investigations away from the former workplace of this worker in Switzerland to the former Eternit plants located in Italy. Only one of the four Eternit plants in Italy, where the Schmidheiny family had been involved as shareholders, was located in Dr. Guariniello's jurisdiction (the province of Turin), but the case was finally brought, despite many objections made by the defense during the procedure, to the Turin courts This was the first anomaly in a long series of incidents.

[3] A recent attempt at imposing a World-wide ban has failed at the 95th International Labor Conference held at Geneva from May 31st to June 16, 2013. Several countries (among them Russia and India) have successfully opposed this attempt. See the protest by one of the environmentalist organizations under http://www.env-health.org/news/members-news/article/wecf-disappointing-results-of-cop6

At Turin, the case was heard by a Chamber of the District Court, composed of three professional justices. After having first indicted the defendant for negligent manslaughter, the prosecution changed the indictment to “intentional provocation of a disaster”. Although this concept criminalizes the mere creation of risks to others (or the environment), the court nonetheless admitted that approximately 6,000 individual victims or their families took part in the hearings as “civil parties”. This form of victim participation is generally admitted in Europe but normally presupposes concrete damages rather than just exposure to risks. Many of these victims took part in all hearings, waving flags in the court room and distributing leaflets on the stairs to the courthouse. More rallies took place out of court, with thousands of people, prominent political figures and even Chief Prosecutor Guariniello attending. The regional and national press and TV stations regularly reported on court hearings and campaigns. They systematically reproduced the prosecution’s arguments. At many hearings, I saw, even during coffee breaks, TV stations rushing to the prosecution team to gather a few statements on the most recent development, whereas no journalist cared about what the defense had to say. Over the years, the Italian public was virtually brain-washed and led to see Dr. Schmidheiny as a cynical “mass murderer”. All attempts at bringing some balance into media presentations of the case remained unsuccessful.

The defendant, during all these years, was not indifferent to the fact that asbestos had produced many fatalities and affected terribly the health of many victims. In 2008, a compensation program was launched to pay all victims who could reasonably claim having been exposed to asbestos, during the years of Stephan Schmidheiny’s involvement at the top of the Group, at or near one of the Italian factories in which the Schmidheiny family was a major shareholder. More than 1,500 victims have received compensations of more than 65 million US $ overall. Unfortunately, however, many victims who were inclined to accept an offer came under heavy pressure to decline. The most prominent case was the City of Casale Monferrato who had been offered, in compensation of environmental damages, costs for public health services and related damages a sum of 18 million € (or about 25 million US $). Although the City’s lawyers and the City Council considered that amount as fair (they

had claimed 25 million €), the local parliament finally declined the offer[4], physically forced by an enraged mob that "visited" the session under high-profile TV coverage. On December 19, 2011, one of the leading national TV (channel 7) stations produced a debate on the Turin case ("Il natale che piace ai nazisti", Christmas that pleases the Nazis). No speaker for the defense was admitted and the defendant was qualified by the TV master (Gad Lerner) as a "mass murderer" equal to Hitler[5]. This TV show had, as we shall see later, a direct detrimental effect on the trial that was still going on at that time.

During the trial, the District Court made a few important decisions. It considered Turin as the appropriate forum, not because it was the appropriate forum under Italian law but because the Turin prosecutor Dr. Guariniello had first started prosecutions. Second, it admitted 6,000 "civil parties", all of which were entitled to representation by a legal counsel. For the defendant, however, only two lawyers were admitted, leading to a dramatic overweight of pleadings in favor of the defendant's conviction. Third, the Court ruled that the defendant would be trialed only for intentional "provocation of a disaster" and for intentional "omission/removal of safety measures at the workplace". According to the District Court, this made it unnecessary to consider individual damages (diseases, with or without fatal outcomes), since in case of "provocation of a disaster" (section 434 of the Italian Penal Code), exposure of other people to risks is legally sufficient for a conviction, regardless of whether or not the risk was followed by concrete damages. Following this reasoning, the Court should have refused hearing the claims for compensation, but ironically took an opposite line on this later.

After roughly 60 hearings, the final ruling was pronounced on 13th February 2012. The defendant was convicted of "provocation of a disaster" (section 434 § 2) and "omission or removal of safety measures at the workplace" (section 437 § 2 Italian Penal Code) and sentenced to 16 years of prison.

[4] It was described by opponents as "the devil's offer". This is also the term used in a song by Guido Rolando on "murderers in a suit and tie" (quoted in La Stampa/Alessandria on 11 January 2014).
[5] http://www.gadlerner.it/2011/12/19/linfedele-un-natale-che-piacerebbe-a-hitler

The court awarded compensation for a total amount of approximately 80 million € to individual victims and their relatives as well as collective entities.

The Appeal procedure

The worst, however, was yet to come. On February 18, 2013, during his introductory statement on the nature of the case and the issues to be examined, the presiding judge, in order to show what, in his view, was the approach of the District Court, compared the conference held at Neuss in 1976 with the meeting of high-ranking Nazi officials held on January 20th, 1942 in the Berlin suburb of Wannsee[6]. This was the meeting where the "final" solution to the "Jewish question" had been organized and decided. It was the moment where a certain Dr. Eichmann exposed the plans of extermination camps of which the most prominent was to be erected near Auschwitz-Birkenau. Further, all the logistic steps on behalf of that project were exposed in great lines and decided. According to the presiding judge, "Wannsee" stands also for a public opinion operation, since, according to him, the Nazis decided there also to hide the true nature of deportations by exposing to the German and the international public that Jews were to be sent to Madagascar.

