



# VICTIMS AND CORPORATIONS

Implementation of Directive 2012/29/EU  
for victims of corporate crimes and corporate violence

## Data collection on leading cases



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Principal investigator of the project is Gabrio Forti, with the support of Claudia Mazzucato, Stefania Giavazzi and Arianna Visconti.

The template and data collection were designed and coordinated by Stefania Giavazzi.

Data have been collected by (in alphabetical order): Pierpaolo Astorina, Matteo Caputo, Francesco, D'Alessandro, Alain Dell'Osso, Marc Engelhart, Stefania Giavazzi, Katrien Lauwaert, Alessandro Provera, Giuseppe Rotolo, Fabio Seregni, Benedetta Venturato.

[www.victimsandcorporations.eu](http://www.victimsandcorporations.eu)

Università Cattolica del Sacro Cuore, Centro Studi "Federico Stella" sulla Giustizia penale e la Politica criminale, Milan, 2016

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## METHODOLOGY

The purpose of this document is to provide an analysis of some leading cases concerning victims of corporate violence in Italy, Germany and Belgium. The Data Collection on leading cases contributes to reaching two of the project's expected results: the assessment of corporate violence victims' needs; the identification of individual victims or other target groups to be involved in focus groups, interviews and, with respect to the latter, training activities.

The identification of leading cases fulfils the following criteria:

a) severe cases having led to *criminal proceedings* for *offences* having caused *deaths or harm to health* or other *physical injuries to individual victims*.

b) *fields of investigation*: environmental crimes, food and drugs safety violations.

c) *place of proceedings*: the investigation covers only European Countries, according to Recital (13) of Directive 2012/29/EU, which states that: «This Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union». In particular, the selection focuses on Germany, Italy and Belgium, where the project research units are located.

The *definition of victim* complies with Article 2 of Directive 2012/29/EU, which reads as follows: «(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death».

The *definition of criminal proceedings* complies with Recital (22) of Directive 2012/29/EU, which reads as follows: «The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings *ex officio* as a result of a criminal offence suffered by a victim».

Data and information have been tracked through the following sources: databases of jurisprudence, direct contacts with lawyers or other parties in criminal proceedings, and access to criminal proceedings files, when available. Press reports or other like sources, when considered reliable, have been used to better frame some cases' context and highlight their relevance, especially where no judicial decision was available.

A tailored template has been developed to collect information on each leading case, with a focus on the following entries: number of victims involved, victims' access to justice, victims' claims, victim's participation in the criminal proceedings, the role of victims' associations and other support services.

An overview of other cases of potential interest and the main findings arising from this Data collection are reported and analyzed in the Project's Mid-term Report.

The templates have been compiled by a large group of researchers. A special thank goes to the UC-CSGP researchers which have significantly contributed to the collection of data related to the Italian cases.

<b>CASE</b>	<b>BUSSI SUL TIRINO</b>
<p><b>COUNTRY</b></p> <p>Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>Italy</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Environmental</p>
<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ol style="list-style-type: none"> <li>1. type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/ privately held companies)</li> <li>2. nature of business (manufacturing, sale, distribution, etc..)</li> <li>3. country of legal head office</li> </ol>	<p>Montedison/Edison S.p.A.</p> <p>Some remarks concerning the corporation are necessary in order to better understand the case. As the facts under investigation cover a wide timeframe, the formal denomination has been modified over time: if initially the entity was named 'Montedison', nowadays – that is when the proceedings have been taken – the same corporation holds the name of 'Edison'. Actually, Edison is a large holding company (which interests are eminently located in Italy); thus, the facts under investigation embrace also the activity of subsidiary corporations.</p> <p>Sector: Chemical (eminently)</p> <p>Country of legal head office: Italy.</p>

## SUMMARY OF THE CASE

(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)

The case concerns the plant of Bussi sul Tirino owned by Montedison in the historical period 1963-2004 and it represents one of the most significant episode of water pollution caused by industrial activities in Italy.

The area located in Bussi sul Tirino is considered one of the largest chemical landfill in Europe.

In the period under scrutiny, the defendants created four illegal dumps of highly toxic waste connected with the productive activities.

Accordingly, also the description of the harm causation is relevant. Prosecutors assumed that the activity determined the groundwater contamination in the whole Pescara Valley ('Pescara' is the name of the main river in the valley). The evidence of environmental pollution has been, also, detected by a report ISS (National Health Institute) dated 30 January 2014, which was filed in criminal proceedings by the Ministry of environment.

The dynamics concerning the causation of harmful consequences are noteworthy too. The toxic waste dumping determined the soil contamination and subsequently also surface water and groundwater contamination (up to 100 meters deep). Such a circumstance, as it has been alleged, had a potential incidence on public health as well, since groundwater fed eight wells for drinking water supply, so that the whole Pescara Valley has been assumed as contaminated and the local communities exposed to potential victimization.

As the judgment decision lets emerge, surface waters and groundwater in that area are to be considered as certainly polluted since October 1, 2002, because of the verified presence of toxic substances. Thus it can be estimated that pollution has been carried for 40 years and potential victims could be around 700.000 people, by computing the number of persons who have been using water in the contaminated area along the considered timeframe contaminated water.

However the point requires several remarks, in order to understand reasons why judges lead to an acquittal decision. Actually, the structure of one of the charged crimes (see below) is premised on water poisoning, rather than on water contamination. That is: in order to prove the crime itself, it is necessary to prove an effective (and not only a potential one) danger for people health. In the considered case, judges pointed out that, although contaminated, it's not proved that the waters for human supply (also considering the location of the eight wells) were poisoned.

It must be noted that no epidemiological research and no cancer register were created; so data on disease occurrence and on the incidence of the contamination on human health were not available.

Only in 2005 the Authorities took actions to secure the deeper aquifer layers; the requalification of the area – along with the remediation procedure – is still on ongoing.

**ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT**

Please, include a brief description of:

1. the offences charged to the corporation(s) or its/their representatives
2. type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives

Seventeen people, who were in charge of different positions over time, have been indicted as participants in the same crime for two intentional felonies against *public health*: art. 439 c.p. 'Poisoning Water or Foodstuffs' and art. 434 c.p. 'Collapse of Structures and Other Intended Disasters'.

A. Art. 439 C.P. 'Poisoning Water or Foodstuffs':

"Whoever poisons water or any substance which is to be used as food, before it is drawn or distributed for consumption, shall be punished by imprisonment for not less than fifteen years.

If the act results in the death of any person, life imprisonment shall be imposed (...)"

Consistent with such an indictment, several circumstances have been alleged as relevant in the harm causation:

- since 1963 and until around 1972 a huge illegal landfill of about 165,000 cubic meters has been used for the illegal and systematic disposal of all kinds of waste, especially the so called chlorinated pitches (residues mainly consisting in: pentachlorethan and esachlorethan arising from the operation in the chlorine-methanes department; raw compounds - carbon tetrachloride, chloroform, methylene chloride and high-boiling - resulting from the mixing of the chlorine with methane). Before the dump was built and utilized, thus until 1963, liquid wastes were dumped directly into the river Pescara;
- the construction of a second landfill in a different location (of about 50,000.00 square meters), in which were dumped harmful toxic-waste as mercury, lead, zinc, tetrachlorethylene, light and heavy hydrocarbons hydrocarbons;
- the construction of a third landfill (extended as the second) which has been used for the hazardous toxic wastes (namely: mercury, lead, boron, chloroform, dichloro ethylene, trichloro ethylene, tetrachloro ethylene);
- the realization of an illegal fourth landfill of about 30,000.00 square meters for the disposal of all wastes generated from manufacturing processes of the chemical plant;
- the significant dispersion of lead in the soil, mainly resulting from production initiated by S.I.A.C. (Italian Society Additives for fuels) from 1966 and up to 1995/1997 (when the demolition of that structure took place);
- the implementation of a corporate strategy oriented to avoid the obligations arising from the need to eliminate the consequences of the conducts described above.

B. Art. 434, co. 2, C.P. 'Collapse of Structures and Other Intended Disasters':

"Whoever, apart from the cases designated in the preceding Articles, commits an act aimed at causing the collapse of a structure or any part thereof, or any other disaster, shall be punished, if his act results in danger to the public safety, by imprisonment for from one to five years.

The punishment shall be imprisonment for from three to twelve years if the collapse or disaster occurs"

Such indictment focuses on the particular area that has been allegedly as deemed contaminated; an area which is of high environmental value, since it is located on the border of the Majella National Park and the Gran Sasso National Park, near the confluence of the two rivers, the Tirino and Pescara. Moreover, due to the presence of two rivers, area is rich of shallow groundwater, and water springs. An environmental disaster of immense proportions has determined harmful consequences on the soil and even on underground, due to the polluting activities consisted in systematic illegal waste dumping, consistent with the disposal of products originated by the industrial cycles, in quantities of hundreds of thousands of tons of waste. As a consequence, the indictment refers to the presence of chlorinated organic compounds, mercury and lead in the contaminated environmental resources.



<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ol style="list-style-type: none"> <li>1. the numbers of victims identified and involved in the criminal proceeding</li> <li>2. - the type of victims (victims who suffered harm or economic loss, family members)</li> </ol>	<p>No individual victim was admitted as civil party in the criminal proceeding.</p> <p>The Judge of the preliminary hearing denied the participation of private citizens due to the fact that personal injuries suffered by people exposed to the contamination were not proved</p> <p>Moreover, personal and individual concerns are only a limited portion of the offences charged, which must be perpetrated against public health and collective interest; accordingly, public safety – rather than personal health – has been alleged as damaged. That means that individual harms were not related to the type of crimes charged to the defendants.</p> <p>Only two persons, who are owners in the same neighborhood, were admitted to participate into the proceeding, but only for economic damages.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>First degree sentence</p>
<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ol style="list-style-type: none"> <li>1. the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>2. whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>3. numbers of victims having the status of party to the criminal proceeding</li> <li>4. level of victims participation in the criminal proceedings (victims are/ were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ol>	<p>None of the individual victims could be strictly considered “victim” according to the type of offences charged to the defendants, except for two owner of areas closed to the plant for economic damages. Many institutions/associations (representing collective interests) were instead admitted as civil party.</p> <p>Also the new owner of the plant, Solvay S.A. – Solvay Solexis S.p.A. and Solvay Chimica Bussi S.p.A., ask for economical damages.</p>
<p><b>VICTIMS’ REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>he only 2 victims admitted as civil parties submitted a request for Euro 750,000.00 in respect of pecuniary and non-pecuniary damages. There has not been established any physical damage.</p>

<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ol style="list-style-type: none"> <li>1. type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>2. final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>3. <u>sanctions</u> imposed to corporation(s) and/or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>4. - <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ol>	<p>The first judgement consists in an <i>acquittal decision</i> in respects to the crime under art 439 c.p., as it was not proved, or demonstrated, the poisoning of the water used for human consumption.</p> <p>The environmental damages concerned in particular the groundwater contamination, although it was estimated as not exceeding a level that could be considered consistent with water poisoning. Indeed, according to some experts' reports, the judges pointed out that the threshold limits for water drinkability were not violated. The statement takes also in account the peculiar location of the pertinent wells; more precisely, although the groundwater was poisoned, the toxic concentration diluted before being drawn, so that the community did not run any actual risk to be injured.</p> <p>In the criminal proceeding any personal harm - in terms of diseases or pathologies certainly related to the contamination - was not proved as requested for a conviction. This circumstance is due to the latency of pathogenesis of the expected diseases: the evidence of a certain correlation between the exposition to toxics and the occurrence of harms to health (think, for instance, to the occurrence of cancer due to such a exposition) is often tricky to ascertain.</p> <p>If no water poisoning occurred, the same facts have instead been considered as an <i>environmental disaster</i>, punished at the time by art. 434 c.p. (no specific environmental crime was in place at the time) Nevertheless, as the defendants <i>intention to cause</i> the environmental disaster (as required by art. 434 c.p.) was not proved, the charge was reconsidered as negligent. The offence punishing the negligent disaster was art. 449 c.p. (again, no provisions were in place at that time for environmental disaster caused by negligence), but the limitation period for this offence had already run out.</p> <p>Therefore, for the second offence charged the proceeding was closed due to the time-barred limits.</p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ol style="list-style-type: none"> <li>1. type of agreement</li> <li>2. content of the agreement</li> <li>3. whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ol>	<p>Unknown</p>

**EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES**

Please, specify (if known):

1. type of Victims Association or other service supporting victim's needs and rights
2. Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)
3. whether the Victims Association itself reported the crimes to criminal Authorities
4. -whether the Victims Association itself has/had the status of party to the criminal proceeding

No association of victims took part in the proceeding, but the civil parties representing "common interests" affected by environmental crimes.

The following institutions/associations (representing collective interests) were instead admitted as civil party:

- Ministero dell'Ambiente e della tutela del territorio e del mare;
- Presidenza del Consiglio dei Ministri;
- Regione Abruzzo;
- Commissario delegato per il bacino Aterno-Pescara;
- Provincia di Pescara;
- Comune di Pescara;
- Comune di Chieti;
- Comune di Bussi sul Tirino;
- Comune di Torre de' Passeri;
- Comune di Tocco da Casauria;
- Comune di Castiglione a Casauria;
- Comune di Alanno;
- Comune di Popoli;
- Comune di Spoltore;
- Ente Parco Nazionale del Gran Sasso e Monti della Laga;
- W.W.F.;
- Italia Nostra;
- Mare Vivo;
- Mila/Donnambiente;
- EVA – Ecoistituto Verde Abruzzese;
- Solvay S.p.A. – Solvay Solexis S.p.A.- Solvay Chimica Bussi S.p.A.;
- Legambiente Onlus;
- Ass. Ambientalista Lega Antivivisezione Onlus;
- Ass. Anpana;
- Ass. Lida;
- Ass. Codici Abruzzo;
- Ecoistituto Abruzzo;
- ACA;
- ATO;
- LAC;
- Ass. Codici Ambiente;
- Codacons Onlus

**VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS**

Please, specify (if known):

1. whether the victims (or some of them) favoured a civil suit
2. whether the victims made claims or requests to other Authorities (not criminal or not judicial)
3. whether the civil action (or other procedure) was the only option provided by the national law;
4. whether the victims filed a complaint but no criminal proceeding ever started
5. whether the victims were denied the status of party to the criminal proceeding
6. - other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings

Unknown.

**ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

1. media exposure of victims during the investigation or during the Trial
2. presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
3. level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
4. evidence of secondary and repeat victimisation, intimidation or retaliation
5. reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
6. whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
7. any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
8. any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

Media exposure was very significant during and after the proceeding.

After the decision, as according to the victims' perspective, an access to justice was denied; therefore, the social debate arose to a conflicting level.

However, as already pointed out, no evidence has been ascertained of direct damages to victims, in terms of deaths or harms to health or even other forms of physical injury.

Citizens concerns and fear are instead don't seem baseless, especially nowadays.

Recent epidemiology findings on the incidence of the increase in cancer cases in the area contaminated are now available.

The evidence of environmental pollution has been, also, detected by a report of ISS (National Health Institute) dated 30 January 2014, which was filed in criminal proceedings by the Ministry of environment. This investigation led to the conclusion that there are *objective evidences* to configure a *significant risk to health of the population* exposed to toxic wastes. Anyway the reports has not demonstrated a correlation between pollution and the increase of cancers pathologies.

Moreover it has been done two other health surveys conducted by the Regional Health Institute of Abruzzo. The first survey has analyzed the prevalence of cancer in the entire region during the period 2006-2011. In that period the average statistics of hospital admissions for cancer diagnosis, was observed in four area including the municipality of Bussi sul Tirino.

A second survey, conducted by the R.H.I. has concerned more specifically the area of the Tirino, for the period 2004- 2014. The conclusions reached by this investigation have failed to demonstrate that the residents of the municipality of Bussi sul Tirino' exposure to environmental pollution has led to an increase of malignant tumors, although it does not rule out the increased incidence of the verification risk in the years to come.

Moreover, the investigation about the extent of the contamination due to the corporation activity has been committed to a parliamentary committee.

In 2014 it has been established a "Parliamentary Commission of Inquiry on illegal activities and environmental crimes related to the cycle of wasting". In the period 2014-2016 the Commission conducted several analyzes and initiatives including: parliamentary hearings of the delegates of environmental associations, local institutions and members of the I.S.S..

It has also been established a Commissioner for the management of economic, social and environmental crisis occurred in all the basin of the river Aterno-Pescara.

In December 2015, a call for tender for the drainage of the polluted areas was published. The procurement procedures are still ongoing.

<b>CASE</b>	<b>ETERNIT - CASALE MONFERRATO</b>
<b>COUNTRY</b>  Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)	ITALY The defendants are foreigners: Stephan Ernest Schmidheiny e Louis De Cartier De Marchienne
<b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)	Environmental
<b>SUMMARY OF THE CASE</b>  (General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)	Eternit is the trade name of fibre-cement, a slow-setting and highly resistant mixture of cement and concrete. It was patented in 1901 and largely used for the preparation of tiles, sheets for building construction and water pipelines. As early as in the 60's, various studies demonstrated that the asbestos dust could cause "asbestosis", as well as a serious form of cancer, named pleural mesothelioma. In Italy, the commercialization of Eternit lasted until 1992. Eternit was produced in Cavagnolo, Casale Monferrato, Bagnoli and Rubiera facilities between 1973 and 1986 by the Eternit Italia S.p.a. company, whose main shareholder was Eternit Swiss Group. Actually, the facilities opened at the beginning of the century, in 1907; however, for study purposes (since the criminal trial didn't regard the whole period of activity), we shall focus only on the "Swiss" period. In the following decades, thousands of people contracted asbestos related diseases, not just among the workers, but also among private citizens, as a result of the wide spread of the material in the cities and in the building of infrastructures field.