The comparison with the Wannsee conference of the Nazi leaders in January 1942 illustrates the Court's limited knowledge of historic facts. In reality, "Wannsee" was not concerned with public opinion, but stands for the very moment where the details of the "final" solution had been decided and logistically organized (Wikipedia, January 3d, 2014). Public opinion was fairly irrelevant for the decision-makers there, and nowhere appears Madagascar in the minutes of the conference[7]. Obviously uninformed about these details, the presiding judge, without being interrupted by his two fellow justices, exposed that the Neuss conference was implicitly seen by the District Court as having served a similar agenda, since it was designed to deceive workers exposed to asbestos as well as

[6] See the transcript of the hearing of February 18, 2013, pp. 28-29.
[7] The truth is that plans to deport Jews from Europe to Madagascar (at that time a French colony) were dropped already in 1940. It was not mentioned during the Wannsee conference, nor was it present in daily communication among the German public (http://en.wikipedia.org/wiki/Madagascar_Plan).

public opinion and policy makers about the real dangers of asbestos. This direct comparison of the asbestos disaster with the Holocaust, and the indirect assimilation of the defendant with Hitler and his executioners are unprecedented pitfalls in European legal history. Never has a prosecutor, police chief or politician ever made such outrageous a comparison. However dramatic the long-term consequences of exposure to asbestos for victims of mesothelioma and other diseases, assimilating their fate with the millions of Jewish and other minority victims killed during the Holocaust is inadmissible whatever the context. Presenting the Wannsee conference as a sort of public opinion operation is an inadmissible trivialization of an unprecedented crime. According to legislation in many European countries, trivializing in this way the Holocaust, and drawing a parallel between "Neuss", i.e. a relatively minor and uneventful industrial conference, and the Wannsee meeting might be a punishable insult to the memory of Holocaust victims. That a presiding justice, during the opening statement of a trial at which the defendant is to be presumed innocent, allows himself to make such hateful comments on the circumstances of the case and the defendant is an abominable disaster for criminal justice in Europe. Several lawyers who were present at Turin, even among those representing civil parties, expressed towards the author how deeply shocked they were about this speech. Under normal circumstances, the defense would intervene by challenging the justice (or the entire court, given the absence of any reaction on the side of the fellow-justices) for partiality. Under Italian law, however, such a move would have been hopeless, even in these extreme circumstances, and Italy's authoritarian justice culture strongly discourages such moves. Of course, even in the absence of such a challenge, the final ruling remains tainted by such an extreme manifestation of bias against the defendant. The Italian media[8], however, applauded nation-wide the comparison with Wannsee and Hitler as a solemn judicial statement, nobody questioning the base of such a parallel and no one protesting against such an insult to the Holocaust victims. After having demonized the defendant over years in a similar vein[9], the media were indeed hardly in a position to bring to reason

[8] The author followed the reports in La Stampa, La Repubblica, Il Corriere della Sera and a few local newspapers.

[9] Recently, the presiding judge's statement is used in an article (panamaon.com, 15.01.2014) to justify the designation of the defendant as "the asbestos Nazi".

a judge who seemed to have lost any sense of historic proportions. In a certain way, the judge had simply repeated what had expressed, roughly one year before, a talk master in a nation-wide TV show (Gad Lerner).

Once the defendant had been presented, at the very beginning of the Appeal trial, as a kind of a war criminal, the hearings went on without surprises. All petitions by the defense, e.g. requests to receive the raw medical data on which the prosecution's experts had based their conclusions, had been systematically rejected. On June 3d, 2013 and after only 16 weeks, the defendant was convicted for having intentionally caused an environmental disaster, and sentenced to 18 years in prison. Roughly 90 million of damages were awarded to civil parties. Cynically, only about one third of this amount was awarded to individual victims, whereas about 60 million € were awarded to cities, provinces and government branches. After the presiding judge's opening statement, any other outcome would have provoked nation-wide protests. The only surprise came 10 days ahead of the verdict when it became known that the 91-years old co-defendant Louis de Cartier de Marchienne, a Belgian baron and last survivor of the previous Belgian shareholders of the Italian Eternit plants had passed away. Their position in the Italian Eternit plants had been taken over, in 1973, by the Swiss Eternit Group. As a consequence, the case of the Belgian co-defendant was dropped and Stephan Schmidheiny remained the only defendant left.

Interestingly, the court has not considered as a mitigating circumstance the fact that the defendant had launched, in 2008, a program for compensation to all victims who could plausibly establish that they had been exposed to asbestos at or near one of the Italian plants during the years of the Swiss Group's shareholding. More than 1,500 victims had received over 50 million € of damages – actually the only damages paid to victims of asbestos sites across Italy so far. Large sums were further made available for medical research into the treatment of mesothelioma and other asbestos-related diseases. In any normal criminal procedure, an initiative like this would lead to a more lenient sentence, as provided actually by section 62 § 6 of the Italian penal code. The court, however, stated that this victims' compensation program was intended to obstruct the criminal procedure since it

diverted potential civil parties away from the courtroom (Court of Appeals, p. 589). Left alone that, under Italian (and generally European) law, a criminal procedure does in no way depend on the presence of civil parties, the argument shows that, whatever the defendant did, was at his disadvantage: Had he paid no damages, it would be seen as a sign of indifference to human suffering and thus an aggravating circumstance; paying damages in relief, in turn, is interpreted as a kind of contempt of court – and, therefore, an aggravating circumstance as well. Arguing that the defendant had acted out of a "cynical search for profit without respect for higher-ranking values" (Court of Appeals p. 590), the court fixed the sentence at 18 years. Such sentences are given, in Western Europe, for serious cases of murder, but certainly not for a responsibility as the one at stake here (illustrations in the European Sourcebook of Crime and Criminal Justice Statistics 2010, chap. 3: www.europeansourcebook.org). One may speculate whether the court would have pronounced the death penalty had it not been abolished decades ago in Italy and beyond in Europe.