<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/private held companies)</li> <li>- nature of business (manufacturing, sale, distribution, etc..)</li> <li>- country of legal head office</li> </ul>	<p>Multinational entity.</p> <p>Structure: Eternit s.p.a. had its registered head office in Genova and held the subsidiary companies Eternit Casale Monferrato s.p.a., Industria Eternit Napoli s.p.a., Icar s.p.a. and Industria Eternit Reggio Emilia s.p.a., which controlled the Cavagnolo, Casale Monferrato, Bagnoli e Rubiera facilities.</p> <p>The majority partner of Eternit s.p.a. has been, from 1973 till 1986, the Eternit Swiss Group. In 1986, all the aforementioned companies went bankrupt.</p>
<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	<p>On 22 July 2009, The Preliminary Hearing Judge, Cristina Palmesino, disposed the committal for trial of Stephan Ernest Schmidheiny e Louis De Cartier De Marchienne, because of their role as heads of management for the Eternit italian facilities. (<b>all. 1</b>, Summon to appear before the court, “decreto che dispone il giudizio”).</p> <p>The charges consisted in:</p> <p>a) <i>“willful removal or omission of health and safety measures against work related accidents”</i> (Rimozione od omissione dolosa di cautele, art. 437 It. Crim. Co.) <i>“having failed to implement systems, instruments and signals aimed at preventing occupational illness and, especially, asbestos related diseases”, aggravated by the causation of an illness to the Eternit facilities workers.</i></p> <p>b) <i>wilful disaster (art. 434 co. 2 It. Crim. Co.), “for having committed actions aimed at causing a disaster, resulting in a danger for public safety; specifically, for having failed to implement the necessary technical measures in the facilities (...) in order to contain the exposure to asbestos, for having failed to take care of the supply and actual use of adequate instruments for personal protection, for having failed in establishing an adequate health surveillance (...), for having failed in gathering informations and informing workers on the risks of asbestos exposure (...) in private and public areas all around the aforementioned facilities, for having continued to use asbestos materials for paving of roads and courtyards (...) causing an uncontrolled, continuous and still persistent exposure (...), for not having organized the cleaning of working clothes”.</i></p> <p>It should be noted that all the victims’ diseases are asbestos related (lung cancer, pleural mesothelioma etc.).</p> <p>It should also be noted, for a proper comprehension of the case, that the Public Prosecutor considered the crime of the second charge as still being perpetrated in 2008. Indeed, the danger for the public safety as intended by art. 434 It. Crim. Co. would have been permanent, because of the persistent presence of asbestos in constructions and houses and all around the area.</p>

<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>The identified victims for the first charge were specifically: as for the Eternit Cavagnolo facility, 110 deceased individuals and 46 ill individuals (still living in 2009); as for the Eternit Casale facility, 1379 deceased individuals and 412 ill individuals (still living in 2009); 4 ill individuals among Eternit Casale suppliers; as for the Rubiera facility, 45 deceased individuals and 7 ill individuals (still living in 2009); as for the Bagnoli facility, 394 deceased individuals and 190 ill individuals (still living in 2009).</p> <p>The identified victims for the second charge, deceased or ill, were 2869, among workers and non-workers in the aforementioned Eternit facilities, listed also in the first charge.</p> <p>Specifically, the victims were: 110 deceased and 46 ill and living (in 2009) individuals as for Eternit Cavagnolo; 1378 deceased and 412 ill and living (in 2009) individuals as for Eternit Casale, 16 deceased individuals among Eternit Casale external suppliers, 4 deceased individuals among Eternit Casale Monferrato suppliers, 45 deceased and 7 ill living (in 2009) individuals as for Eternit Rubiera, 394 deceased and 190 ill and living (in 2009) individuals as for Eternit Bagnoli, 1 deceased person as a result of non-occupational exposure attributable to Cavagnolo Eternit facility, 252 deceased individuals as a result of non-occupational exposure attributable to Casale Monferrato Eternit facility, 2 ill and living individuals (in 2009) as a result of non-occupational exposure attributable to Casale Monferrato Eternit facility, 1 ill and living person (in 2009) as a result of non-occupational exposure attributable to Rubiera Eternit facility, 4 Eternit Casale workers' relatives, 2 Eternit Bagnoli workers' relatives.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>The "Eternit" criminal trial ended with the Court of Cassation ruling on February 2015.</p> <p>After the decision, the Turin Public Prosecutor filed an indictment against Schmidheiny for murder (criminal trial no 14263/13 R.G.N.R.) because "in his role of actual responsible for company management (...) he caused the deaths of 258 individuals among workers at the aforementioned facilities, their relatives and citizens living in the area surrounding these facilities". This new trial is named "Eternit-bis".</p> <p>On 24 July 2015, the Preliminary Hearing Judge of Turin Court raised an issue of constitutional legitimacy for art. 649 It. Co. Crim. Proc.. (<b>all. 2</b>), which lays down the "ne bis in idem" principle. According to this principle, the same person cannot be tried two times for the same offence. A similar rule is provided by art. 4 Protocol 7 ECHR. In the Judge of Turin's opinion, the case-law of Italian Courts provides a strictly formal interpretation of this principle, which intends the "same offence" as same type of crime, while the ECHR sentences would consider the "same fact" as a same event, without considering the legal classification. Should the latter interpretation be applied, Schmidheiny would have been already tried for the "same facts", at least for those victims (approximately thirty) who already were parties in the first trial. According to the Judge of Turin, art. 649 It. Co. Crim. Proc. would violate art. 117 of the Constitution, in conjunction with art. 4 Protocol 7 ECHR. The Constitutional Court has not yet ruled and the decision is expected for May 2016.</p>



<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>During the preliminary hearing, 928 parties already filed a civil suit in the criminal proceeding. Among them, there were also Public entities, such as provinces and municipalities. The parties asking for compensation and not excluded by the proceeding were in summary: a) Public Entities belonging to “asbestos risk area”, b) environmental and Public Health organizations or unions, c) ill former Eternit workers, d) ill citizens, e) Eternit deceased workers’ relatives, f) deceased citizens’ relatives e) citizens worried to contract a disease.</p> <p>As for the individuals who filed a civil action in the criminal proceeding, apart from the diseased, the Eternit workers’ relatives and the citizens who died because of mesothelioma or some other asbestos related disease, there are also some parties who ask for compensation of a non-material damage; these people, such as Miss Pierluisa Balanzino (<b>all. 3</b>), fear they could contract a lung tumour because they are (or were) Eternit workers or Casale citizens.</p> <p>The parties who filed a civil action in the proceeding participated at it, by writing deeds (act of appearance before the Court, closing arguments) and by participating at the activity of evidence gathering during the hearings of the trial. Some parties appointed a private expert consultant to draft a technical report.</p>
<p><b>VICTIMS’ REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>The parties asked compensation for all the suffered damages, both material and non material.</p>

**DECISION/OUTCOME OF CRIMINAL PROCEEDING**

(To be filled in only if a decision is available)

Please, specify (if known):

- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)
- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)
- sanctions imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system
- decision on victims' requests (compensation for material or non-material damages, reimbursement of expenses, etc.)

**First degree sentence:** The Court of Turin sentenced the defendants to sixteen years imprisonment for their crimes (**all. 4**). Specifically, since the second paragraph of art. 437 Crim. Co. was considered as an autonomous offence, the tempus commissi delicti would start from the detrimental event for every person. Hence, only the crimes committed before 1999 would be lapsed by statute of limitation. The art, 434 Crim. Co., on the other hand, would be a permanent crime, perpetrated till 2008. The sentence draws a distinction between the Bagnoli and Rubiera facilities and the Casale and Cavagnolo ones. As for the first two facilities, since the causes of environmental contamination consisted essentially in the productive activity, fifteen years would have passed since the strong and serious danger for public safety and health the crime ended; therefore, the crimes would be lapsed by statute of limitation. In Casale e Cavagnolo, instead, the local practice of using the production waste for building streets and houses would ensure a persistent asbestos powder exposition for all the population. Therefore, the crime should be considered as still perpetrated and not lapsed by statute of limitation.

The defendants were also sentenced to pay compensation for damages (which should have been liquidated by a civil law Court) to many private parties, more than 2000. Some of them also received a sum between 30.000 and 40.000 Euros as a provisionally award.

**Appeal sentence:** on 2 September 2013 the defendants were acquitted by the Turin Court of Appeal for not having committed the crimes, with regard to the period in which they weren't in charge of Italian Eternit facilities (from 1952 to 1966 for Louis de Cartier de Marchienne; from 1952 to 1974 for Stephan Schmidheiny). The sole Louis de Cartier de Marchienne was also acquitted for the crimes related to the Rubiera Eternit facility for not having committed them. Due to his death during the trial, the sentence declared then the impossibility to proceed against Louis de Cartier de Marchienne for the period, starting in 1966, in which he was Eternit CEO. As for the different periods (starting from 1974) in which Schmidheiny actually managed the Italian Eternit facilities, the sentence declared the impossibility to proceed for the charge under a) (art. 437, 1<sup>st</sup> ans 2<sup>nd</sup> par. Crim. Co.) because the crime was lapsed by statute of limitation. With regard to the charge under b) (art. 434 1<sup>st</sup> ans 2<sup>nd</sup> par. Crim. Co), the defendant was sentenced to an 18-years imprisonment, since he was considered responsible also for Rubiera and Napoli Bagnoli facilities (the previous sentence had declared this crimes to be lapsed by statute of limitation).

Unlike the first degree judges' conclusions, the disaster would have occurred not only within the facility, but also outside of it. While the First degree Judges had considered only those who had a non-occupational exposure to asbestos as victims of the environmental disaster, the workers should instead be considered victims of both the crimes (art. 437 2<sup>nd</sup> par Crim. Co., expired, and environmental disaster), as previously claimed by the Public Prosecutor.

The remaining defendant, jointly with the civilly liable companies which were part of the Eternit Group, was sentenced to pay compensation for tens of millions of Euros to local governments, unions, private voluntary organizations and individuals. The latter resulted to be fewer than those awarded by the first degree sentence (more than 2000), even if the appeal sentence accepted many requests of compensation which had been rejected by the first degree sentence. The difference rests upon a settlement signed by some workers after the Eternit bankruptcy in 1986, which, in the opinion of the Court of Appeal, excluded them from asking compensation in the proceeding.

**Court of Cassation judgement.** The First Division of the Court of Cassation, in the judgement n. 7941, delivered on 23 february 2015, established that the charge of disaster ceased to be perpetrated when the spread of asbestos dust and production waste – caused by the facilities managed by the defendant – ended; thus, *tempus commissi delicti* was considered to be June 1986, when Eternit bankruptcy was declared. The limitation period for the crime of art. 434 Crim. Co. , which is 15 years, started therefore in 1986 and so it expired before the first degree sentence, in 2012. Under Italian Criminal Procedural Law, this prevents plaintiffs from asking the compensation of damages awarded by the previous judgements before the Civil Court Judge, since the conviction judgement must occur before the expiring date.

**EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)**

(OR ATTEMPTS TO FIND AN AGREEMENT)

Please, also specify (if known):

- type of agreement
- content of the agreement
- whether the agreement implies the withdrawal of victims' rights to access to justice

**1986 Settlement.** When Eternit went bankrupt, some workers reached a settlement with the company, which did not explicitly include the occupational diseases resulting from Eternit activity. Nevertheless, the Turin Court of Appeal held that this settlement precluded any chance to ask for compensation, since it formally stated that the workers "no longer had any claim" against the company.

**Schmidheiny's "indemnification" proposal to workers.** On 9 December 2008, the defendant submitted a so called (in order to avoid any admission of liability) proposal of "indemnification", with a maximum limit of 60.000 Euro per capita, reduced according to the period of employment and the type of disease. The 100% of the sum was granted only to those who worked exclusively during the Eternit Swiss Group period, between 1973 and 1986, and contracted a mesothelioma.

The majority of the victims accepted the proposal.

The proposal is actually still valid after the Court of Cassation ruling in the first Eternit trial, the reason for this being the intention to prevent civil actions in the "Eternit-bis" proceeding.

**Schmidheiny's "indemnification" proposal to Casale Monferrato citizens.** A year after the beginning of the trial, Schmidheiny offered 30.000 Euro to every Casale citizen (deceased or ill) who was living in Casale during the aforementioned Swiss group period and contracted a disease since 1 January 1988 and at least fifteen years after the beginning of his residence in Casale. The proposal was reformulated on 11 July 2015 and, thus, is still valid after the Court of Cassation ruling in the first Eternit trial, the reason for this being the intention to prevent the civil actions in the Eternit bis proceeding.

**Schmidheiny's "indemnification" proposals to Municipalities.** In 2011, Schmidheiny offered to Casale Monferrato Municipality 60 million Euros. The Municipality declined the offer in 2012, a few months before the conviction judgement of Torino Court of First Instance, in which the Municipality was awarded compensation for a similar sum (on a provisional basis). The refusal of the offer was also motivated by the official assurance from the Italian Government of a direct economic intervention. As a matter of fact, the Italian Government, after the Court of Cassation ruling, provided to Casale Monferrato Municipality an amount of money almost equivalent to Schmidheiny's offer. Cavagnolo Municipality, on the other hand, accepted in 2011 a Schmidheiny's proposal of two million Euros.

**EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES**

Please, specify (if known):

- type of Victims Association or other service supporting victim's needs and rights
- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)
- whether the Victims Association itself reported the crimes to criminal Authorities
- whether the Victims Association itself has/had the status of party to the criminal proceeding

On 22 December 2004, the Italian Asbestos victims' relatives association (AFEVA) filed a criminal complaint to Turin Public Prosecutor, representing that, among the 40.000 people living in Casale, 40/50 cases of pleural mesothelioma were registered every year; these cases were considered to be caused by the industrial activity of Eternit facility (**all. 9**). The Association claimed that, in the previous ten years, 2969 people had died or contracted a diseases. The Association filed its civil action during the preliminary hearing phase. It must be noted that the Association acted as any other plaintiff, asking compensation for the directly suffered damages. Therefore, it can't be considered as an "ente esponenziale" (under the Italian law, an organization which embodies the legal interest offended by the crime), whose procedural rights are very different from any other party, but exclusively as a plaintiff. The case law acknowledges that associations might be damaged by a crime as well as individuals, if they were created in order to protect legal interests offended by the crime. The worker's health and safety is a legal interest which has both an individual and a collective level; the holder of the latter may be an organization, as in the case of Asbestos Victims Relatives Association, whose statutory object is the protection of this legal interest and that acts in order to protect it (e.g. the case law mentioned in the act of appearance before the Court of the Association, **all. n. 10**)

**Role of the association.** The Association provides an assistance in victims' identification, establishing a direct contact with them, coordination, legal information and legal assistance through their own lawyers. In addition, the Association also asks for compensation in the proceeding. The Turin Court of First Instance (dott. Casalbore) endorsed this approach in its ruling of 1 march 2010, holding the Asbestos Victims' Relatives Association was damaged by the crime and rejecting the request of its exclusion from the trial filed by the defendants (**all. n. 11**, Casalbore's ruling). It is worth mentioning that, besides this organization (surely the most relevant one), there were other organizations asking compensation as well, with a partly similar role of assisting and informing victims, such as Italian Unions or Medicina Democratica.

**VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS**

Please, specify (if known):

- whether the victims (or some of them) favoured a civil suit
- whether the victims made claims or requests to other Authorities (not criminal or not judicial)
- whether the civil action (or other procedure) was the only option provided by the national law;
- whether the victims filed a complaint but no criminal proceeding ever started
- whether the victims were denied the status of party to the criminal proceeding
- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings

A complete identification of all victims is only partially possible. Those who didn't file any complaint or denunciation, those who weren't indicated as victims by the associations, those who were not informed or led by the associations to ask for compensation have not been identified. Furthermore, the victims indicated in "Eternit bis" proceeding are almost completely different from those of the first trial, because it concerns deaths and diseases discovered after the beginning of the first trial. It may be argued therefore that not all the victims have been identified yet.

#### **ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

It might be argued that Eternit proceeding and victims received an overexposure in media. Despite being a geographically restricted case, it had a national impact from the beginning, because it's one of the biggest environmental disasters ever happened in Italy. Indeed, "to serve justice", in Eternit victims' view, means to serve justice in favor of Italy, as the tricolour flag, with a black " Eternit" writing over it, which was brought in Court during the hearings and hung to the balconies of Casale Monferrato, testifies.

It is worth mentioning that the Italian Government itself handled the case in various occasions, granting a compensation for some public entities, as seen above. Victims' demonstrations and behavior were pacific and non-violent and never exceeded the edge of legality, despite the serious conflict with the corporation.

The outcome of the trial clearly generated discontent and disbelief, because of the lapsing of the offence by statute of limitation in the first place. It was difficult to understand for the victims why the mere passing of time could make not punishable such a serious felony. Besides, media didn't reported the reasons of time-barring in a proper way. The trial wasn't too long, as wrongly reported; the charges were considered to have been already expired when prosecution took place, because they are not permanent, as alleged by Public Prosecution. This is, however, a very technical matter, as hardly comprehensible for the layman as all the conditions of the charges and the necessary trial assessments.

Finally, even those who accepted the settlement proposal suffered a reduction of their initial claim for damages.

CASE	TRI HEART VALVES
<p><b>COUNTRY</b></p> <p>Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>Two criminal proceedings in Italy: one in Turin, the other in Padua. All the victims were Italian. Three Corporations involved: one Brazilian, one German, one Italian. Unknown if in other countries the use of Tri valves caused victims</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Medical devices</p>
<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies)</li> <li>- nature of business (manufacturing, sale, distribution, etc..)</li> <li>- country of legal head office</li> </ul>	<p><b>Tri-technologies Ltda</b> Brazilian based company privately held medium sized Manufacturing (electronic and technical devices)</p> <p><b>Tüv Product service Gmbh</b> German Company Multinational brand Large company Testing and certification provider</p> <p><b>For Hospital S.r.l.</b> Italian Company Privately held Small company Medical devices broker</p>



<p><b>SUMMARY OF THE CASE</b></p> <p>(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)</p>	<p>Between 2000 and 2002 the units of cardiothoracic surgery based in the Hospitals of Turin and Padua started using new artificial cardiac valves produced by Tri-technologies Ltda. These valves have been used for more than 100 replacements. After the break of some valves, which caused the death of the patients, it was found that the quality of the materials was poorer than expected and inferior to relevant legal standards. Thus, it was asked to a significant number of transplanted patients to replace their Tri valves with different ones.</p> <p>The proceedings were related to approx. 10 deaths and 30 injures (cases of second replacement). Public prosecutors affirmed that the broker had corrupted the public officers who decided to acquire Tri valves. In the Prosecutor's view, the Tüv officers who certified the valves had to be considered responsible for the harms caused by the products.</p>
<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	<p>A For Hospital representative was charged with corruption and collusive tendering. Tüv and Tri representatives were charged with manslaughter and injures.</p> <p>The only corporation directly involved was For Hospital (the broker who sold the valves to the hospitals), charged with corruption: at that time, in Italy there were just few crimes able to trigger a corporation liability.</p> <p>Tri corporation had no role in the proceedings, since it had ceased its activity after the scandal. Tüv was asked for civil damages.</p> <p>The count of indictment identified 10 victims died (their relatives suffered moral and material damages) and approximately 30 victims suffered injuries related to the necessity to be submitted to a second replacement.</p>
<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>There were approximately 40 victims involved in the criminal proceedings: relatives of the ten dead patients; 30 patients who suffered injures since they had to replace Tri valves. Both categories suffered even economic losses.</p> <p>Obviously, all the other patients who were still alive and decided not to have a second transplant can be considered victims, as well. But, those persons hadn't the chance to become parties of the proceeding since their harms were not directly related to the specific crimes under judgment.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Res judicata</p>

<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>Approximately 20 formal complaints were filed.</p> <p>Victims who had the status of party in the proceedings: family members of the dead patients and patients submitted to a second valve replacement.</p> <p>Other parties asking for damages: the two Hospitals, the two Regions, the University of Turin and Padua, an association for the right of medical patients.</p> <p>All the other patients who had been implanted Tri Valves weren't parties of the proceedings.</p> <p>The parties had a good chance to participate in the proceedings (submit evidence, call expert witnesses, file statements, et al.)</p>
<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>All the parties asked for material and moral damages</p>

<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>- <u>sanctions</u> imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>- <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ul>	<p>Both the proceedings were brought to the Supreme Court.</p> <p>Before the Supreme Court decisions, many cases reached <b>statute-barred periods</b>. Thus, for these cases there was no decision on victims' request.</p> <p>For all the cases, representatives of Tüv were acquitted and the corporation hadn't to pay any damages.</p> <p>The broker and his corporation (For Hospital) were convicted in Turin for corruption but it resulted not proven that they knew the valves were flawed. In Padua, even corruption reached statute-barred provisions.</p> <p>The Tri officers were convicted in both the proceedings but just for few cases (some were statute-barred and for some cases of injures it was not possible to prove the necessity of a second replacement). So, just victims submitted to a second valve replacement obtained compensation and reimbursement of expenses.</p> <p>It is unknown if the damages have been paid, indeed.</p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>-whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>Unknown</p>

<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>One Victims Association results involved in the case: <i>Associazione cittadinanza attiva Tribunale diritti del Malato</i> (<a href="http://www.cittadinanzattiva.it">www.cittadinanzattiva.it</a>);</p> <p>It is unknown which kind of support gave to the victims.</p> <p>The association had the status of party in the proceedings.</p>
<p><b>VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- whether the victims (or some of them) favoured a civil suit</li> <li>- whether the victims made claims or requests to other Authorities (not criminal or not judicial)</li> <li>- whether the civil action (or other procedure) was the only option provided by the national law;</li> <li>- whether the victims filed a complaint but no criminal proceeding ever started</li> <li>- whether the victims were denied the status of party to the criminal proceeding</li> <li>- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings</li> </ul>	<p>Since the defendants were charged just with manslaughter and injures (related to second replacements) all the patients alive who hadn't submitted to a second operation weren't allowed to be parties of the proceedings.</p> <p>Some of them started a civil suit (only other option to obtain civil damages)</p>

**ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

Both the criminal proceedings had a good media coverage.

Media gave to victims the opportunity to tell their experiences and to declare whether their claims had been rejected (or declared not admissible).

Since the main corporations involved were not Italian, the level of conflict remained low. Moreover, Tri technologies ceased its activity after the scandal.

No evidence of secondary victimisation.

Two main reasons why some victims' requests have been rejected:

- 1) effect of statute-barred provisions;
- 2) type of crimes alleged, which are focused on the victims who directly suffered relevant injures (or who died).

Some of the victims who didn't get any compensation are still demanding for justice, even through media.

CASE	ILVA
<p><b>COUNTRY</b></p> <p>Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>ITALY</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Environmental</p>
<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies)</li> <li>- nature of business (manufacturing, sale, distribution, etc..)</li> <li>- country of legal head office</li> </ul>	<p>Three companies are involved in the present case, namely:</p> <ul style="list-style-type: none"> <li>➤ <b>Ilva S.p.A.</b>, which is the holding of a group of companies operating in the iron and steel industry with its main office in Taranto;</li> <li>➤ <b>Riva F.I.R.E. S.p.A.</b>, (parent company located in Italy);</li> <li>➤ <b>Riva Forni Elettrici S.p.A.</b>, (parent company located in Italy).</li> </ul>

## **SUMMARY OF THE CASE**

(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)

### **Introduction**

“Ilva” is among the most notorious cases of environmental disaster in Italy. Its importance comes from the contrasts it created between corporations, workers, citizens and public institutions as well as from the wide impact industrial activities allegedly had on the environment. The charges relate to the industrial activity which has been carried out since 1995 in a plant located in Taranto and to the effects such activity had on both the workers’ and the population’s health. More precisely, the environmental disaster would have been produced by the dissemination of highly toxic substances in the air, in the water and in the soil, posing a threat to human beings, animal life and the environment.

### **Type of Damages**

Further to the filing of several criminal complaints on the part of citizens and environmental associations, the Prosecution Service of Taranto appointed experts in Chemistry and Epidemiology to draft two separate reports on the impact of the plant activity on the environment. The chemical report showed a significant dispersion in the air of substances damaging both human health and the environment, as a consequence of the plant activity. Among these substances are powders, nitrogen dioxide, sulphur dioxide, hydrochloric acid, benzene, and dioxin. The latter, in particular, would have contaminated farmlands and made grazing impossible within a 20 km range from the plant, therefore seriously harming the farming activities in the area. The epidemiological report, which takes into consideration a seven years time span, highlighted 11.550 deaths due to cardiovascular and respiratory issues and 26.999 recoveries due to cardiac, respiratory and cerebrovascular issues. The report also finds that «continuing exposure to the toxic and polluting substances dispersed in the air as a consequence of the plant activity had caused and keeps causing a decline in the population’s health conditions (affecting different parts of the body), resulting in illness and death».

### **Potential Victims**

The above suggests that potential victims may be many more than those who joined the criminal proceedings filing civil claims and that damages to the environment cover the whole area surrounding the plant, threatening the health of the people living nearby it.

## ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT

Please, include a brief description of:

- the offences charged to the corporation(s) or its/their representatives
- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives

In the present case, 44 individuals and three corporations were indicted.

### Main Charges Raised Against the Individuals

The main charges served to the 44 individuals may be summarised as it follows:

1. **Taking part into a criminal organization** aimed at committing **crimes against public safety** (namely, those provided for by articles 434, 437 and 439 of the Italian criminal code) and **corruption offences**. In particular, the companies' managers were accused of having planned and realized, over time and thanks to a collusion with public officials, a strategy aimed at underplaying the serious environmental issues deriving from the plant, in order to keep carrying out the industrial activity without incurring the costs associated with a proper protection of public safety;
2. **Intentional disaster** – for having dispersed (or failed to prevent the dispersion of) significant amounts of toxic substances harmful to human, animal and vegetal life. In the Prosecution's reconstruction, this would have caused an extremely serious threat to public health and would have resulted in several deaths and diseases among the people living near the plant.
3. **Intentional failure to put in place adequate measures aimed at preventing accidents in the workplace** – and in particular, failing to manage the plant in such a way as to prevent the dispersion in the air of substances harmful to the workers' health;
4. **Intentional poisoning and land contamination**, as the dispersion of toxic substances would have caused the contamination of farmlands and, as a consequence, the poisoning (especially with dioxin) of thousands of cattle (about 2700) to be used for nutrition.

### Charges Raised Against the Corporations

Ilva S.p.A., Riva F.I.R.E. S.p.A. and Riva Forni Elettrici S.p.A., were also charged, under Legislative Decree 231/2001, for having failed to put in place adequate systems and controls aimed at preventing the commission of corruption, environmental and criminal organization offences and to have rather allegedly profited from the crimes committed by their officers

### Type of Harm to Victims

According to the count of indictment, harms to the victims mainly involve the life and health of the workers and of the people living near the plant, in addition to economic damages caused to the farmers.



<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>The count of indictment identifies about 900 victims.</p> <p>Among these are:</p> <ol style="list-style-type: none"> <li>a) Workers and people living near the plant who suffered damages to their health or life, and in particular: <ol style="list-style-type: none"> <li>a. Workers allegedly suffered health damages caused by long-term exposure to toxic substances;</li> <li>b. The population living near the plant allegedly suffered health damages caused by both the dispersion of toxic substances in the air and the consumption of dioxin poisoned cattle;</li> </ol> </li> <li>b) Farmers who suffered economic damages arising from the contamination of their land and the poisoning of cattle;</li> <li>c) Environmental associations in relation to damages caused to the environment.</li> </ol> <p>It is worth noting that the Prosecution service did not identify the single injuries or deaths allegedly deriving from the plant activity.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>First instance trial (the first hearing was held in May 2016).</p>
<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>On the basis of the trial files, victims would appear to have played a very important role within the criminal proceedings, both during the investigation phase and afterwards.</p> <p>The file, in fact, contains several complaints filed by citizens and associations (among which is PeaceLink), flagging the emission of anomalous smoke from the plant as well as by farmers who had to kill dioxin-poisoned cattle. Furthermore, the victims appear to have actively collaborated with the Prosecution service in the reconstruction of the relevant facts also through interviews since 2008.</p> <p>Finally, all 900 victims identified by the count of indictment filed civil claims within the criminal proceedings to recover damages. Some of them withdrew their claims before the start of the trial. The reasons underlying the decision to withdraw these claim remains unclear at this stage.</p>

<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>The victims who filed civil claims within the criminal proceedings requested the payment of health damages as well as of those arising from land contamination and cattle poisoning. They also requested the payment of damages arising from the fear to contract health diseases, which, in turn, would come from the awareness of having been exposed to toxic substances for a long time.</p>
<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>- <u>sanctions</u> imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>- <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ul>	<p>First instance trial is still pending. <b>No judgement is currently available.</b></p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>- whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>At this stage no information is available on this point.</p>

<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>A number of institutions and associations joined the criminal proceedings as civil parties. For the reader's ease of reference, they will be recalled here only by category. In particular, they include:</p> <ul style="list-style-type: none"> <li>➤ Public institutions (e.g. the Apulia Region);</li> <li>➤ Associations for the protection of the environment (e.g. <i>"Legambiente"</i>);</li> <li>➤ Victims' associations (e.g. <i>"Associazione Contramianto e altri rischi"</i>);</li> <li>➤ Associations for the protection of workers' right (Unions);</li> <li>➤ Citizens' organizations (e.g. <i>"Cittadinanza Attiva"</i>);</li> </ul> <p>Some of these associations and institutions (e.g. <i>"PeaceLink"</i>) significantly contributed to the start of the proceedings, by filing criminal complaints and providing the Prosecution Service with information and evidentiary elements.</p> <p>Many associations were ruled out because they lacked legal standing.</p>
<p><b>VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- whether the victims (or some of them) favoured a civil suit</li> <li>- whether the victims made claims or requests to other Authorities (not criminal or not judicial)</li> <li>- whether the civil action (or other procedure) was the only option provided by the national law;</li> <li>- whether the victims filed a complaint but no criminal proceeding ever started</li> <li>- whether the victims were denied the status of party to the criminal proceeding</li> <li>- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings</li> </ul>	<p>At this stage no information is available on this point.</p>

## ADDITIONAL INFORMATION ON VICTIMS' POSITION

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

In relation to victims' protection, **two additional aspects** are worth to be mentioned.

### 1) In the context of the criminal proceedings civil claimants will be able to recover damages only from individual defendants

This is the result of two separate sets of decisions taken within the criminal proceedings, which appear to significantly affect civil claimants' ability to fully recover damages. Namely:

- a. The Judge for the Preliminary Hearing ruled out the possibility to file claims for damages against corporate entities indicted under Legislative Decree 231/2001; and
- b. None of the corporations involved could join the proceedings as party civilly liable for the payment of damages. With respect to Ilva S.p.A., this was due to the fact that on 21 January 2015 the company was admitted to an insolvency procedure (*amministrazione straordinaria*) and, as a consequence, according to Italian insolvency law, claims for damages must be filed within such procedure. With respect to Riva F.I.R.E. S.p.A. and Riva Forni Elettrici S.p.A., they were both excluded from the criminal proceedings as party civilly liable on procedural grounds.

### 2) Industrial activity is still ongoing

In 2012 (see, in particular, d. l. no. 207 of 3 December 2012), despite the persisting dangerousness of the plant, freezing orders previously issued by the judicial Authority were revoked by the Italian Government, thereby allowing the restart of the industrial activity and the sale of a number of products, which had also been previously subject to the freezing. However, the restart of the plant activity was made subject to the adoption of measures apt at protecting the environment. The decree was subsequently challenged, but the Italian Constitutional Court upheld it (see Judgement no. 85/2013). The relevant opinion highlights that the Court deems that the decree correctly balanced two different constitutional rights: the right to health, on the one hand, and the right to work, on the other hand, taking in due consideration the need to protect occupation.

The press recently reported that the case was brought before the European Court of Human Rights. In particular, between 2013 and 2015 about 180 people filed complaints, contending that they suffered health damages as a consequence of the plant's activity and that the Italian State "failed to take all necessary measures to protect the environment and their health". They also criticize the Government's decision to authorize the restart of the plant's activity.

Further to the filing of the complaints, the European Court of Human Rights formally accused the Italian State of having failed to protect the life and health of the people living in Taranto and in the plants' surroundings from the harmful substances dispersed by Ilva S.p.A. (see communication dated 27 April 2016, relating to the lawsuit *Francesco CORDELLA et autres contre l'Italie* and *Lina AMBROGI MELLE et autres contre l'Italie* – attached).

<b>CASE</b>	<b>IVREA – OLIVETTI</b>
<b>COUNTRY</b>  Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)	ITALY
<b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)	ENVIRONMENTAL
<b>CORPORATION(S) INVOLVED</b>  Please, specify (if known): - type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies) - nature of business (manufacturing, sale, distribution, etc..) - country of legal head office	Ing. C. Olivetti Spa (Olivetti) – Telecom Italia s.p.a. (Telecom) In 2003 Telecom Italia s.p.a. incorporated Olivetti s.p.a., an historical, leading corporation in the Information Technology sector.  Large company (in 2000 Ing. C. Olivetti Spa employed almost 5000 workers. Today, after a crisis and new industrial strategies, it employs around 300 worker)  Telecom is a multinational entity  Italy

## SUMMARY OF THE CASE

(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)

The case is one of the several Italian criminal proceedings concerning harms to human health caused by the inhaling of asbestos fibre dusts generated during productive activities.

Accusation, as in almost all these types of cases, is related to a negligent behaviour of corporations, having failed to implement systems, measures, instruments and signals aimed at preventing illness and, especially, asbestos related diseases.

In the Ivrea Olivetti case, in particular, the inhaling of asbestos fibre dusts is supposed to have caused severe injuries and the death of several workers who, having worked without any protective disposals and without being informed about the risks, have been exposed to the substance for a long period of time.

The period under scrutiny is very long, from 1956 to 1999. Of course, in some cases the offences are time-barred.

The Olivetti plants involved are three: Ivrea, Agliè and Scarmagno.

The deaths under scrutiny occurred in the period between 2003 and 2013, but experts underline that other diseases and deaths are expected to arise in the next five years.

The investigation is particularly complicate, as it aims to rebuild fifty years of industrial activities; the findings were collected also through-out the historic archive of Olivetti and the potential victims' testimonies. The investigation file amounts to more than 36.000 pages of documents.

The first investigation was prompted in 2005, after the death of one worker for pleural mesothelioma, a typical asbestos related disease. That case led to a first proceeding, closed with a judgment against one of the Olivetti CEOs, who died in the meantime.

After that first case, a new investigation started on a large scale and flowed in the current criminal proceedings.

Potential victims are more than the ones already identified; they are hundreds in a long-term perspective, as, following the expert's evaluation, all workers exposed for a long period to asbestos are at-risk; in fact, the etiopathogenesis consists in very long periods, which often are even latent.

Other investigations have already been opened, taking into account other victims. Further investigations are expected to be opened. The Public Prosecutor Office declared to press that the other lines of investigation will be developed after the conclusion of the current pending Trial.

**ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT**

Please, include a brief description of:

- the offences charged to the corporation(s) or its/their representatives
- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives

Seventeen corporate representatives - who were in charge of different positions over time - have been indicted for having caused very severe injuries to two workers and the death of twelve workers. Charges included involuntary injuries and manslaughter committed by omissions consisting in not having put in place adequate measures aimed at protecting health and safety in the workplace.

All deaths and harms charged to defendants involve typical asbestos related diseases (like pleural mesothelioma, lung cancer, peritoneal mesothelioma)

Violations may be ascribed to the following actions and omissions:

- for having failed in gathering information and informing workers on the risks of asbestos exposure
- for not having implemented an intake system
- for having failed to supply adequate instruments for personal protection and in particular respiratory protective devices
- for not having implemented suitable procedures and organizational measures in order to avoid or to reduce the levels of asbestos dusts in the productive areas;
- for not having banned the access, nor cleaned up, nor isolated the contaminated sites

Telecom is involved as party responsible for civil damages.

No corporate criminal liability is under scrutiny.

<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>Fourteen individual victims have been identified by the count of indictment. Among these: two seriously injured; twelve died due to asbestos related diseases.</p> <p>Six individual victims are involved with the status of party into the criminal proceeding ( one of them seriously injured; the others are family member of workers already died).</p> <p>Many entities and associations representing collective interest are also involved in the criminal proceeding with the status of party:</p> <ol style="list-style-type: none"> <li>1) Municipality of Ivrea;</li> <li>2) Municipality of Torino,</li> <li>3) INAIL</li> <li>4) the Italian Asbestos victims’ relatives association (Afeva)</li> <li>5) la FIOM CGIL Torino (labour union)</li> <li>6) la Federazione Metalmeccanici Uniti Italia (labour union)</li> <li>7) la Fim Cisl Torino (labour union)</li> <li>9) A municipalities’ union ( Mercenasco, Perosa Canavese, Romano Canavese, San Martino Canavese, Scarmagno, Strambini e Vialfrè, Comunità Collinare Piccolo Anfiteatro Morenico Canevesano),</li> <li>10) Associazione nazionale mutilati e invalidi sul lavoro.</li> </ol> <p>In total, nine entities and six individuals are participating as party into the criminal proceeding. Other ten victims identified by the count of indictment (nine among family members of dead and one victim injured) have not the status of party within the criminal proceeding, as they entered, in the meantime, in an extrajudicial agreement with Telecom Italia.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Trial on going.</p>



<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>Six individual victims are involved with the status of party in the criminal proceeding. Trial is still ongoing.</p> <p>The two victims of injury offences actively participated in the proceedings, giving their testimonies, answering to all the questions, and providing evidences.</p> <p>At this stage, some family members, having the status of party, have been heard as testimonies. Some representatives of victims associations and labour unions (AFeVA e Fiom CGIL Torino) have also been already heard as testimonies or as persons of interest.</p>
<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>Compensation for damages</p>

<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>- <u>sanctions</u> imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>- <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ul>	<p>Trial is ongoing. Therefore, at this stage, the only decision available is the order of indictment (dated 5 October 2015).</p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>- whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>An extrajudicial agreement between Telecom Italia and some victims was entered into before the trial opening or during the preliminary hearing. More precisely, one victim of injury offences and three families of people already died entered into an agreement which entailed the payment of a compensation in exchange for the withdrawal of victims 'participation into the criminal proceedings. The negotiation with other victims is still ongoing. The content of the agreement is unknown. The press reports that the total compensation allocated until now is around 2 million Euros, 150.000 Euros for each individual victim.</p>

**EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES**

Please, specify (if known):

- type of Victims Association or other service supporting victim's needs and rights
- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)
- whether the Victims Association itself reported the crimes to criminal Authorities
- whether the Victims Association itself has/had the status of party to the criminal proceeding

Two victims associations (AFeVA and l'ANMIL) have themselves the status of party to the criminal proceeding. These associations supported victims before and during the trial.

Their representatives have been heard as persons of interest.

Many other entities, representing workers rights and collective interests, are participating at the trial. More precisely, three labour unions and many municipalities.

**VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS**

Please, specify (if known):

- whether the victims (or some of them) favoured a civil suit
- whether the victims made claims or requests to other Authorities (not criminal or not judicial)
- whether the civil action (or other procedure) was the only option provided by the national law;
- whether the victims filed a complaint but no criminal proceeding ever started
- whether the victims were denied the status of party to the criminal proceeding
- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings

It's quite sure that the fourteen victims identified within the current criminal proceedings are only a limited part of the potential victims.

Experts and Public Prosecutor Office underlined that many other deaths are expected for the period between 2017 and 2020.