Factors leading to false factual conclusions

Defining the relevant time frame

The greatest challenge in the Turin trial was time. Asbestos had been used in industries in general over many decades. That this led to dramatic damages to individuals and the environment is not to be contested. In a criminal case, however, it is necessary that the time-frame for which the defendant has to take responsibility is clearly defined. In the case of Stephan Schmidheiny, it cannot start before 1976, when, at the age of approximately 28 years, he became CEO of the Swiss Eternit Group owned by his family, and it cannot extend beyond 1986 when all Italian plants had gone out of business. The prosecution had left the indictments extremely vague in this respect, and at every instance, the time frame was manipulated in order to fit the development of the case. However, the clear definition of the relevant time-frame is important in a case like this where pollution had started

decades before. Indeed, there was a fatal tendency throughout the trial to put on the defendant's shoulders all sorts of events that had taken place years before or after his involvement at the top of the Group. The District Court observed, for example, that the defendant had failed to "clean" of asbestos dust the Italian plants after they had gone bankrupt – as if bankruptcy law had allowed him to deal with plants and sites that were now under the exclusive control of bankruptcy trustees and courts.. On the other hand, many workers who later contracted asbestos-related diseases had stopped working on his family's plants years before the Schmidheiny's had become dominant share-holders (in 1973). Further, the accurate reconstruction of safety standards in a plant is obviously difficult more than 30 years later: What was the situation in, say, 1978 compared to 1973? Given his strong commitment to safety standards, the defendant had called, at and following the Neuss conference of 1976, for the strict enforcement of safety measures that were recommended at that time. These standards were to be observed in all the plants belonging to the group and, therefore, also in those located in Italy. But did that really change the situation in the several plants, and to what extent? How far does the responsibility of a holding company extend, and how far can responsibility be left to local managers? Can the CEO of a world-wide industrial conglomerate be blamed if workers in a remote country do not wear masks as recommended?

De-facto organ and limits of penal responsibility

In this connection, it must be mentioned that Stephan Schmidheiny had never exercised any direct role or formal function in the four Italian Eternit factories, which were part of the Swiss Group's holding. Never was he CEO, nor a Board member of any of the Italian Eternit companies – he simply was, through the shares controlled by an investment company that, in turn, was controlled by his family, an important share-holder. The Turin courts have considered the Schmidheinys as decisive, dominating share-holders, and Stephan, as the family group's CEO, as a de-facto director or officer of the Italian plants. This extension of penal responsibility to simple share-holders is not without risks

since it can make investments in Italy hazardous. According to media reports, foreign investments seem to have dropped considerably in Italian industries, a fact that some observers ascribe to the unpredictability and unreliability of Italy's judicial system.[10]

Americans may have learned recently about pitfalls and shortcomings through the Amanda Knox case (Vuille, Biedermann and Taroni, 2013), but the fear of erratic criminal prosecutions is far more general and widespread. The perspective of being one day held criminally liable, even as a simply share-holder, of some unforeseeable industrial accident certainly does not promote foreign investments. Even if one accepts the basic idea that a dominant share-holder can be a de-facto director or officer of a company without any formal role in its management, the limits of penal responsibility would still need to be assessed in light of what such a person could reasonably control. If, as during the Turin hearings, some witnesses described safety standards as insufficient, the question would have been what of the situation, provided it concerned the time of the defendant's role as a "de-facto organ", was personally known to him and what did he (or failed he to do) to improve it.

Unfortunately, the District as well as the Court of Appeals failed to make any effort at delineating more precisely the extent of the defendant's alleged responsibility as a de-facto director or officer.

Investments – made for profit or for safety?

[10] In an interview awarded the Italian magazin *L'Espresso* (of May 22, 2013), the American analyst Edward Luttwak criticizes the Italian criminal justice system as a major obstacle to economic redress. He refers to the World Economic Forum's 2012 report on Global Competitiveness (http://reports.weforum.org/global-competitiveness-report-2012-2013/) that places Italy's justice system on the last ranks among 144 countries, behind many Asian and African countries. For example, on efficiency in dispute settlement ("how efficient is the legal framework in your country for private businesses in settling disputes?"), it ranked 139th among 144 nations. In other respects, the results are similarly appalling, e.g. regarding the efficiency in challenging government regulations/actions, or protecting property rights (rank 131). Poor is also the rank with respect to judicial independence (68). See Tables 1.01, 1.06, 1.10 and 1.11 (data for 2011-12).

The defense has argued, throughout the procedure, that the defendant had, right after his initial meeting with managers in 1976, taken initiatives to improve safety in all plants world-wide in which the Swiss Eternity Group was involved as a shareholder. Of course, it is nearly impossible to find evidence, in particular the accounting records, invoices, corporate resolutions and correspondence as to what was done to invest in health and safety measures in such a remote past. Given this formidable task, it is remarkable that the defense succeeded in reconstructing the financial flows between the Swiss Eternit Group and the four Italian plants. After 1973 when the Schmidheiny family gradually took over the position of major shareholder in the Italian Eternit plants from the Belgian investors, no less than 75 billion Liras (or approximately 170 million Swiss francs in 1980) were transferred from the Swiss investors to the Italian Eternit plants. Corrected for inflation, this sum corresponds nowadays to more than 300 million US $. These are considerable investments given that the Italian plants never returned any profit to the Swiss company.