A representative of the ASL (Public sanitary office) during her testimony have declared that in the last 15 years they have identified 85 victims directly injured or died.

Just a small part of them is participating into the current criminal proceedings.

The Prosecutor Office opened other lines of investigation, two of them already developed and in an advance phase, known as Olivetti bis and Olivetti ter cases.

Among identified victims, some could not participate into the criminal proceeding due to the fact that the offences were time-barred.

Other victims, even if they were suffering of asbestos related diseases, died for other reasons.

Others, as pointed out, withdrew from the proceeding having entered into an extrajudicial agreement for compensation of damages.

Asbestos - with an high level of concentration - is still present in many places and building belonging to the industrial area, according to the supplementary investigation ordered in the last two years (the results of which have already been filed),

There is evidence of one civil proceeding, started in 2013 and closed in January 2015. Telecom has been convicted to pay a compensation of 1 million and 200.000 Euros to family members of a worker who died in 2007 for pleural mesothelioma. This worker is one of the initial victims identified. In this case, the civil action was an alternative option to the participation as plaintiff into the criminal proceedings.

There is no evidence of other civil actions promoted by victims, nor of claims or request made to other Authorities.

#### **ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

Local and National media paid a lot of attention to this case, as it involves a leading Italian corporation and a large number of potential victims. In the past, thousands of workers were employed in the industrial site. Almost all the families living in Ivrea have a member who worked or works in Olivetti.

On web the records and transcripts of all the trial hearings are available to the public.

Despite this media exposure, at this stage of trial, there is no evidence of repeat victimizations, nor intimidation or retaliation. The decision of Telecom to enter into an extrajudicial agreement for the compensation of damages has reduced the conflict, and the amount of compensation offered has been considered as adequate by many victims.

It's nonetheless important to note that at the beginning of 2015 Telecom was condemned by the Civil Court of Ivrea to pay, as compensation of damages, a relevant amount of money to a single family. This previous circumstance may have influenced the corporation's attitude, suggesting the opportunity to offer a compensation to the other victims in exchange of their withdrawal from the criminal proceeding.

Telecom, in fact, has the status of civil responsible in the current criminal proceeding.

Defensive strategies do not seem, at this stage, too aggressive on both side, except for the debate among the experts (during their examination) regarding the evidence of the causation link between the exposure to asbestos and the diseases/deaths and the scientific knowledge available at the time of the relevant facts. The conflict on these topics is common in all the proceedings concerning asbestos effects on human health.

Public Prosecutor Office stated its intention to proceed as rapidly as possible, so that the current proceeding will be close pretty soon.

It cannot be excluded that the announced opening of two new criminal proceedings (Olivetti bis and Olivetti ter) will increase the level of conflict, because, according to press reports, despite the type of offences charged to corporate representatives is the same, a relevant number of new victims, injured or dead, will be involved

<b>CASE</b>	<b>PORTO MARGHERA</b>
<p><b>COUNTRY</b></p> <p>Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>ITALY</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Environmental</p>
<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies)</li> <li>- nature of business (manufacturing, sale, distribution, etc..)</li> <li>- country of legal head office</li> </ul>	<p>Two corporations were involved in the present case, namely Eni Chem and Montedison.</p> <p>In a first period, the Porto Marghera plant was owned and managed by Montecatini-Edison Group (Ausimont, Ausidet, Montepolimeri, Montedison, ecc.); in a second period, the plant was owned and managed by Eni Group (Enimont, Enichem, later Syndial, Polimeri Europa...)</p>

## SUMMARY OF THE CASE

(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)

Porto Marghera is the first significant criminal case concerning illicit corporate behaviours in managing a productive activity in Italy. In the previous past, criminal proceedings had concerned only episodic disasters caused by productive activities (as in the Seveso case).

Porto Marghera may also be considered a seminal case of historical pollution in Italy: after the Porto Marghera trial, many other similar cases were opened in the whole Country.

The investigation covered the industrial activity carried out at the Marghera petrochemical plant (in the Venice lagoon) over more than thirty years.

Under scrutiny were, in particular, the damages caused to human health (mainly cancer diseases) by toxic chemical substances (Cvm/Pvc) as well as the damages caused to the environment by productive activities around the chemical complex.

The investigation opened in 1994 after a complaint lodged by a worker, who had, on his own initiative, collected for ten years a dossier of data on workers' injuries and deaths.

Since the very beginning of the investigation, many environmental associations (Greenpiece, Legambiente) started an active campaign and took own researchers to check the real status of the environment pollution. Therefore, Porto Marghera became immediately an investigation concerning not only workers' but also residents' health and, in general, the entire Venice lagoon environmental safety. The investigation involved a number of directors, top managers and plant managers who follow in time since 1965. The trial involved 99 experts and it lasted several years (with more than 120 hearings held).

Potential victims were hundreds; when the trial started, some of the potential victims had already died, while others were seriously injured (some died during the trial). As an extensive area (the Venice lagoon) seemed to have been contaminated by a large environmental pollution process, all the residents, political institutions and local authorities had a significant role and took part in the criminal proceeding.

The trial started in 1998 and was closed in 2006, with a final judgment of the Supreme Court.

The criminal proceeding had immediately a lot of publicity in the local and national press. The media impact on the public opinion was enormous, as it involved one of the most important Italian corporations and the most important Italian chemical complex.

**ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT**

Please, include a brief description of:

- the offences charged to the corporation(s) or its/their representatives
- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives

Charges included, on the one hand, involuntary manslaughter, injury, and health disaster; on the other hand, environmental disaster as well as water poisoning and adulteration.

The **first set of charges** related to the effects the petrochemical industrial activity would have produced inside the plant and on the workers' health from 1969 to 2000. In the Prosecutor's reconstruction, albeit aware of scientific studies, which since 1975 reported risks arising from the exposure to vinyl chloride monomer ("CVM") and polyvinyl chloride ("PVC"), the defendants would have failed to:

- (i) Stop or suspend the plant activity;
- (ii) Put in place adequate measures to prevent workers from contracting extremely serious health diseases including cancer;
- (iii) Inform workers on health risks connected with the plant activity; and
- (iv) Intervene to globally redevelop the plant and the surrounding area and monitor the status of workers' health.

The **second set of charges** related to the effects produced on the environment by allegedly illegal protracted waste management practices. Allegations included both the creation of illegal dumps and the failure to subsequently:

- (i) Put in place adequate measures to prevent the deterioration of hygienical and health conditions of the plant and its surroundings;
- (ii) Inform the authorities; and
- (iii) Proceed with the cleanup of the relevant site, which was undertaken only starting from 1995.

The second set of allegations was based on the assumption that all the defendants had a legal duty to prevent any harm or threat to the environment arising from the activity of the petrochemical plant, eventually – for those who took the role in a second moment in time – including the legal duty to remove the consequences of previous illegal waste management.

Allegations were also based on the assumption that the defendants were all fully aware of the extremely high toxicity of the substances spread both inside and outside the plant and that they nevertheless took the risks arising from the petrochemical production and the relevant waste. In doing so, according to the Prosecutor, they also contributed to, respectively, start and aggravate the poisoning of groundwater underlying the Porto Marghera site allegedly destined also to agriculture and to other human activities as well as to contaminate the Venice lagoon. The contamination would have, then, resulted in the adulteration and poisoning of the water and the fauna, threatening public safety and health.



<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>In the count of indictment, the Public Prosecutor identified 546 victims, including, in some cases, family members of people who at the time had already died. Among these, 407 victims were identified at an early stage in the proceedings, while the others were identified only subsequently.</p> <p>More specifically, out of the 546 victims:</p> <ol style="list-style-type: none"> <li>i. 478 cases concerned victims of involuntary manslaughter and injury offences;</li> <li>ii. 157 cases related to deaths, while the others were cases where people had suffered serious injuries;</li> <li>iii. 22 cases related to victims who were only “indirectly affected by the defendants’ alleged illegal conducts.</li> </ol> <p>In addition, 46 of victims (not included in the Public Prosecutor’s list) participated into the criminal proceeding.</p> <p>Not all of the victims identified by the Public Prosecutor were legally considered as “directly” affected by the behaviours under scrutiny, as too much time had run and the <b>limitation period had already expired</b>. But the identification of the entire number of victims was essential for the Public Prosecutor to affirm the health disaster.</p> <p>Different types of harm were alleged. In his closing arguments, the Public Prosecutor referred to 311 diseases, of which 164 neoplasms.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Res Judicata in 2006.</p>

<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>The investigation started after a complaint lodged by one of the victims, supported by an association called <i>Medicina Democratica</i>.</p> <p>The majority of individual victims identified by the Public Prosecutor (530) entered into <b>extra-judicial agreements</b> with the corporations involved.</p> <p>Around 12 individual victims decided to take part into the criminal proceedings as parties. Among them are the family members of the worker who, at first, lodged the complaint.</p> <p>Other entities, as workers' associations, stayed in the criminal proceedings.</p>
<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>Compensation for material, moral and biological damages.</p>

## DECISION/OUTCOME OF CRIMINAL PROCEEDING

(To be filled in only if a decision is available)

Please, specify (if known):

- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)
- final Judgment (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)
- sanctions imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system
- decision on victims' requests (compensation for material or non-material damages, reimbursement of expenses, etc.)

## First Instance Judgment (issued in 2001)

With respect to the **first set of charges**, the Court of Venice found that there was no causal connection between the contested conducts and most of the diseases, which, in the Prosecution's reconstruction would have allegedly derived from them. More precisely, apart from liver sarcoma and the Raynaud Syndrome, it had been impossible to prove the existence of a causal connection, not only at an individual assessment level, but – in some cases – also in terms of general causation.

[In relation to liver sarcoma, the Court found that, although the exposure to CVM had effectively caused the contraction by some of the plant workers of liver sarcoma, this could not be attributed to the defendants because, based on the scientific knowledge available at the time of the relevant facts, a causation link between the exposure to CVM and the liver sarcoma was not foreseeable. Consequently, with respect to these allegations, the Court acquitted the defendants from both involuntary manslaughter and health disaster for the lack of the relevant *mens rea* requirement. To the contrary, in relation to the Raynaud Syndrome, the Court found that a causation link between the exposure to CVM/PVC and the contraction of this disease could be foreseen even at the time, but because the injury charges had become **time-barred**, also with respect to these allegations the Court's findings could not lead to conviction.

With respect to the **second set of charges**, the Court acquitted all the defendants from both the environmental disaster and the water poisoning and adulteration charges **on the basis that it had not been proved that their conducts had resulted in a threat for public health and safety, as required by the law. Actual contamination levels, in effect, were found to be significantly lower than those able to trigger any such threat.**

## Appeal Judgment (issued in 2004)

The Court of Appeal overruled the first instance judgment on the involuntary manslaughter stating that if information available at the time suggested that exposure to CVM may have posed a threat to workers' health, albeit just uncertain and partially undefined, the defendants' legal duty was that of taking adequate measures apt at preventing that risk. The Court of Appeal upheld the first instance judgment on any other issue.

For almost all the cases under examination, the Court's findings could not lead to conviction because the injury charges had become **time-barred**.

Only with respect to one case, the Court *convicted the defendants to a 18-month term of imprisonment and to the payment of all the damages required by the victim.*

## Supreme Court Judgment (issued in 2006)

The Supreme Court issued its judgment **only on the first set of charges**, as the decisions taken on the second set had not been challenged, and upheld the Court of Appeal judgment, restating the applicability of the precautionary principle.

<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>- whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>With respect to the individual victims of involuntary manslaughter, injury, and health disaster offences, an extra-judicial agreement was entered into before the trial opening.</p> <p>More precisely, 530 victims entered into the agreement. The total compensation allocated was equal to 63 billions of Italian liras (approximately 34 millions euro).</p> <p>With respect to the environmental offences, before the first instance judgment an agreement was entered into between one of the two corporations involved and the Ministry of Environment. The agreement entailed the payment of a compensation of 550 billions lira (approximately 300 millions euro) on the part of the corporation to the Ministry in exchange for the withdrawal of victims' participation into the criminal proceedings.</p> <p>Labour unions and environmental associations never obtained compensation, nor through the criminal proceedings, nor through extra-judicial agreements.</p> <p>Many victims and their family members, even after the agreement, continued to follow the trial, attending as public almost all of the hearings (120 in the first degree proceeding).</p>
<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>No victims' associations were involved in the criminal proceedings, while labour unions and other associations or institutions representing their interests were admitted as party in the criminal proceedings since the beginning and until their end.</p> <p>Some of these unions and association played a relevant role in supporting victims, especially during the investigation phase.</p> <p>Some of these associations decided to stay within the criminal proceedings. Nonetheless, the majority of victims left the proceedings to join the extra-judicial agreement.</p> <p>These entities requested compensation for damages caused to workers, residents and the environment. Due to the acquittal, no compensation was obtained.</p>

**VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS**

Please, specify (if known):

- whether the victims (or some of them) favoured a civil suit
- whether the victims made claims or requests to other Authorities (not criminal or not judicial)
- whether the civil action (or other procedure) was the only option provided by the national law;
- whether the victims filed a complaint but no criminal proceeding ever started
- whether the victims were denied the status of party to the criminal proceeding
- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings

The investigation started due to a complaint lodged by a victim, supported by the association *Medicina Democratica* (an NGO promoting and protecting health in the work places).

Only few victims decided to bring suits for damages before civil courts

All of the victims identified by the Public Prosecutor were admitted as party into the criminal proceedings, but most of them withdrew their claims further to receiving compensation as a consequence of the extra-judicial agreement.

Victims' access to justice was guaranteed and in some ways helped by the Public Prosecutor.

In the investigation phase, victims, their associations, environmental associations and the experts worked side by side with the Public Prosecutor.

#### ADDITIONAL INFORMATION ON VICTIMS' POSITION

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

The case was closed in 2006.

After the first acquittal, the judges and the whole justice system were strongly perceived as unjust. It appears quite important to notice that this reaction occurred despite almost all of the individual victims had obtained compensation (entering the extra-judicial agreement with the corporations). Victims, victims' family members and all of the associations involved never stopped demanding for justice until the end of the proceedings in 2006.

The level of conflict between victims, their representatives, their lawyers and the corporations was very high, even after the signing of the compensation agreement.

During trial hearings, the conflicts between the two parties (Public Prosecutors, associations and their experts on one side; lawyers and experts of corporations on the other side) never faded.

Many victims and their family members (having no more the status of party) participated *as public* to almost all the hearings. Their physical presence and emotional involvement transformed the trial in a sounding board of the conflict.

After the reading of the acquittal, victims present in the room occupied the bench.

The judges who issued the first instance judgment left the room (after having read the judgment) under guard.

Press reports said judges had also been intimidated.

Many initiatives and demonstrations took place in the days following the judgment.

Victims' request for justice was strongly supported by many parties, the Public Prosecutor, the associations representing their general interests, but also the local public authorities and the general public.

This public sentiment arose despite corporations' attitude and approach had not been particularly aggressive. Corporations offered compensation, which was accepted and considered equitable. As a matter of fact, corporations offered and paid a consistent amount of money as compensation, which, due to the final acquittal and to the relevant statute of limitations, they did not have to pay.

At the same time, it is important to underline that corporations never admitted their liability.

Victims' requests for the conviction of the defendants were not met (except for the limited conviction established by the Court of Appeal) for many reasons: causation not being easy to prove in court, limitation periods applicable to the relevant offences, and epidemiological data not being evident.

Media exposure was enormous since the very beginning of the investigation.

Public opinion was constantly informed about the proceedings by press reports, associations, web sites and local and national media.

CASE	SPINETTA MARENGO
<p><b>COUNTRY</b></p> <p>Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>ITALY</p> <p>The defendants are executives of two corporations, namely: Ausimont S.p.A. and Solvay Specialty Polymers Italy S.p.A. Both corporations are located in Italy. However, while Ausimont S.p.A. belongs to the Italian corporate group Montedison, Solvay is the Italian subsidiary of a Belgian corporate group.</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (Environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Environmental</p>
<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies)</li> <li>- nature of business (manufacturing, sale, distribution, etc..)</li> <li>- country of legal head office</li> </ul>	<p>In the present case, charges related to the industrial activity carried out within a chemical plant located in Spinetta Marengo (nearby Alessandria), where three companies operated. Namely:</p> <ol style="list-style-type: none"> <li>1. <b>Ausimont S.p.A.</b>, which operated in Spinetta Marengo until 2002;</li> <li>2. <b>Solvay Specialty Polymers Italy S.p.A.</b>, which bought Ausimont S.p.A. in 2002 and operates within the field of fluorine products;</li> <li>3. <b>Arkema S.r.l. (formerly, Atofina S.p.A.)</b>, which operates in the field of organic peroxides.</li> </ol> <p>In the context of the criminal proceedings registered under docket no. 3479/08 r.g.n.r., only Ausimont's and Solvay's executives were prosecuted. Both companies have their main office in Italy. Arkema's executives were prosecuted within separate proceedings.</p>

## SUMMARY OF THE CASE

(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)

### Background

The case concerns the alleged commission of environment-related offences in the context of industrial activities linked to chemical production.

The Spinetta Marengo chemical area, operating since the beginning of the XX century, includes plants for the production of plastic, rubber and fluorine lubricants. The chemical area is located nearby Alessandria and in between the residential area of Spinetta Marengo (a small town in the province of Alessandria) and river Bormida. In the region, several lots are dedicated to agriculture and groundwater is largely drawn for both nutrition and irrigation.

### Start of the Investigations

Between 2005 and 2006 the construction company CoopSette collected data on a plot of land in view of the construction of a supermarket. The Regional Institution for Environmental Protection (*Arpa*) was required to perform several checks on the data collection, which it did, finding out that groundwater underlying the area contained hexavalent chromium concentrations, which were significantly above legal thresholds, in addition to high concentrations of certain other substances. Based on the outcome of these checks, in 2008 *Arpa* filed a criminal complaint, further to which the Prosecution Service of Alessandria started a criminal investigation. However, it is worth noting that the association *Medicina Democratica*, which later filed a civil claim within the criminal proceedings, had also previously filed several complaints with the Prosecution Service in relation to the same activities.

### Allegations and Parties to the Proceedings

Allegations (presented in more detail in the Section “Accusation” below) consisted in two counts: i) intentional water poisoning; and ii) failure to carry out clean-ups as required by the law.

In brief: the defendants were accused of having failed to properly maintain the plant’s water systems over a long period of time (precisely, from 1995 on). This would have resulted in significant spills from water-jacket and in the consequent spread of toxic substances from surface land to groundwater used for nutrition and agriculture, threatening the life and health of workers and families leaving in the plant’s surroundings. In addition, the defendants would have failed to report to the relevant public authorities the fact that the site was highly polluted and to take any measure apt at minimizing or removing the pollution.

Eight individuals, acting in different capacities respectively within Ausimont/Atofina and Solvay were indicted on the two counts mentioned above. No corporation was prosecuted under Legislative Decree 231/2001. Solvay (which had tried to file itself a civil claim within the proceedings, but was ruled out) and Edison S.p.A. were involved in the proceedings in their capacity as third parties jointly and severally liable for the payment of damages.

A number of public entities (the Ministry for the Environment; the Province of Alessandria; the City of Alessandria), associations for the protection of health and the environment (*WWF Italia*, *Medicina democratica*, *Legambiente*, *Associazione “I due Fiumi E.R.I.C.A”*), and Unions (CGIL), in addition to several individuals, filed civil claims within the criminal proceedings.



### **Damages and Potential Victims**

The offence of water poisoning does not require any actual damage to be caused to people or to the environment. As a consequence, the Court was required to focus its attention on whether the contested conducts had produced a threat to public health rather than on the existence of any actual damage.

In the Prosecutor's reconstruction, the spreading of toxic substances deriving from the plant's activity would have threatened public health and safety. Those who would be the most exposed to such threat would be plant workers and people living near the plant. Some of the alleged victims were examined and cross-examined in Court: workers pointed out that during working hours it was often very hot inside the plant and, therefore, people used to drink a lot of water, sometimes even directly from the pipes and that no sign indicated that water could be dangerous.

Victims who filed civil claims reported serious harm to their health, consisting in lasting anxiety and stress conditions arising from the fear to contract diseases related to the exposure to the toxic substances contained in Spinetta Marengo's poisoned water. Some of them also reported actual contraction of diseases that they claim to be connected to the use of poisoned water, e.g., among others, thyroid cancer, dermatitis, leukemia, skin cancer and some died because of the disease (see transcripts of the examination and cross examination of some of the plant workers as well as civil claims filed within the proceedings).

However, the Court found that, although the plant's industrial activity had certainly seriously polluted the surrounding soil and groundwater – threatening public health – both the water supplied to the plant workers and that drawn for nutrition by those resident in Spinetta Marengo and Alessandria were not poisoned, and rather in line with concentration levels of drinkable water. The Court nonetheless ascertained, that the environmental matrices (soil and groundwater at different levels of the aquifer) had been seriously affected by the pollution generated by the plant (see section "Decision/Outcome of the Criminal Proceedings" below for more details on the Court's findings in the first instance trial).

<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	<p>The defendants were indicted on:</p> <p><b>1. Intentional water poisoning charges under Article 439 of the Italian Criminal Code</b></p> <p>The defendants would have allegedly failed to properly maintain the plant water systems from 1995 on. This would have resulted in significant spills from water-jacket and in the consequent spread of toxic substances from surface land to groundwater drawn for nutrition and agriculture, threatening the life and health of workers and families leaving in the plant’s surroundings. In addition, the defendants would have failed to report to the relevant public authorities the fact that the site was highly polluted and to take any measure apt at minimizing or removing the pollution. Instead, they allegedly kept supplying poisoned water to the plant’s workers through taps and beverages machines. In addition, those, who lived in Spinetta Marengo and Alessandria would have allegedly drawn poisoned water for both nutrition and agriculture.</p> <p><b>2. Failure to perform clean-up charges under Article 257 of Legislative Decree 152/2006</b></p> <p>The defendants would have frustrated the clean-up process, which had been subsequently initiated, by maliciously failing to disclose to the competent local authorities the fact that: i) spills had risen; ii) illegal dumps containing toxic waste existed on the site; iii) groundwater was highly polluted.</p>
<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>See section “Victims participating in the criminal proceedings” below.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>End of the first instance trial: the relevant judgment was issued at the hearing held on 14 December 2015 and the full opinion was delivered on 6 June 2016.</p>

## VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING

Please, specify (if known):

- the existence of a formal complaint reporting crimes made by victims
- whether victims have the status of party to the criminal proceedings.
- numbers of victims having the status of party to the criminal proceeding
- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)

## Complaint

In 2008, the Regional Institution for Environmental Protection (*Arpa*) filed a criminal complaint, further to which the Prosecution Service of Alessandria started a criminal investigation. The association (*Medicina Democratica*), which later filed a civil claim within the criminal proceedings, had also previously filed complaints with the Prosecution Service in relation to the same activities.

## Victims Who Took Part into the Criminal Proceedings

The following entities and individuals filed civil claims within the criminal proceedings:

- Public entities:
  - Ministry for the Environment;
  - Province of Alessandria;
  - City of Alessandria;
- Associations for the protection of health and/or of the environment:
  - *WWF Italia*;
  - *Medicina democratica*;
  - *Associazione "I due Fiumi E.R.I.C.A."*;
  - *Legambiente Piemonte e Valle d'Aosta*;
- Labour Unions:
  - *CGIL Alessandria*,
- In addition to several individuals (about 90).

Please note that those listed above are not victims' associations, but associations for the protection of health and/or the environment.

In addition to joining the proceedings as a civil party, *Medicina democratica* provided many individual victims with legal support.

The individuals who filed civil claims are residents in Spinetta Marengo, plant's workers and heirs and family members of people who allegedly died as a consequence of the crime.

All of the victims who joined the proceedings had the possibility to effectively exercise their rights in court and join the trial as a "party" through their defence counsel and expert witnesses.

**VICTIMS' REQUESTS TO THE JUDGE**

(eg. compensation or other kind of moral or material reparation claims)

All civil claimants requested:

- Defendants' conviction;
- Payment of damages; and
- Trial expenses refund.

Some of them also requested (see First instance judgment full opinion, pp. 11-18):

- Provisional damages;
- That the possible grant of a suspended sentence be subject to the previous payment of provisional damages;
- Publication of an excerpt of the judgment convicting the defendants on local and national newspapers.

**DECISION/OUTCOME OF CRIMINAL PROCEEDING**

(To be filled in only if a decision is available)

Please, specify (if known):

- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)
- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)
- sanctions imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system
- decision on victims' requests (compensation for material or non-material damages, reimbursement of expenses, etc.)

Criminal proceedings registered under docket no. 3479/08 r.g.n.r. – Judgment issued by the *Corte d'Assise* of Alessandria at the hearing held on 14 December 2015 –full opinion delivered on 6 June 2016

**The Court's Findings on the Status of the Contamination: the Relevant Offences**

At the end of the first instance trial, the Court found that **both the soil and the groundwater** in the plant's area and its surroundings **had been seriously contaminated, as a consequence of Ausimont's and Solvay's industrial activity** (see full opinion, pp. 55 et seq. and p. 209). Both of the environmental matrices, in effect, were found to contain concentrations of hexavalent chromium as well as of other toxic substances, apt at threatening public health, especially if people were to be exposed to them over long periods of time.

Despite this, **the Court found that no intentional water poisoning had been committed** (see full opinion, pp. 147 et seq.).

The Court's findings on this count were based on the fact that, with respect to the objective element of the crime, the legal test for water poisoning requires not only a water contamination apt at threatening public health, but also that the "poisoned water" be "destined to human nutrition". This latter prong, in the Court's opinion, should be construed in a restrictive way, so as not to apply, for example, to water used for the feeding of animals or for agriculture.

Once clarified this, the Court highlighted that all of the checks performed on the wells whose water was destined to human nutrition had shown that both the water supplied to the plant workers and that supplied to the residents in Spinetta Marengo and Alessandria were not poisoned, and rather in line with concentration levels of drinkable water.

This was due to the fact that: i) some of the wells used for direct human nutrition drew the water from the deepest layer of the aquifer, where toxic substances were very limited; and ii) even contamination affecting the superficial and intermediate levels of the aquifer (which was very high) was not uniform and turned out not to have affected the wells used for human nutrition.

\*Please note that certain studies had also shown that the use of contaminated water in agriculture and in the feeding of farm animals in the areas surrounding the plant had not resulted in vegetables or milk being affected.

Against this background, however, **the Court found that some of the defendants' behaviours met the legal test for the less serious offence of Unintentional Environmental Disaster** provided for by article 449, paragraph 1, of the Italian Criminal Code.

In this respect, the Court stated that the legal test for Environmental Disaster does not require contaminated environmental matrices to be destined to certain specific uses. It requires contamination to be serious and to have widespread effects, so as to be able to potentially affect public health (but in a broader way as compared to that implied by the water poisoning offence). Relevant indicators should be found in the contamination affecting a large area, it being difficult if not impossible to remove or mitigate and in the possibility that more environmental matrices be contaminated.

On the basis of the above, the Court found that an environmental disaster had occurred in Spinetta Marengo.

### Summary of the Court's findings

The **bullet-point summary** below briefly presents the Court's findings:

- **Intentional Water Poisoning:**
  - None of the defendant was found guilty because the water drawn for human nutrition was found not to be poisoned and count 1 was turned into allegations of Unintentional Environmental Disaster (see more details above);
- **Unintentional Environmental Disaster:**
  - Four defendants were convicted on this count and sentenced to a term of imprisonment of two years and six months (these include both Ausimont's and Solvay's executives (with the exception of their directors) and those having direct responsibility for environmental compliance);
  - Three defendants were acquitted on the merits (these are Ausimont's and Solvay's directors who were found to have properly delegated their environment-related functions to the other executives/employees);
  - One defendant could not be convicted because the relevant limitation period had run out;
- **Failure to Carry Out Clean-ups:**
  - All defendants were acquitted on the merits;
- **Damages and Trial Expenses:**
  - The four defendants who were convicted as well as Solvay (in its capacity as third party civilly liable) were also held jointly and severally liable for the payment of damages to the associations, which had filed civil claims within the criminal proceedings and to approximately one third of the individuals who had also done so (in some cases only some of the convicted defendants were held jointly liable).  
In particular:
    - The **Ministry of the Environment** was awarded damages in relation to the harm to the environment caused by the disaster (the amount is to be determined by law);
    - The **City of Alessandria** was awarded damages for an amount of euro 50,000 in relation to the reputational harm deriving from the "Chromium Emergency" scandal which arose in connection with the disaster;
    - The **Province of Alessandria** was not awarded damages because its claim related only to the charges listed under count 2, in relation to which all defendants were acquitted;
    - All of the **associations** who had filed claims were awarded damages for an amount of euro 25,000 each (apart from *Associazione "I due fiumi E.R.I.C.A."*, which was awarded euro 10,000) in relation to the harm caused to the interests they protect;

- Those who had requested damages arising from **death and injuries** as a consequence of the alleged poisoning saw their claims rejected because the defendants were never charged with these offences and, therefore, no causal connection between the defendants' conducts and the death/injuries has ever been ascertained. In the full opinion (p. 319) the Court expressly stigmatized this strategy – consisting in the filing of civil claims in relation to damages which will never be ascertained in the context of a certain criminal proceedings (because unrelated to the charges) – stating that it only fosters victims' expectations which are going to be frustrated, thereby causing additional pain to people who already suffered significant losses;
  - Those who had filed civil claims for damages arising from the **exposure to poisoned water** were not awarded damages because, at the end of the trial, no one could prove to have drunk or used poisoned water. Likewise, no damages were awarded to those who supported their claim only by indicating that they lived in the plant surroundings;
  - The Court, however, found that **the right not to be alarmed on one's own health conditions** and not to spend a lifetime with health concerns arising from polluting activities is a need deserving legal protection, in that it is part of the broader **right to health**, which includes also the right to "psychological peace and quiet". On this basis, approximately 25 individual defendants were awarded damages for an amount of euro 10,000 each and 5 individual defendants were awarded damages to be determined in separate proceedings. Among these are people who had worked in the plant, or who had filed with the Court blood analyses showing the presence of several metals in their blood, or who had reported to have changed their life habits as a consequence of the Chromium Emergency scandal (e.g. who used to flush their home vegetable garden with water drawn from wells connected to the plant and had to stop and start drinking only mineral water);
  - Those who had filed civil claims, but who had **not been heard in Court** were not awarded damages, because the Court found that – since the claims were very general – it had not been possible to ascertain even just their actual "suffering" from the awareness or the fear to be exposed to toxic substances, which could have justified the award of damages;
- o The defendants and Solvay were also sentenced to the payment of trial expenses incurred by the civil parties.

<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>- whether the agreement implies the withdrawal of victims’ rights to access to justice</li> </ul>	<p>From both trial files and publicly available information, it would appear that <b>no extra-judicial agreement</b> has been entered into between the parties.</p>
<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim’s needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>See above – section “Victims participation in the criminal proceedings” for a list of associations, which took part into the proceedings and section “Summary of the Case” for details on the criminal complaint, whose filing triggered the investigation.</p> <p><i>Medicina democratica</i> provided individual victims with legal support.</p>



**VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS**

Please, specify (if known):

- whether the victims (or some of them) favoured a civil suit
- whether the victims made claims or requests to other Authorities (not criminal or not judicial)
- whether the civil action (or other procedure) was the only option provided by the national law;
- whether the victims filed a complaint but no criminal proceeding ever started
- whether the victims were denied the status of party to the criminal proceeding
- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings

The idea that victims might be more than those who took part into the proceedings is publicly supported by *Medicina democratica*, however, in the absence of a final judgment on the case, it is not possible to assess the actual extent of the damages arising from the alleged crime and its aftermaths, nor the exact number of victims.

#### ADDITIONAL INFORMATION ON VICTIMS' POSITION

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc.)
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

From web searches, it appears that the case had full media coverage.

Under this perspective, *Medicina democratica* played a very important role. The association not only filed several criminal complaints with the Prosecution Service of Alessandria, but also published fliers and letters addressed to the population living in the area surrounding the plant, encouraging whoever deemed to have contracted diseases from water pollution to file civil claims for damages against Solvay and the other companies operating in Spinetta Marengo. *Medicina democratica* also supported, at a political level, the promotion of epidemiological studies and monitoring activities in the area (see for instance the initiative called "*Osservatorio della Fraschetta*"). Extensive information on the case was also provided to the public on the web.

It is worth noting that information spread by *Medicina Democratica* comes from a party to the proceedings and appears very much affected by a unilateral perspective and, therefore, as such, it is to be carefully evaluated in the absence of a final judgement on the case.

In outline, media approach to the case is aggressive and substantially lined up against the defendants. Most websites refer to the case with words such as "scandal", "ecological bomb" or "ecocide" and report the first instance judgment as "disappointing" and "worrisome" (mainly because the penalties to which the defendants were sentenced are perceived as too low and environmental criminal law as generally ineffective).

Web searches essential references:

- <http://medicinademocraticaalessandria.blogspot.de/2014/11/le-vittime-delleccidio-di-spinetta.html>
- <http://www.meetup.com/it-IT/Movimento5stelleAL/messages/76337330/>
- [http://www.industriaeambiente.it/convegno\\_sin/slideshow/Processo\\_Solvay.pdf](http://www.industriaeambiente.it/convegno_sin/slideshow/Processo_Solvay.pdf)
- <http://ambientinforma.blogspot.de/2015/12/deludente-e-preoccupante-la-sentenza.html>
- <http://www.radiogold.it/notizie/5-cronaca/78788-solvay-a-spinetta-marengo-via-alla-bonifica-da-cromo-esavalente>
- <http://www.lastampa.it/2015/12/14/edizioni/alessandria/cromo-nelle-falde-dirigenti-di-ausimont-e-solvay-a-processo-ad-alessandria-quattro-condanne-j7QPKMUI0aZaWxa1uQfibL/pagina.html>
- <http://www.cr.piemonte.it/web/comunicati-stampa/comunicati-stampa-2015/394-giugno-2015/3806-interrogazioni-discusse-in-aula1>
- <http://www.ilpiccolo.net/articolo.php?ARTUUIID=81B8DD6E-58CD-406C-8955-2D887752846F&MUUIID=3C730350-9F23-4F76-B4DE-87E150F9C1DA>
- [http://banchedati.camera.it/sindacatoispettivo\\_16/showXhtml.Asp?idAtto=601&stile=6&highLight=1](http://banchedati.camera.it/sindacatoispettivo_16/showXhtml.Asp?idAtto=601&stile=6&highLight=1)
- <http://www.cr.piemonte.it/resocpfoweb/dettaglioSeduta.do;jsessionId=B5B8F011AAAC8765F7CF6564CAA1BCAF.part182node11?from=ricercaArchivio&numeroLegislatura=X&seduta=79>

CASE	TAMOIL CASE; CREMONA CASE
<p><b>COUNTRY</b> Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>ITALY The only aspect that lets emerge transnational profiles consists in the corporation involved in the case, as it is related to a multinational company. However the plant, whose activity has been contested, is located in Italy (Cremona)</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Environmental</p>
<p><b>CORPORATION(S) INVOLVED</b> Please, specify (if known): - type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies) - nature of business (manufacturing, sale, distribution, etc..) - country of legal head office</p>	<p>Tamoil (Tamoil Raffinazione S.p.a.; Tamoil Italia S.p.a)  Multinational entity, privately held  The corporation business is gas and oil  The legal head office lies in Netherlands, although drilling stations are located in Libya</p>

**SUMMARY OF THE CASE**

(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)

The case deals with the alleged production of site contamination due to the industrial activity of the refinery located in Cremona from 2001 to 2007, along with failures in waste management. Thus, the release of toxic substances has produced the contamination of the site where the refinery lies and subsequently – as a dynamic consequence of the pollution – the contamination of groundwater and of natural resources, as the waters of Po river.

A critical aspect concerns the environmental context, as the industrial activity affected resources already severely polluted, because of the contamination inherited from the past.

In particular, a self-report of the Corporation in 2001 addressed the World War II bombing and the industrial activity carried out until 1983 as main causes of the overall contamination. Furthermore, although under different formal denominations, the judge found out that the same legal entity has owned the activity before 1983 and currently; hence, the self-report was reticent on this point.

Because of the toxic influence of contaminants on human health (also concerning dermatological and respiratory aspects), the whole community can be exposed (even in a long-term perspective) to victimization processes, although potential and also not yet completely evident.

## ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT

Please, include a brief description of:

- the offences charged to the corporation(s) or its/their representatives
- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives

Two different offences have been issued to the defendants (5 persons): the prosecutor has charged 3 persons with the negligent crime related to Collapse of Structures and Other Intended Disasters, while all defendants have been charged with the crime of Poisoning Water or Foodstuffs.

A) Art. 434 c.p. - *Collapse of Structures and Other Intended Disasters*:

“Whoever, apart from the cases designated in the preceding Articles, commits an act aimed at causing the collapse of a structure or any part thereof, or any other disaster, shall be punished, if his act results in danger to the public safety, by imprisonment for from one to five years. The punishment shall be imprisonment for from three to twelve years if the collapse or disaster occurs”

Art. 449 c.p. - *Negligent Crimes Involving Damage*

Whoever, apart from the cases designated in the second paragraph of Art. 423-bis, through negligence, causes a fire or other disaster designated in the first Chapter of this Title, shall be punished by imprisonment for from one to five years. The punishment shall be doubled in the case of a railway disaster or shipwreck or sinking of a ship used for transporting persons or the crash if an aircraft used for transporting persons”.

B) Art. 439 c.p. - *Poisoning Water or Foodstuffs*

“Whoever poisons water or any substance which is to be used as food, before it is drawn or distributed for consumption, shall be punished by imprisonment for not less than fifteen years. If the act results in the death of any person, life imprisonment shall be imposed (...)”

The latter crime has been charged together with the misdemeanours under Articles 137, 256 and 257 TUA: that means that the behaviour has been qualified also as excess of the limits provided by the law or through the administrative authorization, or even in absence of the authorization itself, concerning the release of toxic substances in the soil or water (137) and the management of waste dumping (256); moreover, also the omitted reporting about the contamination has been charged (257).