The prosecution tried to minimize these investments, followed largely by the Court of Appeals. The argument was that only a tiny fraction of these amounts was properly invested for safety, whereas the bulk of the sums injected were spent on making the plants more profitable. Prosecutors and judges omitted to consider that, pursuant to the official balance sheets no profits were made by the Swiss Group in Italy whatsoever.. The difficulty for the defense was that the archives of the Italian plants are largely lost. They were maintained with little care once the Italian plants had been declared bankrupt. Worse, the archives were largely destroyed when they were set under water due to flooding of the entire area. How chould the defense establish, under these conditions, what payment had been made with what purpose? Given the presumption of innocence, as guaranteed in Article 6 § 2 of the European Convention of Human Rights, a situation like this should normally benefit the defendant. Unfortunately, the Court considered that the defendant had been unable to present evidence as to the nature of the payments.

Beyond the direct purpose of payments (provided it could be reconstructed), one should keep in mind that modernization of machines and installations goes along not only with higher productivity

but usually also with more safety. For this reason, the prosecution's attempt to disentangle the nature of payments along these two goals must be considered ill-suited from the onset. It further illustrates the illusion of establishing the truth thirty to forty years after the facts. All local managers who might have been involved in the acquisition of modern equipment have passed away or are no longer in a situation to recall relevant details.

What was known about risks in 1976?

That asbestos could have damaging effects on health was known for a long time. What was not known was the causal role it played in lung cancer, given the strong interaction effect with tobacco smoking, and in mesothelioma, given the extremely long incubation period of thirty years or more. This is not to say that no warning voices had been heard before scientific certainty was established during the 1980ies. The problem for industrial production is that in many areas warnings are regularly articulated about new devices such as micro-wave stoves, cell-phones, grills etc. Many of these warnings turn out to be completely unfounded after a few years and are finally eliminated of our collective memories. In case, however, refrigerators or any other household equipment we long got used to, turned out to be dangerous in some future for whatever reason, it would be easy to find isolated voices who, years ago, had forecasted terrible outcomes in the long run. Problems are further complicated by the issue of safety measures: How efficient are they and what level of residual risk can still be considered acceptable?

Even for present-day situations, it is not always easy to determine what risks are related to some products and what probabilities of damages should be considered acceptable. If Courts have to decide this for periods that lay behind several decades, it is almost impossible to consider the situation as it was for the defendant at the relevant moment. Most people are inclined to telescope knowledge acquired far later to remote periods when it was not available. In the present case, the Court of Appeals, as well as the District Penal Court, had at many instances considered that the

defendant “knew” everything about the risks of asbestos and the illusionary protective effects of safety measures.

There are a few striking illustrations as to how unfounded such an approach actually is. *First*, the defendant himself was sent, during the early 1970ies, by his father to work (incognito) in one of the family’s asbestos plants in Brazil where he was exposed to asbestos along with ordinary workers. After five months he was promoted to foreman in that factory. This kind of grass-roots experience was part of a typical traditional Swiss career model: no one should play a top role without having seen the business from the bottom-up. During that time, Stephan Schmidheiny was no less exposed to health risks than any other worker employed at the same plant. Nobody knows what his future health problems may be one day. For sure, however, his cousin who went through the same experience a few years earlier has passed away last summer due to mesothelioma. If the deadly effects of asbestos had been known to the “bosses” of the asbestos industry at that time already, as the Turin Appeals Court claims, how can this be reconciled with his father’s decision to send the defendant as a simple worker to such a plant? *Second*, the defendant’s father divided the family’s empire equitably, as he thought, between his two sons, leaving Thomas the cement industries and Stephan, the defendant, the shares in the Eternit plants. As it later turned out, the cement industry developed most favorably, whereas Eternit became synonymous of debts, damages and law suits. If the risks of asbestos had been known to the persons involved in this agreement at that time, as the Turin Court of Appeals presumes, how can one explain that it was accepted by all parties as a fair deal? Unfortunately, although convincingly pleaded by the defense, the Court in its 800 pages ruling nowhere mentions a word of these two critical arguments.

Who should set risk standards?

Among the astonishing aspects of the Turin Eternit case is the absence of any incrimination of former Ministers or high-ranking government officials in charge of establishing (and enforcing) safety

standards in industries. Many industrial products are dangerous. Trains, cars and airplanes, although helpful, appreciated or even indispensable in modern life, regularly are involved in accidents. The same is true for pharmaceutical and almost all other industries. Ultimately, any industrial manager in an automobile factory could theoretically be prosecuted for negligent manslaughter after any accident in which one of his products is involved. That this does not happen is made possible through safety standards to which such products must conform. As long as they do, producers are not liable (at least not criminally). Once new technologies allow discovering new risks, or improve safety measures, such standards are regularly adapted. This approach has allowed improving considerably the safety of products, by eliminating market competition at the expenses of safety, and at the same time "decriminalizing" managers and industrials provided their products respect the adopted standards.