Few remarks are noteworthy.

Both the considered offences (A and B) are crimes aiming at the protection of public safety, consisting in the causation of danger towards such an interest.

The first offences has been charged as a negligent crime (art. 449 in relation to art. 434); the second one as an intentional felony.

<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>The charged offences have to be considered as focused on the danger caused to the whole local community. Thus, victims cannot be personally identified.</p> <p>Rather, victims' instances have been fostered by associations, which aim embraces the social interests that allegedly have been offended.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Nowadays, the criminal proceeding is before the Court of Appeal.</p> <p>All the defendants, but one, have been sentenced guilty with the judicial decision of first instance; all of them have chosen to shape the first degree as a special proceeding (namely 'giudizio abbreviato').</p>

**VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING**

Please, specify (if known):

- the existence of a formal complaint reporting crimes made by victims
- whether victims have the status of party to the criminal proceedings.
- numbers of victims having the status of party to the criminal proceeding
- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)

Have been a formal role as parties in the proceeding the followings:

- Giuseppe Ghisolfi: President of the Association 'Associazione Dopolavoro Ferroviario di Cremona';
- Members of the Association 'Canottieri Bissolati': 28 persons;
- Members of the Association 'Canottieri Flora': 3 persons;
- Association 'Lega Ambiente Lombardia';
- Gino Ruggeri: private person, citizen included in the election district of Cremona (taking part in the proceeding as the Cremona Municipality did not).

A further aspect is noteworthy: private person's legitimation to be considered a party in the proceeding depends on the decision of the Cremona Municipality not to make any request to be considered a party as well, although it could be assumed that facts have damaged the Municipality itself.

Consistently, even the 'Ministry of Environment' has decided not to submit any request to be recognized as a party in this proceeding, although the material circumstances could legitimate such a decision.

The criminal proceeding started since a formal complaint was exhibited by the association 'Ambiente, territorio società' on July 10, 2007, concerning the contamination of the groundwater and of natural resources, and particularly of waters along the Po river.

On July 5, 6 and 7, 2007, the local newspaper 'La Cronaca' dedicated articles and dossiers on the environmental contamination of the area surrounding Cremona: in particular, it was assumed that the groundwater was contaminated until 20 meters, and even 60-70 meters in depth, because of the presence of hydrocarbons and MBTE (an oil addictive).

Moreover, an anonymous warning was received by the local authority office (Comando provinciale dei Carabinieri), reporting that users of recreational clubs and associations along the refinery area had been perceiving smell of oil in that area.

The judge in person recognized a very active participation of the victims standing in the process, especially by promoting witnesses examinations and experts' involvement (p. 402 of the decision at first instance ).

**VICTIMS' REQUESTS TO THE JUDGE**

(eg. compensation or other kind of moral or material reparation claims)

When it comes to victims' requests, it is necessary to distinguish three different profiles, concerning the basic features of their claims:

- The recreational associations have requested for economic compensation, because of the material and moral losses related to the crimes. Actually, according to their claims, two different profiles can be distinguished: that concerning the patrimonial harm, which has been suffered because of the water pollution (particularly concerning the Po river), since pools and other recreational structures could not even be used; moreover, people suffered a moral harm, inasmuch as they felt fear to be personally contaminated and still running the risk to get sick, because of the human exposure to toxics;
- The proceeding standing of Mr. Ruggeri can be correctly intended as his right to partake in trials depends on the decision of the Municipality to give up its right to stand. Thus, Mr. Ruggeri's claims have to be intended as requested on the behalf of the whole Municipality. Also in this case, it is necessary to distinguish the material profile from the moral one: the economic loss suffered by the local community is that related to the necessity to provide administrative measures focused on the 'Tamoil case', so that the agenda has been altered and significant amounts of money have been redirected on that purpose ('sviamento di funzione'). Moreover, the image of the community and of the Municipality – generally intended as fair – has suffered such a loss, because of the reputational harm due to the severe pollution of surrounding areas.
- Finally, Lega Ambiente has to be considered an association, which aims at promoting high levels of environmental protection. Hence, the severe pollution registered in the pertinent area damages the specific interests pursued by the association itself.



**DECISION/OUTCOME OF CRIMINAL PROCEEDING**

(To be filled in only if a decision is available)

Please, specify (if known):

- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)
- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)
- sanctions imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system
- decision on victims' requests (compensation for material or non-material damages, reimbursement of expenses, etc.)

In short, these are the aspects of the First degree judgement, concerning the defendants, who are 5 overall:

4 defendants have been sentenced guilty;

1 has been acquitted.

The sanctions have been both of imprisonment and pecuniary.

Respectively:

- AA: 1 year and 8 months of imprisonment (art. 449 c.p.); 4 months of detention (art. 257 TUA); €6.000,00 of penalty (art. 257 TUA)
- BB: acquittal decision
- CC: 3 years of imprisonment (artt. 81, 434 c.p.)
- DD: 6 years of imprisonment (artt. 81, 434 c.p.); 6 months of detention (art. 257 TUA); € 9.000,00 of penalty (art. 257 TUA)
- EE: 1 year and 8 months of imprisonment (art. 449 c.p.); 4 months of detention (art. 257 TUA); €6.000,00 of penalty (art. 257 TUA)

Further aspects are noteworthy:

- the offence under art. 439 originally charged by prosecutors has been reconsidered by the judge as an hypothesis of 'unnominated disaster' under the provision of art. 434 c.p.;
- the misdemeanours under artt. 137 and 256 TUA have been considered as time-barred, because the period of limitation ran out.

For all the victims taking part to the proceeding provisional compensations have been recognized.

Respectively:

- € 50.000,00 to the 'Associazione Dopolavoro Ferroviario di Cremona';
- when it comes to the associates of 'Canottieri Bissolati' and of 'Canottieri Flora' (31 persons overall), it is necessary to distinguish: the amount of €10.000,00 has been provided to each of the members, while the amount of € 8.000,00 has been recognized to each of associates' relatives;
- € 40.000,00 to Lega Ambiente Lombardia Onlus;
- € 1.000.000,00 to the Municipality of Cremona, as represented by Mr. Ruggeri.

Also the reimbursement of legal expenses has been recognized to victims:

- € 18.000,00 to the Associazione Dopolavoro Ferroviario di Cremona';
- when it comes to the associates of 'Canottieri Bissolati' and of 'Canottieri Flora', three different amounts have been provided to as much groups of victims, and respectively € 55.000,00 , € 27.000,00 and € 27.000,00;
- € 40.000,00 to the Municipality of Cremona, as represented by Mr. Ruggeri;
- € 27.000,00 to Lega Ambiente Lombardia Onlus.

<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>- whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>On April the 1<sup>st</sup>, 2011, the Cremona Municipality and Tamoil agreed on the commitment about the remediation procedures, which the corporation should activate.</p> <p>Such an agreement included also the Economic Development Ministry, other Local administrations and the involved Trade Unions.</p> <p>As it is argued in the judicial decision, the existence of the agreement may have not influenced the choice of the Municipality to give up the opportunities coherent with the right of standing (p. 115).</p>
<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>Consistent with the campaign conducted by Lega Ambiente and the activities oriented to promote the community awareness on the site contamination, the environmental association constituted in 2008 the 'Comitato contro l'inquinamento Tamoil' .</p>

**VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS**

Please, specify (if known):

- whether the victims (or some of them) favoured a civil suit
- whether the victims made claims or requests to other Authorities (not criminal or not judicial)
- whether the civil action (or other procedure) was the only option provided by the national law;
- whether the victims filed a complaint but no criminal proceeding ever started
- whether the victims were denied the status of party to the criminal proceeding
- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings

As already pointed out, because of administrative choice, the municipality of Cremona and the Environmental Ministry did not request to take part to the criminal proceeding, although both were recognized the formal right of standing.

#### **ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

Local media played a significant role, not only at the beginning of the proceeding, but also along its development.

The point is consistent with the case, as it can be considered eminently local, with reference to the contaminated area and the immediately victimized community.

The proceeding lets emerge also the outcome of a research fostered by the Local Sanitary Agency (Asl), although it has not been considered consistent with the facts under investigation. The research concerned the cases of leukaemia occurred in the neighbourhoods of the allegedly contaminated areas during the period 1998-2007: they were assumed as the double than the average in the region; the triple, considering the specific pathology named 'acute myeloid leukaemia', which is consistent with the exposure to benzene (note n. 274, p. 2149).

Conversely, the defense expert argued that such data were not trustworthy, as epidemiological study had been conducted on a not extended cohort and the outcome had not been submitted to peer review, so that the study itself could not be intended as scientific.

Anyway, as already pointed out, the data have not been considered as relevant for the decision, since they were deemed as unrefined and the charged crimes are characterized for the occurrence of danger to the public (and not individual) safety.

Consistent with the latter point, that under consideration has to be intended as a case of victimization related to danger, rather than to damage. This implies that victims requested (and obtained) compensation for the fear to get sick, because of the exposition to toxic substances. Furthermore, such fear depends also on the awareness that under those circumstances the etiopathogenesis (as the secondary effect of environmental resources contamination) consists in very long periods, which often are even latent.

**ADDITIONAL COMMENTS**

The proceeding currently stands before the court of appeal, and so far the second degree decision is not yet available.

<b>CASE</b>	<b>TRAIN ACCIDENT OF ESCHEDI, JUNE 3<sup>RD</sup> 1998</b>
<b>COUNTRY</b>  Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)	GERMANY
<b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)	Product liability
<b>CORPORATION(S) INVOLVED</b>  Please, specify (if known): - type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies) - nature of business (manufacturing, sale, distribution, etc..) - country of legal head office	<b>Deutsche Bahn AG</b> (private joint-stock company under German law, single shareholder: Federal Republic of Germany) <ul style="list-style-type: none"> <li>• Multinational entity</li> <li>• Second-largest transport company in the world and largest railway operator and infrastructure owner in Europe</li> <li>• Headquarters in Berlin, Germany</li> </ul>

<p><b>SUMMARY OF THE CASE</b></p> <p>(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)</p>	<p>On June 3<sup>rd</sup> 1998 at 10:57:28 the rubber-sprung wheel (Thorough technical analysis in Richard et al. 2005, 986 ff and Esslinger et al. 2004, 519 ff.) type BA 064, of ICE 844 broke due to material fatigue at the speed of approximately 200-250 km/h six kilometers south of the village of Eschede (Esslinger et al. 2004, S. 517).</p> <p>300 meters ahead of a road bridge a switch became entangled with the damaged wheel at 10:59:06 causing the train to derail and enabled the point blades to redirect the train. The derailment resulted in a collision with the road bridge, which collapsed instantly (Oestern et al. 1998, S. 813). Human casualties summed up to 101 people, leaving 105 severely and slightly injured. Of the 101 dead bodies 96 were successfully identified.</p>
<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	<p>Investigation against the only surviving train conductor were terminated without indictment (August 1999).</p> <p>Investigations against three suspects working for the ICE-maintenance in Munich were terminated without indictment (March 23<sup>rd</sup> 2001). They were involved in the construction, authorization and production of the rubber sprung wheels. However, the investigations demonstrated that they have acted according to their duties.</p> <p>A department manager and a senior technician of Deutsche Bahn AG as well as an engineer of the component supplier for the wheels (Vereinigte Schmiedewerke Bochum) were indicted with bodily injury in 105 cases and negligent manslaughter in 101 cases and put on trial in front of the Landgericht Lüneburg. The prosecution blamed the catastrophe on them due to insufficient testing of the rubber sprung wheels.</p>
<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>More than 100 surviving victims and dependants were represented by a single lawyer (Rainer Geulen) in first instance</p> <p>93 witnesses were heard in the proceedings</p> <p>Type of victims: victims who suffered bodily harm and family members who lost a relative</p>

<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Res judicata/final judgement</p>
<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>More than 100 Victims and Descendants joint the criminal proceedings as so-called Private Accessory Prosecutors (art. 395 German Code of Criminal Procedure) in first instance, mainly represented by one lawyer (Dr. Rainer Geulen)</p> <p>An accessory prosecutor has certain procedural rights as stipulated in §§ 397-401 German Code of Criminal Procedure, which can be compared to the rights of a public prosecutor. However, it is not possible to prevent a termination of the case by court decision.</p> <p>14 Private Accessory Prosecutors in second instance (OLG Celle) represented by one lawyer (Dr. Rainer Geulen)</p>
<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>Financial compensation up to 550,000 DM (German Mark) claimed per casualty</p> <p>Confession of guilt and formal apology claimed</p>



<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>- <u>sanctions</u> imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>- <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ul>	<p>The termination of proceedings according to sec. 153a StPO was agreed upon on first instance, as the degree of the guilt of the accused was low and the accused consented to a cash settlement of 10,000 € each (LG Lüneburg, May 8<sup>th</sup> 2003).</p> <p>The settlement was confirmed by the appellate court, OLG Celle, June 6<sup>th</sup>, 2003 (OLG Celle, Beschluss vom 05.06.2003).</p> <p>The following constitutional challenge of the accessory prosecutors was declared inadmissible and decided without merit, BVerfG, July 28<sup>th</sup>, 2003 (BVerfG, Nichtannahmebeschluss vom 27.08.2003, S. 337).</p> <p>No decision on damages was taken by the courts in the criminal proceedings.</p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>-whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>Compensation according to the Opferentschädigungsgesetz (OEG) was not accessible because the case did not meet the legal preconditions (intentional crime – prosecution was for negligent injury and negligent killing)</p> <p>No formal agreement between both parties</p> <p>Several days after the incident the Deutsche Bahn named an Ombudsman (Prof. Dr. Krasney) and provided him with further staff for victims support and also created an emergency fund of 5 Mio. German Mark</p> <p>Deutsche Bahn consented without a legal decision to treat victims as if the company had acted with guilt and compensate the victims accordingly (otherwise compensation would have been limited according to the applicable Haftpflichtgesetz)</p> <p>Injured victims received material and immaterial damages (single payments as well as annuity payments) in accordance with generally used tables for damages in German law</p> <p>Deutsche Bahn AG paid 30,00 DM compensation for each dead</p> <p>Expenses and material damages were largely reimbursed after individual legal action by victims</p> <p>In total, Deutsche Bahn AG paid 32 Mio. € until the end of 2008</p> <p>Access to justice was not limited</p> <p>Additional damages claimed in civil proceedings were denied by the court (Landgericht Berlin 18. September 2002)</p>

<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>Ombudsmann appointed by Deutsche Bahn was responsible for victims for 10 years</p> <p>Victims association "Selbsthilfe Eschede" was founded by the victims that negotiated with the Deutsche Bahn on compensation issues</p>
<p><b>VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- whether the victims (or some of them) favoured a civil suit</li> <li>- whether the victims made claims or requests to other Authorities (not criminal or not judicial)</li> <li>- whether the civil action (or other procedure) was the only option provided by the national law;</li> <li>- whether the victims filed a complaint but no criminal proceeding ever started</li> <li>- whether the victims were denied the status of party to the criminal proceeding</li> <li>- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings</li> </ul>	<p>Not all victims participated in the criminal proceedings.</p> <p>As the criminal proceedings ended without judgements, no decision on victim compensation was taken. A civil law suit was therefore the only remaining legal possibility.</p> <p>After the Deutsche Bahn paid the compensation/provided for compensation six victims filed a civil legal test case (that was joined by at least 50 more victims) at the Landgericht Berlin in order to be paid higher immaterial compensation (Schmerzensgeld). The claim for additional damages was denied by the court (Landgericht Berlin 18. September 2002). This decision was not further challenged by the victims.</p>

#### **ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimization, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 – articles 10 et seq. – of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 – articles 18 et seq. – of Directive 2012/29/EU

Victims were exposed to extensive media coverage, but several openly embraced the opportunity to make their (not necessarily financial) demands heard

Victims claims were mainly driven by the activity of one lawyer (Dr. Rainer Geulen), who was not only the legal representative for most victims in the court proceedings but also the speaker of the "Selbsthilfe Eschede" (victim's association)

Proceedings were held in German, no victim requested translation in another language, English and Japanese translation was provided for the authorized experts of Deutsche Bahn AG

Victims claimed that the Deutsche Bahn AG delayed the process of compensation for years and made it unnecessarily bureaucratic

Deutsche Bahn (co)sponsored a victim's memorial site at the place of the accident

"Selbsthilfe Eschede" (victim's association) fought publicly for an official apology of the company

Current Chairman Rüdiger Grube apologized on the 15 year anniversary of the tragedy (2013) on behalf of Deutsche Bahn AG at the place of the victim's memorial

CASE	HOLZSCHUTZMITTEL-FALL(WOOD PROTECTION AGENT CASE)
<p><b>COUNTRY</b> Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	GERMANY
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	Environmental
<p><b>CORPORATION(S) INVOLVED</b> Please, specify (if known): - type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies) - nature of business (manufacturing, sale, distribution, etc..) - country of legal head office</p>	<p><b>Desowag Materialschutz GmbH</b> (formerly affiliated with Bayer AG and Solvay S.A.) <b>Medium sized manufacturing</b> company (market leader in the 1980s with 170 Mio. German Mark annual turnover) From 1986 owned exclusively by Solvay S.A., <b>private</b> company with headquarters in <b>Brussels, Belgium</b></p>
<p><b>SUMMARY OF THE CASE</b>  (General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)</p>	<p>The company sold the wood protection agents “Xyladecor”, “Xylamon-Braun” and “Xylamon-Echtbraun/ Naturbraun” <b>since 1969</b> as adequate wood protection agents for interior surfaces. These products contained pentaclorfenol (<b>PCP</b>) (5,4-6 %) and Gamma-hexaclorclohexan (<b>Lindan</b>) (0,4-1 %) and certain production-related contamination substances like <b>dioxin</b> and <b>furan</b>. The people in authority did not react to the <b>4,000 written complaints</b> (received by the end of 1978) by consumers and <b>continued</b> sales and distribution until 1983, while stopping the production of PCP in 1978, while continuing to sell the same products with the label “for exterior surfaces”. The commercial production and sale of PCP was legal until legislation taken up in 1989. The estimate of people having suffered physically from contact with the substances is around 200,000 (Dieckmann/Haydvoegel/Stüdemann/Wunderlich, Praxishandbuch Schadstoffe 2010, 39). The victim’s organization IHG (Interessengemeinschaft Holzschutzmittel-Geschädigter) received a total of <b>60,000 inquiries</b> and documented about <b>10,000 cases of damage</b>. In the trial, <b>29</b> of the alleged 44 personal injuries were found <b>attributable</b> to the products.</p>

<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	<p>Chief executive Dr Kurt. Steinberg and business executive Fritz Hagedorn were first charged with negligent (sec. 230 StGB) [before 1978] and intentional <b>bodily harm</b> [after 1978] by dangerous means (sec. 223, 223a [a.F.] StGB), partly for omission. In various cases, the public prosecution accused them of causing a <b>severe danger</b> by <b>releasing poison</b> (sec. 330a StGB).</p> <p><b>Preliminary symptoms</b> reported by victims include (according to the summary by the Landgericht Frankfurt):</p> <ul style="list-style-type: none"> <li>• Irritations of eyes, ears, nose and throat cavities, skin and the gastrointestinal tract</li> <li>• Conjunctivity</li> <li>• Delayed wound healing</li> <li>• Skin alteration</li> <li>• Diarrhoea</li> <li>• Qualm</li> <li>• Headache</li> </ul> <p><b>Systemic damages</b> reported by victims include (according to the summary by the Landgericht Frankfurt):</p> <ul style="list-style-type: none"> <li>• Defects of the immune system and various endocrinological and neurovegetative functions</li> <li>• Constantly recurring viral and bacterial infections</li> <li>• Dystocia and erectile dysfunctions</li> <li>• Lack of drive and inefficiency (“multifold chemical sensitivity”?)</li> <li>• Increased risk of cancer and leukemia</li> </ul>
<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>The <b>prosecution</b> in Frankfurt received 2,700 criminal complaints. 800 complainant families were registered. The prosecution selected 171 people after investigating their health status and the likeliness of their links to the wood protection agent to compile the indictment, which were organized in 69 different household units (family/couples). 19 of these units served as backup cases to counteract possible statutory limitation and were not introduced to the proceeding.</p> <p>The complainants were either suffering physically themselves or economically because of their relatives’ afflictions</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Res judicata</p>

<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>33 Joint Plaintiffs took part in the criminal proceedings at LG Frankfurt</p> <p>A joint plaintiff has certain procedural rights as stipulated in sec. 397-401 StPO, which can be compared to the rights of a public prosecutor</p>
<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>Material compensation claims by two joint plaintiffs according to sec. 403 StPO</p>

<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>- <u>sanctions</u> imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>- <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ul>	<p>After a conviction of the accused in first instance (Landgericht Frankfurt, 25 Mai 1993, 65 Js 8793/84 5/26 Kls), the Bundesgerichtshof overturned the conviction on appeal of the accused (Bundesgerichtshof, 2 August 1995, 2 StR 221/94) and ordered a retrial at the Landgericht Frankfurt. The Landgericht Frankfurt terminated the proceedings according to sec. 153a StPO due to the bad health of the accused and the length of the proceedings and as the following agreement was reached:</p> <ul style="list-style-type: none"> <li>• Solvay S.A. and Bayer AG agreed to spend 4 Mio. DM on a research chair at the University of Gießen called "Toxicology of interior air"</li> <li>• The accused Dr. Steinberg and Mr. Hagedorn paid 100,000 DM to the treasury each</li> </ul> <p>As the criminal proceedings ended without judgements, no decision on victim compensation was taken.</p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>- whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>There has been no compensation awarded.</p>

<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>Victims founded the <b>Interessengemeinschaft Holzschutzmittel-Geschädigter (IHG) e.V.</b> (<a href="http://www.la-umwelt.de/ihgev/">http://www.la-umwelt.de/ihgev/</a>) in May 1983. The organisation helps:</p> <ul style="list-style-type: none"> <li>• Gathering and evaluation of information on issues concerning chronic and acute health damage attributable to wood protection agents and related substances</li> <li>• Capacity building of victims and affected persons in terms of detection of the damage and verification of links to the harmful substances</li> <li>• Counselling and assistance in medical, toxicological, legal and fiscal matters as well as object decontamination</li> </ul> <p>The 1983 founded <b>Coalition against BAYER Dangers</b> (<a href="http://www.cbgnetwork.org/4.html">http://www.cbgnetwork.org/4.html</a>) publicly campaigns against the Bayer company e.g. in the Holzschutzmittel-case especially by publications and protests in the annual shareholdermeeting</p>
<p><b>VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- whether the victims (or some of them) favoured a civil suit</li> <li>- whether the victims made claims or requests to other Authorities (not criminal or not judicial)</li> <li>- whether the civil action (or other procedure) was the only option provided by the national law;</li> <li>- whether the victims filed a complaint but no criminal proceeding ever started</li> <li>- whether the victims were denied the status of party to the criminal proceeding</li> <li>- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings</li> </ul>	<p>Before and after the trial, civil suits by victims participating and not participating in the criminal proceedings were filed, but have not been successful.</p>



#### ADDITIONAL INFORMATION ON VICTIMS' POSITION

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

The main problem for victims was to establish a **causal link** between their illnesses and the sold product. The Bundesgerichtshof in the criminal case found no clear causal connection between damages and the sold product as the scientific basis was not sufficiently clear. Equally civil proceedings denied the necessary causal link

Compensation claims also were often denied by the courts because of limitation of time as the victims raising claims in the 1990s (probably due to extensive media coverage) for acts committed in the 1970s/ early 1980s.

**ADDITIONAL COMMENTS**

In 2014 several parliamentarians of the left wing party (DIE LINKE) questioned government on the issue of the victims situation in the Holzschutzmittel-case (BT-Drucksache 18/3691 of 19 December 2014), that was answered by the government in 2015 (BT-Drucksache 18/5499 of 9 February 2015). The government mainly stated that the Holzschutzmittel-case was taken as a starting point for finding a European solution that was finally reached with the biocidal products directive 98/8/EC of 16 February 1998 (now replaced by the biocidal products regulation (EU) No. 528/2012 of 22 May 2012). Any damages out of such products are considered to be sufficiently covered by private law product liability regulations.

CASE	UB PLASMA (LABORATORY) CASE
<p><b>COUNTRY</b></p> <p>Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>GERMANY</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Medical Devices / Pharmaceutical</p>
<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies)</li> <li>- nature of business (manufacturing, sale, distribution, etc..)</li> <li>- country of legal head office</li> </ul>	<p>UB Plasma Labor GmbH (limited liability company), Privately held, small company; First privately run plasmapheresis station in Germany (manufacturing); Legal head office in Koblenz, Germany;</p>

<p><b>SUMMARY OF THE CASE</b></p> <p>(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)</p>	<p>On 26 June 1985 the company UB Plasma GmbH in Göttingen (Germany) had received the permit to produce industrial plasma (for further processing) and from 1 November 1989 until March 1992 it was even allowed to produce plasma for direct application to patients. UB Plasma had sent tens of thousands of blood products obtained by blood plasma to hospitals and pharmaceutical companies in Germany. At least 144 shipments contained batches of blood products which were tested in a pool and that had been stored for less than 15 days; thus a possible contamination by the human immunodeficiency virus (HIV virus) could not be detected by the techniques and tests applied. Such a batch made from blood products produced by the blood plasma of a donor with the registration no. 2505 who was infected by the HIV virus was supplied to hospitals in Fulda and Frankfurt. At least two patients in hospitals in Fulda and one in Frankfurt a.M. were tested HIV positive after having received blood infusions with the said plasma and two of them had died after a few months, however, due to their underlying diseases. In order to save money, UB Plasma had pooled the blood of several donors before testing which was considered an unacceptable laboratory practice. This practice rendered the well-established / prevalent HIV and hepatitis tests less sensitive with the consequence that the HIV infection of this donor had not been detected in time. The money saved for each HIV test amounted to 4,90 DM (2.50 €) per serum sample and 2,30 DM (1.18 €) per serum sample for the hepatitis test. Moreover, for financial reasons the company did not apply and observe the standard quarantine period and storage of the blood plasma, which would have closed the so-called diagnostic window (i.e. in case a donor contracted HIV just shortly before his or her blood donation, the HIV virus could have only been detected after three to eight weeks at that period of time). Since 1986 several complaints had reached the district council Koblenz about the very unsatisfying practices and standards at UB Plasma which did, however, not prompt the supervisory body to take all necessary action. The company's operating permit was eventually revoked and its laboratories shut down on 28 October 1993. Its managing director as well as its lead controller were arrested.</p>
<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	<p>On 10 February 1994, the district attorney of Koblenz charged five persons of UB Plasma for aggravated battery (gefährliche Körperverletzung) in 71.303 cases as well as in 3 other cases and for continued fraud (fortgesetzter Betrug).</p> <p>Type of harm: damage to health.</p>

<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>At least two patients in hospitals in Fulda and one in Frankfurt a.M. were tested HIV positive after having received infusions with the said plasma and died after a few weeks to months, however, due to their underlying diseases.</p> <p>The surviving victim did not want testify in court.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Final judgement (8 August 1996) issued by the District Court Koblenz (9. Strafkammer des Landgerichts Koblenz).</p> <p>2101 Js 41273/93 – 9 KIs (file number).</p>
<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>Victims or their heirs did not seem to participate in the criminal proceedings. At least neither the judgment nor press releases provide any information in this regard.</p>
<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>There were no requests made to the judge.</p>

<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>- <u>sanctions</u> imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>- <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ul>	<p>First degree sentence; final judgement: convictions.</p> <p>On 1 December 1995 the biggest court case for HIV infected blood products ends after 96 days of court hearings. Four accused were found guilty for violating the laws on drugs (§§95 I Nr. 1, 4 AMG; 53, 54, 56 StGB), i.e. for having negligently put on the market dangerous medical products in 144 cases. The general manager of UB Plasma (48 years old) and the lead controller (57 years old) were sentenced to four years imprisonment. Two other employees of UB Plasma were sentenced as well: A lab doctor was sentenced to three years imprisonment, a lab assistant was sentenced to two years on probation (Bewährung); she was the only one who had offered and made an ample confession. The prosecution had announced to launch an appeal on the points of law (Revision); it had asked the court to convict the accused to prison sentences between 28 months as well as six years and three months respectively.</p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>-whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>No information available. Most likely no agreement had been made.</p>

<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>In connection to specifically this case no association was created.</p>
<p><b>VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- whether the victims (or some of them) favoured a civil suit</li> <li>- whether the victims made claims or requests to other Authorities (not criminal or not judicial)</li> <li>- whether the civil action (or other procedure) was the only option provided by the national law;</li> <li>- whether the victims filed a complaint but no criminal proceeding ever started</li> <li>- whether the victims were denied the status of party to the criminal proceeding</li> <li>- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings</li> </ul>	<p>Only one press report mentioned that the surviving victim did not want to testify as witness in court (maybe because of the HIV stigma).</p>

**ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

There is no information on these points available.



#### ADDITIONAL COMMENTS

The information on the UB Plasma GmbH case provided above was taken from media sources as well as the judgement. The extensive court files had been transferred to and are now being stored at the Archives of Rhineland Palatine, a fact which exhibits considerable public interest in the case. However, they have not been made accessible so far. We were told that our chances of getting timely access to the files are rather slim due to the very restrictive regulations of the Archive.

On 4 November 1993, an inquiry commission “Infected blood and infected blood products” was set up by the State of Rhineland Palatine in Mainz prompted by the UB Plasma scandal. The commission was mandated among other issues to inquire to what extent HIV and otherwise infected blood or blood products had been gathered, produced and put on the market in Rhineland Palatine. The final report was published on 12 Sept. 1994. It detailed the events at UB Plasma until the arrest of the main accused.

The broader context of the so-called AIDS blood product scandal (transfusion patients and haemophiliacs) with a focus on Germany; civil and criminal court cases as well as settlements involving even big transnational pharma corporations took place in other countries, too; e.g. France, Japan, USA:

Since 1987, negotiations between German haemophilia societies, corporations producing blood products and their liability insurances took place with the aim of compensating HIV infected haemophiliacs. Only material damage of the victims and their spouses was compensated for. In this context, the victims had to sign a settlement agreement in which they waived all further claims also against possible third-party joint debtors (Gesamtschuldner). The vast majority of victims did consent to this agreement because of a series of legal challenges which made speedy compensation rather unlikely. On average the victims received 60.000 DM (total above 100 Mio. DM).

On 6 October 1993, the president of the German Health Authority (Bundesgesundheitsamt) and a ministerial officer had to step down due to pressure by the Federal Minister of Health. They were criticized for a poor information policy on HIV infected blood products. On 29 October 1993, the German Parliament (Deutscher Bundestag) set up an inquiry commission "Inquiry Commission on HIV Infections through blood and blood products" according to art. 44 German Constitution (art. 44 GG); its main focus was to inquire if and to what extent the federal government and administration bore (legal) responsibilities and accountabilities in the context of the scandal. The commission was also mandated to clarify the financial, social and legal situation of the victims (mainly haemophiliacs) and their relatives in order to formulate proposals in the victim's interest to the legislator. A last point was to assess the safety of blood and blood products and what needed to be done to improve those. The final report by the inquiry commission, which was criticised for its weakness and softness on the pharmaceutical industry and for not having vigorously challenging the legal status quo, was published on 25 October 1994. One of the main outcomes for victims was the institution of a foundation (*Stiftung Humanitäre Hilfe für durch Blutprodukte HIV-infizierte Personen*) in 1995, in parts modelled on the Contergan Foundation. This foundation Humanitarian Help was financed by the federal government (100 Mio DM), the German States (50 Mio DM), the German Red Cross (9,2 Mio. DM) as well as by the pharmaceutical industry (90.9 Mio. DM), namely: Bayer AG, Immuno GmbH, Behringwerke AG, Baxter Deutschland GmbH, Armour Pharma GmbH and Alpha Therapeutics GmbH. The federal law (Gesetz über die humanitäre Hilfe für durch Blutprodukte HIV-infizierte Personen (HIVHG)) implementing the foundation stipulated some restrictions among others that all further claims stemming out of this subject matter against the federal government, the Red Cross as well as the pharmaceutical corporations, which had financed the foundations, extinguished. The financial support provided (pension scheme) to the victims is comparatively moderate. The assets of the foundation were already exhausted by 2010 and needed to be stocked up due to new medical drugs which significantly improved the life-expectancy of HIV infected persons. Today, the question of how to sustainably support the victims is still unresolved. The funds will be exhausted again in the near future.

Persons with a hepatitis C infection through contaminated blood products have until today not received financial compensation in Germany.

<b>CASE</b>	<b>GAS EXPLOSION IN GHISLENGHIEN</b>
<b>COUNTRY</b>  Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)	BELGIUM
<b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)	Environmental: disaster caused by a gas explosion
<b>CORPORATION(S) INVOLVED</b> Please, specify (if known): - type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/private held companies) - nature of business (manufacturing, sale, distribution, etc..) - country of legal head office	<ul style="list-style-type: none"> <li>• Diamont Boart, company who ordered the construction of a new building on the site where the disaster happened</li> <li>• Tramo, construction company or building contractor who constructed the new building for Diamont Boart.</li> <li>• Fluxys, large company managing the gasnetwork which passed under the construction site</li> </ul>
<b>SUMMARY OF THE CASE</b>  (General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)	On 30 <sup>th</sup> July 2004 an accidental gas leakage in a high pressure gas pipe (managed by company Fluxys) created a persistent smell of gas. The gas pipe passed underneath the industrial zone of Ghislenghien where construction work was taking place. Company Tramo was constructing a new building for company Diamont Boart. Some employees of one of the factories alerted the firefighters. When the first crew of firefighters arrived, around 9am, an enormous explosion took place. It instantly killed 24 people and wounded 132 others. An enormous flame rose up to 500 meters up in the air, the temperature at the disaster scene went up to 300°C. The heat of the fire was felt until 2 km from the explosion. Debris from the nearby factories was projected up to 6 km away from the epicentre of the disaster. It was the biggest technological disaster ever in Belgium. A medical disaster plan was activated and victims were transported to hospitals and burn centers all over Belgium and the Netherlands. (De Soir, 2015, 16-17)

<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	<p>All the accused were initially charged with art. 418-420 Criminal Code, which concern involuntary manslaughter and unintentionally causing bodily injury by lack of precaution and without the intention to harm being present.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Final judgement. The case was handled:</p> <ul style="list-style-type: none"> <li>• first, at the court of first instance in Tournai (verdict of 22/2/2010)</li> <li>• second, at the court of appeals in Mons (verdict of 28/6/2011)</li> <li>• finally at the court of cassation (verdict of 12/11/2012)</li> </ul>
<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING ***</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>The press relates that there were 600 civil parties involved in the trial. (press release Belga, 3/12/2008)</p>
<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>No information</p>

<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>- <u>sanctions</u> imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>- <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ul>	<p>There was a lot of debate about the outcome of the criminal proceedings because the decision of the judges in the appeal court was considerably different from the decision of the court of first instance. In each instance in total 14 people or legal persons were accused.</p> <p>In first instance: only 3 of the accused were found guilty: construction company Tramo (165.000 euro fine with postponement of execution), the architect of the new building (suspended sentence) and the foreman of the construction site (suspended sentence). All three were convicted for involuntary manslaughter.</p> <p>The public prosecutor appealed against the decision.</p> <p>In appeal: 8 of the accused were found guilty: the architect, gas company Fluxys, Diamond Boart who ordered the building, two people of the construction company Tramo and two safety coordinators. They were convicted for a lack of carefulness (manqué de prudence). Company Tramo itself received an acquittal.</p> <p>The court of cassation confirmed the criminal part of the case, but reviewed parts of the civil part of the decision in appeal.</p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>-whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	

<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>Existence of ngo 'Solidarité Ghislenghien', who collected money for the the children of the victims and for costs related to funerals of deceased victims, transport to hospital etc.</p> <p>Existence of ' the association of victims of Ghislenghien': an association where victims can meet, share their stories and organise mutual support.</p>
<p><b>VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- whether the victims (or some of them) favoured a civil suit</li> <li>- whether the victims made claims or requests to other Authorities (not criminal or not judicial)</li> <li>- whether the civil action (or other procedure) was the only option provided by the national law;</li> <li>- whether the victims filed a complaint but no criminal proceeding ever started</li> <li>- whether the victims were denied the status of party to the criminal proceeding</li> <li>- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings</li> </ul>	<p>Besides the criminal proceedings victims also filed separate civil lawsuits on the basis of art. 1384 Civil Code, this is the responsibility for the harm caused by things/objects for which one is responsible. Civil parties wanted to hold Fluxys responsible for the harm caused by the gaspipe and Diamont Boarts for the construction site they owned.</p>

#### **ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

The question of the financial compensation of the civil parties was a very complicated one. The amounts of compensation to be paid was estimated by some professionals up to 1 billion euro. Many parties were potentially co-responsible for what happened, and thus also many insurance companies were involved. Because the attribution of responsibility was not clear at all, the insurance companies wanted detailed investigations and they were not keen on paying provisionally before the outcome of the court case.

In order to decide about the compensation of the civil parties after criminal responsibility had been determined, a panel of experts was created who started to work immediately after the decision on the criminal responsibility was taken by the court of appeals. Ten years after the disaster not all compensation cases had had a final decision.

**ADDITIONAL COMMENTS**

The gas explosion of Ghislenghien was a disaster highly covered and followed up by the media. Because of its immediate and important impact in terms of material and physical impact, it also received intense political attention and it raised empathic reactions from the public opinion.