In the area of Eternit, a similar approach was chosen throughout many Western countries including Italy. Unfortunately, Italy was slower than many other countries at enforcing EU safety standards in this domain, and it outlawed the use of Asbestos in 1992. Given that the defendant's factories went out of business in 1986, the delays of official Italian policy-makers remained irrelevant for the present case. However, if the dangerousness of asbestos and the illusionary effects of protective measures were as generally known at the relevant time as the Court of Appeals assumes, the question arises why this knowledge did never provoke any action on the side of the Italian Ministry of Public Health, or other authorities in charge of labor safety. It is as if the defendant's unprecedented defamation had been so efficiently orchestrated and supported by the Italian media and political class out of concern that the outrage might otherwise have affected the own political leaders and their ministerial bureaucracy.

A good illustration of these ambiguities is offered by the far more recent Ilva scandal. Italy's largest steel factory, located in Italy's deep South (Taranto), had over decades polluted the environment and damaged the health of many people, including those working there or living in the wider neighborhood. When it ultimately was closed by prosecutors in June 2013, the Government, giving in

to protests of trade unions and other pressure-groups, re-opened the factory in November, while the owner family's patriarch, 86 years old Emilio Riva, has been arrested and put on home detention. Of course, the loss of thousands of jobs would be a terrible blow to the local economy – but how can one prosecute the owner for pollution and, at the same time, re-open the polluting factory?[11]

Why "environmental disaster"?

That asbestos had detrimental effects on persons who were directly exposed to it is obvious. In the area of the factory of Casale Monferrato (Piedmont, Northwestern Italy), however, asbestos waste was largely used outside the plant. Over decades, workers and neighbors could obtain for free or a minimal fee asbestos waste – the so-called "polverino" – that they used to isolate roofs, barns, garden shelters and all sorts of constructions. This has led to a dramatic pollution of an entire area and to the exposure of many more people than just those working at the factory.

When Stephan Schmidheiny took over the leadership of the Swiss Eternit Group in 1976, the practice of giving away asbestos waste had already been stopped, as part of a package of immediate safety measures. The District Court, in its verdict, did not deny that an instruction to end the distribution of asbestos waste to private citizens was given (District Court, p. 518-530). However, the court observed that several witnesses said that they did not notice any change in that sense, or that, at least, it was still possible to obtain asbestos waste after 1976. The court never questioned whether the memory of these witnesses was accurate regarding the time-frame. Rather, it went on to conclude that the defendant himself must have been well-informed about the continued violation of his instruction. Worse, the court even held that he must have been willing to let this old practice go on, and that,

[11] Details in www.nzz.ch/aktuell/panorama/italiens-stahlkoenig-emilio-riva-verhaftet. More recently, the juridical battle seems to have turned to the advantage of the owner family, http://www.ilfattoquotidiano.it/2013/12/20/ilva-cassazione-annulla-sequestro-8-miliardi-restituiti-a-riva-fire/821426/. See further http://www.gadlerner.it/2013/01/04/le-migliori-puntate-dellinfedele-lilva-madre-velenosa

therefore, he intentionally polluted the environment. This is indeed a series of statements that would have needed clear evidence of two facts:

(a) Schmidheiny really knew that instructions to stop the distribution of asbestos waste were not respected in the Italian plants. Given that he never or extremely rarely visited these plants in person, an automatic inference from the mere existence of a practice in a local plant to knowledge about it at the top level of an international conglomerate is impossible. Even as a "de-facto organ" of the Italian companies, the defendant cannot reasonably be held liable for every detail of the daily management of the many local plants in which the Eternit Group was involved as a shareholder.

(b) Once evidence had shown that the defendant himself knew about the continued distribution of asbestos waste to neighbors, it would have been necessary to establish that he accepted this state of affairs and agreed, at least tacitly, to let it continue. This would seem hard to proof given the absence of any economic profit (District Court, p. 530). Why should the defendant willingly accept a potentially dangerous practice to continue if that "polverino" was given away for free or against a few cents to be paid into the coffee coins' pot?

The Court had not gathered any evidence for either of the two factual bases of its verdict. In the climate that dominated in the courtroom throughout the procedure, Schmidheiny, given his status as a quasi-war criminal, could not be innocent. That he acted to kill thousands of people was obvious beyond any doubt for all actors of the criminal justice system. In a state of mind like that, no space is left for doubt and evidence is ultimately unnecessary.

Why intentional and not negligent conduct?

In the Schmidheiny case, foreign media and public opinion mostly wondered how the Turin Courts (of both levels) could have been led to assume that the defendant had acted with intention, i.e. in full knowledge of the relevant facts and with the intent to kill innocent people. As explained, the District

Court has tried to deduct this mostly from the continued distribution of "polverino" to the local population (District Court, 518-530). The Court of Appeals must have realized that the factual base of this verdict was all too weak. It moved away from this reasoning (around "polverino") and focused entirely on the Neuss conference. For the Court of Appeals, this meeting had the only goal of manipulating public opinion (Court of Appeals, pp. 500, 504, 511) by giving the public the false impression that asbestos is not dangerous or that it can be used safely (Court of Appeals, p. 502). The Court went on observing that the defendant had instructed the Eternit Group's leading chemist, Dr. Robock, to indoctrinate the participants and to discredit dissenting colleagues among the scientific community (Court of Appeals, p. 524). The parallel between the meetings at Neuss and the Wannsee conference is, probably, due to the Court's view that "Wannsee" served first of all a public opinion agenda. This misconception has been criticized above. Also "Neuss" was in no way a public opinion exercise.

At the Neuss conference, managers had been exposed to scientific evidence about the risks related to asbestos that they had never been confronted with, or that they had learned to ignore through long-lasting managerial careers in the asbestos industry. These persons certainly did not need to be manipulated in 1976. If Dr. Schmidheiny's agenda had been to divert disturbing news from reaching these circles, the best would have been to continue the "communication of denial" long-practiced by his predecessors. That Dr. Robock, the Group's best-informed scientist played a leading role in that meeting is indeed a strong sign that the defendant wanted his staff to be completely informed about the state of affairs. What did the defendant himself say at that conference? The Court of Appeals quotes (Court of Appeals, p. 502) from his speech, on the last day of the meeting, the following statement: *"Today we know that asbestos is potentially dangerous when treated inappropriately. Therefore, industries are obliged to….care about the safety and health of their staff."*

How could the Court of Appeals draw from this speech the conclusions that (a) the defendant knew at that time already about the impossibility of a safe use of asbestos (Court of Appeals, p. 506), that (b) all this was done to deceive public opinion (Court of Appeals, p. 504), that (c) the risks of asbestos

and the need to invest in workers' safety had been denied (Court of Appeals, p. 509) and – finally – that (d) the defendant had willingly killed a large number of workers (Court of Appeals, p. 584)? A further citation illustrates how the Court of Appeals distorted the meaning of the defendant's speech at that meeting. From the following quote (Court of Appeals, p. 530): *"We have to search for a maximum of protection of workers at minimal costs"* the Court of Appeals concluded: *"By this reasoning, the defendant ignored that not only economic interests were at stake, but higher values such as life and physical integrity of human beings"*. A few sentences further, the Court becomes even more explicit: *"The defendant was indeed not just a* 'homo oeconomicus'*, but a member of a social community. As such, he was not allowed considering only the pursuit of increasing his wealth as an entrepreneur. In the first place, he was obliged not to jeopardize life and health of people who had contact with the mineral whose toxic nature was known for sure."* As any reader easily recognizes, the defendant never said that health and life of his staff are to be abandoned for economic profit. He simply said that a maximum of protection is to be sought at minimal costs – something quite obvious in everyday life where we all try to obtain the best protection at reasonable costs. It is quite rare in a modern democracy that Courts so blatantly distort a defendant's declarations. Obviously, the need to find the defendant guilty was so pressing that usual reservations were set aside.

Juridical technicalities and facts finding

Once the defendant's intention to kill was so clearly established, in the eyes of the Court of Appeals and the District Court, the question arises why actually the defendant had been indicted (and found guilty) of intentional provocation of a disaster (section 434 § 2 Italian penal code) and intentional *removal or omission of safety installations on the workplace* (section 437 IPC) rather than of intentional murder (section 575 Italian penal code). There were, from the point of view of the prosecution and the Court, good reasons for this approach. Indeed, intentional murder needs to be heard by a jury rather than a chamber of three professional justices, according to section 5 of the

Italian code of criminal procedure. This alone would have made the hearings far more demanding on the side of the prosecution.

Further, a trial for negligent or first-degree murder (sections 589 or 575 Italian penal code) or intentional or negligent bodily injury (section 582 and 590 Italian penal code) would have obliged the court to hear several thousand cases of concrete, individualized victims. Evidence would have been necessary that these persons were exposed to asbestos in the relevant Italian plants during the relevant years, i.e. between 1976 and 1986, that they developed asbestos-related diseases as a consequence of exposure during this period, that use of asbestos in the relevant factories was unlawful and/or that the measures of protection were insufficient according to Italian law, and, most important, that the defendant knew about all that and that he anticipated (or even accepted) that many of his workers would ultimately be killed. These are heavy burdens of proof, and the prosecution was obviously aware of this.

The prosecution and the two Turin courts were, therefore, eager to try another approach. Section 434 CPI criminalizes, in § 1, any person who intentionally causes a building to collapse, or who willingly causes "any other" kind of a disaster that jeopardizes public safety. The punishment will be from one to five years, and, according to § 2, from three to twelve years if the collapse or the disaster occurs. Section 437 CPI provides for punishment from six months to five years in case the offender has intentionally removed warning signals or protective equipment from the workplace (§ 1). In case an accident or disaster occurs as a result, the punishment will range from three to ten years (§ 2).

Sections 434 and 437 IPC are typical "endangerment offences", i.e. crimes where punishment is incurred once a concrete risk is created. These offences make it easier for the prosecution to obtain a conviction since no evidence needs to be established regarding (a) a real, concrete damage and (b) the nexus of causality between the defendant's conduct and the damage. It is sufficient to establish that the defendant's conduct exposed another person's safety to a non-trivial risk. This obvious simplification of the prosecution's burden of proof, however, was outweighed by a clear

disadvantage. Indeed, in the present case, the defendant's relevant conduct ended at the latest in 1986 when, due to the bankruptcy of the Italian factories, he lost control over their operations. According to the rules of limitation in Italian penal law (section 157 IPC), provided the court had found the defendant guilty according to sections 434 and 437 IPC, the latest imaginable offenses committed by him under this heading would have been time-barred. Therefore, an additional effort was necessary to avoid this outcome.