In this context a number of initiatives were taken outside the context of the criminal trial, which provided recognition to the victims. We mention a few:

- two large donations by gas company Fluxys to compensate the victims
- as a consequence of the disaster of Ghislenghien, a law was adopted according to which victims of a technological disaster are compensated for physical damage without them having to wait until the legal responsibilities have been determined in legal procedures. It was a response to the complaints of many victims who had to wait for years before receiving compensation. A fund was created to make this early compensation possible. Insurance companies contribute to the fund and after the legal procedures they mutually arrange the division of the compensation as decided by the court.
- Every year a commemoration is held at the site of the disaster

Bibliography, De Soir, E. (2015). Trauma and mental health in the wake of technological disaster. The Ghislenghien gas explosion. Antwerpen-Apeldoorn: Maklu



CASE	WASTE DUMP OF MELLERY
<p><b>COUNTRY</b></p> <p>Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>BELGIUM</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Environmental</p>
<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies)</li> <li>- nature of business (manufacturing, sale, distribution, etc..)</li> <li>- country of legal head office</li> </ul>	<p>Sprl Les Sablières réunies: company owned and managed by Mr Heremans , exploited a waste dump in Mellery from 1982 to 1989.</p> <p>De Block, transport firm which imported (toxic) waste from the Netherlands to Mellery.</p>
<p><b>SUMMARY OF THE CASE</b></p> <p>(General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)</p>	<p>1983 Start of dumping of illegally toxic waste at the waste dump of Mellery.</p> <p>1987 Discovery of the traffic by the local population.</p> <p>1989 The government closes the dump. Pollution of the water, ground and gazes on a big surface becomes apparent.</p> <p>1990 The government starts cleaning up the area.</p> <p>1992 Medical tests of the local population show worrisome results; a saga of medical follow up follows; it drags on and is not thorough; the funding is problematic, in 2006 the inhabitants refuse to continue the medical follow up as it has not been done seriously.</p>

<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	
<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>The victims involved in the case and in the legal proceedings were citizens living in the neighbourhood of the waste dump of Mellery.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Final judgment</p>

**VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING**

Please, specify (if known):

- the existence of a formal complaint reporting crimes made by victims
- whether victims have the status of party to the criminal proceedings.
- numbers of victims having the status of party to the criminal proceeding
- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)

**VICTIMS' REQUESTS TO THE JUDGE**

(eg. compensation or other kind of moral or material reparation claims)

**DECISION/OUTCOME OF CRIMINAL PROCEEDING**

(To be filled in only if a decision is available)

Please, specify (if known):

- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)
- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)
- sanctions imposed to corporation(s) and/ or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system
- decision on victims' requests (compensation for material or non-material damages, reimbursement of expenses, etc.)

Criminal cases were engaged in 1987 against the manager of the waste dump (Heremans) and against the people transporting the toxic waste (Stevens, De Block and De Dijcker).

- First instance: decision of 21 September 1994

The accused were charged with 19 offences: a whole series of violations of environmental law and forgery and tax offences. Medical reports acknowledged that the health of certain residents of Mellery was under serious threat from groundwater, soil and air pollution caused by the dump site, but that this threat had not yet manifested itself in the form of lesions, which meant that there were no factors constituting 'involuntary injury' as an offence yet (Lavvrysen, 1995, 234). The main offenders were sentenced to respectively 5 years of imprisonment (Stevens, the brain of the scandal), 4 years of imprisonment (Heremans, the manager of the waste dump) and 2 years of imprisonment (the transporters De Block and De Dijcker), and each with a fine of 180.000 belgian francs (about 4.500 euro). These were the most severe penalties ever imposed in Belgium in a criminal environmental case. The civil parties were awarded provisionally 1 belgian franc in compensation. Concerning the damages, the judge had to wait for the final report of a panel of experts which had been appointed by another, civil court.

- Court of appeals: first decision of 23 June 1995 and final decision in 2003

The appeals started in 1995. A whole series of charges were dismissed by the court of appeal. The main indictment became involuntary battery and assault (418-420 Criminal Code). Faced with contradictory opinions of different experts the court considered itself in no position to judge whether or not the dumping had caused damage to public health. A panel of experts was appointed to investigate the link between the waste dump and the risks for the health of the citizens living near the waste dump. The case was adjourned pending the report of these experts. The experts concluded in 2001 that the causal link between the waste dump and the risks for the population was very likely, but not certain and so the criminal case ended in 2003 in an acquittal of all the accused.

In April 2008 the ECHR sentences the Belgian State to pay financial reparation of 30.000 euro to one of the accused persons (Heremans) for the unreasonable length of the procedure.

The committee set up to defend the citizens in 1988 (CADEV), is attacked with a complaint for defamation (outcome not clear).

<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>-whether the agreement implies the withdrawal of victims’ rights to access to justice</li> </ul>	<p>In 2003, when the criminal suit ends in acquittal, the civil law suits are concluded by a ‘conciliation’. The victims perceive it as a ‘bad agreement’, but they are tired of years of procedures.</p>
<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim’s needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>As a consequence of the discovery of the waste dump, a non-governmental organisation was founded in 1988 and called CADEV, which is the abbreviation for <i>Comité d’Action pour la Défense de l’Environnement à Villers-la-Ville</i>.</p> <p>Cadev filed a civil law suit at the court of Nivelles and started a criminal law suit in Antwerp. The law suits were directed against the manager of the waste dump, the organisers of the transport of dangerous waste and against the administration which delivered permits for the waste dumps without adequate control.</p> <p>Cadev also struggled to get organised and funded a medical follow up of the population living in the neighbourhood of the waste dump.</p> <p>The organisation pushed for and obtained the cleaning up of the site and contributed to the development of more adequate environmental legislation.</p> <p>Now many years after the discovery of the scandal, Cadev still exists and has adopted the larger mission of tackling other environmental problems, focusing more on territorial planning, protection of biodiversity and mobility.</p>

**VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS**

Please, specify (if known):

- whether the victims (or some of them) favoured a civil suit
- whether the victims made claims or requests to other Authorities (not criminal or not judicial)
- whether the civil action (or other procedure) was the only option provided by the national law;
- whether the victims filed a complaint but no criminal proceeding ever started
- whether the victims were denied the status of party to the criminal proceeding
- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings

Besides the criminal law suits, civil law suits were engaged in 1990 and lasted for many years. In 2003, when the criminal suit ended in an acquittal of all the accused persons, the civil law suits were concluded by a 'conciliation'. The victims side perceived the conciliation as a 'bad agreement', but they are tired of years of procedures.

**ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
- any other useful information concerning the respect of victims rights envisaged by Chapter 3 - articles 10 et seq. - of Directive 2012/29/EU
- any other useful information concerning the implementation of measures to ensure the victims' rights of protection envisaged by Chapter 4 - articles 18 et seq. - of Directive 2012/29/EU

The victims association CADEV used the media as a means to pressure politicians in order to actively handle the case and take measures.

**ADDITIONAL COMMENTS**

A parliamentary commission was set up in 1993 to investigate the regulations and policies developed in Wallonia concerning the treatment of waste and their actual implementation in order to draw lessons for the future. The commission explicitly and logically avoided interfering in questions of individual responsibility, which were treated by the courts. However, the final 9 page political report of the commission, published in 1994, was quite general and weak and avoided pointing out political responsibilities.



CASE	UCO – TEXTILE PLANT CAUSING SERIOUS ODOUR NUISANCE
<p><b>COUNTRY</b> Specify the State where the case was prosecuted and, in case, whether the case has transnational features or deals with extra-judiciary procedures (such as: involvement of foreign victims, requests for cooperation, extradition, etc...)</p>	<p>BELGIUM</p>
<p><b>PROJECT'S FIELD OF RESEARCH</b> (environmental, food safety, medical devices/ pharmaceutical)</p>	<p>Environmental</p>
<p><b>CORPORATION(S) INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of corporation (multinational entity, small, medium-sized or large company, publicly owned companies/privately held companies)</li> <li>- nature of business (manufacturing, sale, distribution, etc..)</li> <li>- country of legal head office</li> </ul>	<p>UCO: Large private company operating in the production of textile (spinning, colouring and weaving textile fabrics)</p> <p>UCO is short for Unon Cotonnière, a company which was started up in Ghent in 1919 and focused initially on industrial fabrics.</p> <p>In the 1970s the name changed into UCO sportswear, as the plant started concentrating on the production of denim.</p> <p>After a merger in 2006 with Indian company Raymond, the company is called UCO Raymond.</p> <p>The company is no longer profitable in that period and at the end of 2008 it is decided to close the production site in Ghent down. The production is moved to other countries.</p> <p>In January 2009 the last workers leave the production hall. Later that year the company is merged with UCO nv.</p> <p>In 2010 the city of Ghent buys the UCO site and starts up a large conversion process: the site will be used by organisations of social economy and to provide green space to the neighbourhood.</p> <p>It is important to notice that historically the textile industry has been a central economic player in the region of Ghent. The textile plant was an important provider of jobs, the plants were part of people's daily life because it was their employer and/or because they lived in the neighbourhood.</p>
<p><b>SUMMARY OF THE CASE</b> (General description of the case, including the time and place of facts and events, the type and dissemination of damages or harms, and, if possible, the identification of the potential victims, regardless of the formal identification in a criminal proceeding)</p>	<p>Since 1976 neighbours of textile company UCO Sportswear complain about odour nuisance. In 2001 the environmental inspection takes on the case. In the period 2001-2005 it gathers the complaints that keep coming in, identifies ongoing breaches of environmental regulations, and orders external reports about the odour nuisance. The odour nuisance is very clearly established and the environmental inspection makes numerous requests to make the necessary technical changes to prevent the odours. The company makes promises but does not carry out the necessary changes. Finally the case goes to a criminal court.</p>

<p><b>ACCUSATION RESULTING FROM THE COUNT OF INDICTMENT</b></p> <p>Please, include a brief description of:</p> <ul style="list-style-type: none"> <li>- the offences charged to the corporation(s) or its/their representatives</li> <li>- type of harm or other damages directly caused to victims by the criminal offence charged to the corporation(s) or its/their representatives</li> </ul>	<p>No information</p>
<p><b>VICTIMS INVOLVED</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the numbers of victims identified and involved in the criminal proceeding</li> <li>- the type of victims (victims who suffered harm or economic loss, family members)</li> </ul>	<p>Only one victim was involved in the criminal procedure as civil party: a women living in the neighbourhood of the textile plant.</p> <p>Many more people actually suffered from the odours produced by the plant.</p>
<p><b>STAGE OF THE CRIMINAL PROCEEDING ***</b></p> <p>Current status: Investigation, Preliminary Hearing, Trial, res judicata/final judgement</p>	<p>Res judicata/final judgement</p>

<p><b>VICTIMS PARTICIPATION IN THE CRIMINAL PROCEEDING</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- the existence of a formal <u>complaint</u> reporting crimes made by victims</li> <li>- whether victims have the <u>status of party</u> to the criminal proceedings.</li> <li>- numbers of victims having the status of party to the criminal proceeding</li> <li>- level of victims participation in the criminal proceedings (victims are/were able to explain the circumstances of the crime and to provide their evidence; active participation in court hearings, statements or explanations in writing, etc...)</li> </ul>	<p>The reports about the case mention that people living in the neighbourhood of the plant started complaining about odour nuisance already in 1976. It took however until 2001 for environmental inspection service to draw up the first official report about the odour nuisance.</p> <p>In the period 2001-2005 the environmental inspection kept on receiving legitimate complaints. When the case turned into a legal criminal procedure, only one victim, a lady living in the neighbourhood, participated as a civil party.</p>
<p><b>VICTIMS' REQUESTS TO THE JUDGE</b> (eg. compensation or other kind of moral or material reparation claims)</p>	<p>From the outcome of the case we can deduce that the victim/civil party requested financial compensation. No further information is available.</p> <p>In an interview with the press, the victim/civil party emphasised that her main concern was that the plant would respect the environmental regulations and install the necessary filters and/or chimneys so that the odour nuisance would stop. (Het Nieuwsblad, 6/2/2007, p. 21)</p>

<p><b>DECISION/OUTCOME OF CRIMINAL PROCEEDING</b> (To be filled in only if a decision is available)</p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of decision (First degree sentence, Appeal sentence, Supreme Court sentence, plea bargain, decision of the prosecutor resulting in an out-of-court settlement)</li> <li>- final Judgement (conviction, acquittal, decision not to prosecute, proceeding closed because the limitation period for the offence run out)</li> <li>- <u>sanctions</u> imposed to corporation(s) and/or to its representatives. Specify the nature of sanctions imposed to corporations according to the domestic law system</li> <li>- <u>decision on victims' requests</u> (compensation for material or non-material damages, reimbursement of expenses, etc.)</li> </ul>	<p>First instance: decision of 5/2/2007</p> <ul style="list-style-type: none"> <li>• UCO sportswear was sentenced to a fine of 412.500 euro.</li> <li>• The chair of the board of the company was sentenced to a fine of 13.750 euro</li> <li>• The CEO was sentenced to a fine of 13.750 euro</li> <li>• A former CEO of UCO was sentenced to a fine of 2.478 euro</li> <li>• One neighbour of the plant, who acted as civil party at the trial, received 3.650 euro in compensation.</li> </ul> <p>Court of appeals: decision of 25/11/2011</p> <ul style="list-style-type: none"> <li>• The conviction of the chair of the company and its CEOs were upheld, but the fines were reduced because the case in appeal had taken an unreasonably long time according to the judge in appeal. The fine of the chair and CEO in office was reduced from 13.750 to 9.625 euro.</li> <li>• The company could not be sentenced anymore because UCO sportswear was taken over by UCO nv in 2009. The merger had been organised in such a way that no company (also not the new owner UCO nv) could be held criminally liable for the environmental offences treated in the case.</li> </ul> <p>Court of cassation (appeal introduced by the chair of the board): decision of 5/6/2012</p> <p>The court of cassation confirmed the decision of the court of appeals. The chair of the board's argument that he was not part of the operational team and therefore could not be held responsible was rejected. The court explained that he took part in the criminal offences as the board had decided or at least allowed - for economic reasons - that no measures were taken in order to prevent harm (in terms of odour, noise or dust – 'milieuzorgplicht') and that environmental regulations were not respected. There was no indication that he had ever protested against this policy of the board, neither was there any indication that he would not have been followed in case he had proposed to take other decisions. In other words, the court argued that in practice, he had the power to steer the company's policy in a different direction. This decision caused quite some discussion in the world of the boards of big companies.</p>
<p><b>EXTRA-JUDICIAL AGREEMENTS BETWEEN VICTIMS AND CORPORATION(S)</b> (OR ATTEMPTS TO FIND AN AGREEMENT)</p> <p>Please, also specify (if known):</p> <ul style="list-style-type: none"> <li>- type of agreement</li> <li>- content of the agreement</li> <li>-whether the agreement implies the withdrawal of victims' rights to access to justice</li> </ul>	<p>No knowledge of extra-judicial agreements between victims and the textile plant. It is however mentioned in the press that neighbours of the plant were offered a cheque (money) in an attempt to convince them to stop the complaints to the environmental inspection. The complaints continued.</p>

<p><b>EXISTENCE OF ASSOCIATIONS, CIVIL SOCIETY ORGANISATIONS, VICTIMS SUPPORT SERVICES</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- type of Victims Association or other service supporting victim's needs and rights</li> <li>- Victims Association or other victims support services role in supporting victims before and during the Trial (assistance, information, legal aid)</li> <li>- whether the Victims Association itself reported the crimes to criminal Authorities</li> <li>- whether the Victims Association itself has/had the status of party to the criminal proceeding</li> </ul>	<p>We did not find traces of a specific victim association related to this case.</p>
<p><b>VICTIMS NOT PARTICIPATING IN CRIMINAL PROCEEDINGS</b></p> <p>Please, specify (if known):</p> <ul style="list-style-type: none"> <li>- whether the victims (or some of them) favoured a civil suit</li> <li>- whether the victims made claims or requests to other Authorities (not criminal or not judicial)</li> <li>- whether the civil action (or other procedure) was the only option provided by the national law;</li> <li>- whether the victims filed a complaint but no criminal proceeding ever started</li> <li>- whether the victims were denied the status of party to the criminal proceeding</li> <li>- other reasons for victims lack of participation in, or withdrawal from, the criminal proceedings</li> </ul>	<p>It is interesting and intriguing that in the criminal case only one civil party came forward, although the descriptive accounts of the case refer to regular complaints received by the environmental inspection in the period 2001-2005. Moreover, the reports of this inspection document important odour nuisance which extended to – in some instances – around 650m from the plant and experienced by a high percentage of the inhabitants of that area.</p>

#### **ADDITIONAL INFORMATION ON VICTIMS' POSITION**

Please, specify (if known):

- media exposure of victims during the investigation or during the Trial
- presence of victims who do not understand or speak the language of the criminal proceeding and, in case, whether interpretation or translation were provided
- level of conflict with corporation before or during the criminal proceeding (such as demonstrations against the corporation, aggressive defensive strategies, distress expressed by victims, etc. )
- evidence of secondary and repeat victimisation, intimidation or retaliation
- reasons why victims' request to the justice system were not met or completely satisfied (e.g. an investigation or a proceeding ever started; the offender was not identified, apprehended, prosecuted or convicted; damages to victims were not be proven; decision not to prosecute due to limitation period for the alleged offence; compensation obtained in the victim's perception/opinion is not consistent with the request)
- whether victims or victims Associations are still demanding for justice after the Trial (e.g. throughout appeals, petitions, press releases, Parliamentary questions, an active web-site)
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**ADDITIONAL COMMENTS**

This is a clear case of a company who refuses to invest in prevention of environmental harm and to respect environmental regulations for economic reasons. The environmental inspection described this attitude as a structural lack of attention for the environmental aspects of the management of the company, with disregard of many specific requests made by the environmental inspection, and with immediate negative consequences for the population.

A poignant detail of the case: the member of the board of UCO who was convicted by the criminal court, was a well-known top manager involved in the boards of different big companies. In the year before the conviction he received the award of 'Belgian manager of the year' and the year after his conviction he was ennobled...

## PARTNERS



### **“Federico Stella” Centre for Research on Criminal Justice and Policy (CSGP) – Università Cattolica del Sacro Cuore, Milan, Italy.**

CSGP is the coordinator of the project. CSGP is a research centre on criminal law and criminal policy, committed to promote theoretical and applied interdisciplinary research, aiming at improving the criminal justice system. Its activities, projects and expertise cover a wide range of themes, including business criminal law, corporate liability, criminal law reform, restorative justice and victim support, environmental law, law and the humanities, law and the sciences. An Advisory Committee of prominent scholars, judges and leading experts in juridical, economic, philosophical and psychological disciplines coordinates its scientific activities.



### **Leuven Institute of Criminology – University of Leuven, Leuven, Belgium.**

The University of Leuven (KU Leuven) is charter member of the League of European Research Universities; European surveys rank it among the top ten European universities in terms of its scholarly output. The Leuven Institute of Criminology (LINC) is composed of about seventy professors and researchers involved in criminological research and teaching. LINC continues the Leuven tradition of combining solid research with a deep commitment to society, a goal achieved through fundamental as well as policy-oriented research. LINC consists of eight ‘research lines’, one of which is on ‘Restorative justice and victimology’.



### **Max Planck Institute for Foreign and International Criminal Law (MPICC), Freiburg i.B., Germany.**

Research projects undertaken at MPICC are comparative, international, and interdisciplinary in nature, and focus on empirical studies of criminal law, crime, crime control, and crime victims. Research also involves: harmonization and assimilation of criminal law and criminal procedure in EU Member States; development of criminal law thanks to insights into existing legal solutions to social problems, and into functional criminal and extra-criminal law alternatives.

## ASSOCIATE PARTNERS



**Scuola Superiore della Magistratura**



**Associazione Familiari Vittime Amianto**