The prosecution, followed by the District Court (p. 505), argued that both in sections 434 and 437 IPC, § 2 was not just an aggravating circumstance (or, in continental legal terminology, a "qualified offence"), but an "autonomous" offence independent of § 1 in both sections. Indirectly and tacitly, the courts have, in doing so, transformed these two offences (sections 434 § 2, and 437 § 2) from "endangerment offences" into "result offences". Such offences imply that a legally protected interest has been violated (and not just endangered). The advantage for the prosecution and the court was that this change in the nature of the offence eliminated the statute of limitation: according to Italian law (section 158 § 1 IPC), the limitation does not start to run before the "result" (i.e. the violation of the legally protected interest) has taken form. In the case of a "disaster" (as in section 434 § 2 IPC), the Court of Appeals (p. 480) concluded, therefore, that the time of limitation will start to run only once the last victim of asbestos will have passed away.

The problem with this construction is that it is out of line with established jurisprudence in Italy[12] as well as in continental Europe in general. In all systems the author is familiar with, more severe outcomes (as those described in the second §§ of the two sections at stake) are considered as aggravating circumstances (or "qualified offences"). According to this reasoning, the limitation starts with the defendant's relevant conduct, i.e. the creation of a risk for other people's safety. In our case, the defendant could not act beyond 1986 since he lost control of the four Italian plants at that

[12] The District Court was well aware of this (p. 505). For an overview of jurisprudence in this area see Codice penale spiegato, 16th ed., Simone 2012, especially note 5 on Article 437 (identical to section 434 on this).

time. Therefore, whatever the criminal conduct he may be found guilty of falls under the statute of limitation at latest in 1996.

Of course, the defense has, in its appeal, extensively criticized the District Court's construction. The Court of Appeals has tacitly followed this argument by acquitting the defendant for having intentionally removed warning signals or protective equipment from the workplace (section 437 IPC). The Court of Appeals reasoned (pp. 461-462), as suggested by the defense, that any of the defendant's conduct falling under this provision was statute-barred after 1996. Ironically, however, it adopted the opposite reasoning with respect to the "intentional provocation of a disaster" (section 434 IPC). As the District Court before, and against all the jurisprudence in Italy and abroad (for similar offences), it concluded that §2 of section 434 was an "autonomous" offense where the time of limitation starts to run only with the last asbestos victim's death (Court of Appeals, pp. 474, 480). Given the extremely long incubation period, criminal liability for asbestos-related offenses will be time-barred not before the mid-21st century or roughly 70 years after the last asbestos industries went out of business in Italy.

Such periods are absurd in their consequences, both in terms of human penal responsibility and even more so with respect to the requirements of fair trial (Article 6 § 1 European Convention of Human Rights). The issue of investments made by the Swiss Eternit Group in the Italian plants is emblematic of this problem. How can one expect that the defense establishes, half a century after the facts, that considerable sums invested in these workplaces actually improved safety standards there? The European Court of Human Rights has ruled, in a number of leading cases that excessive periods of limitation can conflict with the requirements of fair trial[13].

A last irony must be mentioned here. If one follows the Appeal Court's reasoning regarding the nature of section 434 § 2 IPC, namely that this offence is autonomous, that it is not a "risk offense" but a "violation offense" and that, therefore, it is not time-barred as long as the results (i.e. the

[13] See decisions of 29 May 2001, *Sawoniuk c. United Kingdom*, and 24 September 1996, *Stubbing c. United Kingdom*.

fatalities) continue to occur, the court should actually have accepted also the other side of the medal, namely that every victim's case is to be heard individually, that damages, including the nexus of causality and the defendant's mens rea, have to be presented and debated. Instead, the court has insisted, with respect to the defense's request of debating individual cases, that there is no room (and need) for this given that section 434 § 2 IPC is, after all, a "risk offense". Rarely has a court acted in so blatant a contradiction with its own principles and reasoning.

Synthesis: How political pressure leads to wrongful convictions

Under dictatorships, it is rather common that political opponents are prosecuted and convicted for ordinary offences, such as theft or fraud (as in Ukraine), deviant sexual behavior (as in Malaysia) or corruption (as in Pakistan). Emil Plywasczewski (2008) has offered remarkable illustrations of how this was practiced under the communist regime in Poland. Typical of such miscarriages of justice is a criminal justice system that is tightly controlled by the political elite. The Schmidheiny case in Turin is an emblematic illustration of how wrongful convictions can occur in a basically democratic country with an independent criminal justice system.

Several factors favor politics-driven wrongful convictions in democracies. The first condition probably is a political culture where victims of major disasters (as the asbestos crisis) are left alone, i.e. without redress through institutions of social security or insurance schemes. Left without any constructive perspective, i.e. without schemes that proactively seek to assist victims as far as possible by providing adequate compensation, victims and the public are likely to react by looking for an individual that can be blamed for all the facets of a disaster. A wealthy man like Stephan Schmidheiny, citizen of a wealthy country (Switzerland) living abroad, with an extremely successful career in several industrial sectors and important philanthropic and pro-environmentalist commitments, fits perfectly the profile of an ideal scapegoat. By allocating all the blame on that one person, the role of Ministers, public agencies in charge of setting safety standards in industries and

even trade unions and Lord Mayors (who often were more concerned with protecting workplaces rather than workers' health) disappears from the picture.

Several actors play key-roles in this reductionist operation. In the Schmidheiny case, a first key-player was a victims' association that soon developed its own institutional agenda. For example, it actively deterred victims from accepting compensation from the defendant, obviously because that would have evacuated the civil damage issues from the criminal trial, and ultimately deprived this association with its full-time staff of its "raison d'être". This association also has been very successful at lobbying among the media and political circles, involving even Ministers who called Mayors to discourage them from accepting offers of compensation by promising even higher sums (that ultimately never were paid). A detrimental role was also played by the Italian media who never gave room to the point of view of the defense. Rather, they diabolized the defendant over years up to the point of drawing direct parallels between him and Hitler. A further key-player was the chief prosecutor who, in a kind of search for the role of a national hero, campaigned over years hand in hand with victim associations and other lobbies at countless rallies across Italy and, more recently, even abroad. Such a profile would be considered absolutely inappropriate in other continental countries, as e.g. in Scandinavia or in Germany where magistrates (including prosecutors) are expected to keep some critical distance and to express their views in a more balanced way (Gilliéron, 2014).

In the Schmidheiny case, the criminal justice system became further imbalanced through the participation of approximately 6,000 civil plaintiffs (victims and relatives) of whom many came regularly to demonstrate in front of the courthouse and participated (often with their lawyers) with flags and stickers at the hearings inside the courtroom. The culmination of this pressure was reached when the presiding justice of the Appeals' Court, in his opening statement, compared the Neuss meeting of the defendant's Eternit industries with the infamous Wannsee conference of the Nazi. By drawing this parallel, the Court of Appeals put itself under pressure to arrive at the most unfavorable verdict and sentence. How could it have found mitigating circumstances in the conduct of this "war

criminal"? That the defense council did not object immediately to this blatant violation of the presumption of innocence (Article 6 § 2 European Convention of Human Rights) by calling for an immediate interruption of the trial and the designation of new justices, as that would have been normal in any other continental country, further illustrates how the climate during the trial affected even the defense council's room of maneuver.

In this climate, next to all procedural issues were decided against the defendant. In the first place, the Turin court accepted hearing the case, although none of the usual criteria of territorial competence would have suggested this particular jurisdiction. As a result, the Turin chief prosecutor with his long-standing record of activism in the area of industrial accidents came into the play. At the next stage, the court admitted to the trial several thousand civil parties, bringing an obvious imbalance into the trial. Later the court accepted the prosecution to change the indictments several times in order to make them "fit" changing contingencies. This was made easier through vaguely formulated indictments. It was, up to the final stage of the Appeal process, not clear how the relevant time for the defendant Schmidheiny would actually be framed. Next, the substantive criminal law was interpreted in a way that not only is at odds with well-established jurisprudence, but also with the Court of Appeal's own reasoning on related aspects of the case. Such internal contradictions in the two courts' rulings were partially masked by unusually lengthy explanations full of redundant comments and observations, making up for 700 and 800 pages at the two levels. Finally, the unusual interpretation of substantive criminal law led to unreasonably long periods of limitation. It is no longer compatible with the requirements of fair trial if the defense has to proof that sums paid some 40 years ago were actually invested for safety measures. The longer the past, the harder it becomes to disentangle knowledge available at a remote point in time from what had been discovered later on. All this makes vague allusions, excessive statements and unspecified accusations easy, and facilitates omitting important facts such as the defendant's personal history as a worker in an asbestos factory in Brazil.

What can we learn from a case like this? First of all, the Schmidheiny case shifts attention away from the usual key-factors generally seen as causes of miscarriages of justice, namely lying (or mistaken) witnesses, ill-prepared forensic experts and incompetent defense counsils. It underlines to the contrary the role of key-actors of the criminal justice system, i.e. prosecutors and judges. If prosecutors no longer are committed to finding the truth, but see their role in the pursuit of a political agenda, and if political and media pressure prevents courts from handing down equitable justice, false conclusions regarding the relevant facts are easily distorting the criminal process. One of the lessons of this procedure is that formal rules, such as those delimiting territorial jurisdiction, matter in the search of the truth. These lessons can be drawn whatever the further sort of the defendant and the trial will be, at the Italian Supreme Court or, eventually, the European Court of Human Rights. Further, if media pressure matters in exonerating innocent convicts (Warden 2014), it matters even more in pushing the criminal justice system in the direction of convicting innocent defendants. A first priority should, therefore, be to establish a media culture that is concerned with giving a fair, balanced account of trials (Michlig 2013).

A further lesson pertains to the way societies are dealing with disasters. Blame allocation is a fairly efficient way of dealing with daily incidences of offending, either intentional or negligent. Accidents caused by reckless behavior can be dealt with through blame allocation (Killias 2011, 395-408). However, major disasters such as nuclear accidents should not be dealt with in this way, but call for preventive action by specialized governmental agencies. In the asbestos case, these agencies did not really take action before 1990 approximately. In face of the disaster it caused, the number of victims and the seriousness of the damage again make individual (civil) responsibility unsuitable. Given the many conflicting interests at work, it would be highly unfair to blame today's producers of cars or micro-wave stoves for any mass damages caused by such devices eventually one day far in the future. Individualizing blame does not take into account the diffusion of responsibilities in complex situations. Further, it does not produce any positive (preventive) effect in the future, since trials come so long after the facts that they can no longer affect the course of events. Most importantly, it

does not help victims of disasters. Unfortunately, Italy has not seen yet any tangible effort to relieve the sort of asbestos victims, with the exception of the defendant's own compensation scheme. As the only Western country, it has focused on criminal trials against a few scapegoats. As it seems, this is not likely to change in the foreseeable future since it arranges so nicely all sorts of key-players, namely victims' lobbyists, prosecutors, courts, lawyers, Ministers, bureaucrats, the media and, last but not least, the public who visibly enjoy seeing hanged some ugly scapegoats.

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