



## Editorial

### Asbestos And The Law<sup>☆</sup>

#### La justicia y el amianto

Glòria Poyatos,<sup>a</sup> Carmen Diego Roza<sup>b,\*</sup>

<sup>a</sup> Magistrada del Tribunal Superior de Justicia de Canarias, Las Palmas de Gran Canaria, Las Palmas, Spain

<sup>b</sup> Neumología, Complejo Hospitalario Universitario de Ferrol, Ferrol, A Coruña, Spain



Asbestos and the law have crossed paths on numerous occasions, and several different types of court (criminal, labor, etc.) have ruled on compensation for damages caused by this material. Most judgements involve the application of labor laws, and more specifically, health and safety regulations.

Labor law emerged as a legal discipline independent from civil law in the 19th century as a result of changes brought in by the industrial revolution<sup>1</sup> and the emergence of new social classes, namely the middle and working classes. Labor or employment law, then, was created to prevent the abusive practices to which some workers were exposed as a result of labor supply and demand, thus safeguarding their dignity and granting them a series of inalienable rights protecting their freedom of contract.<sup>2</sup>

In Spain, the first regulations appeared in 1873 in the form of laws designed to protect the social security and working conditions of minors. In 1900, the first law on occupational accidents was enacted; this was followed by many more, until, in 1966, the first Social Security Act was passed.<sup>3</sup>

Protection for occupational disease has its origin in a judgment delivered by the Supreme Court in 1903, which ruled that the Occupational Accidents Act was applicable to occupational diseases, although it was not until 1947 that this was enshrined in law, and the scope of the Act was subsequently expanded in 1961.<sup>4</sup>

The Spanish social security system is based on a mixed protection scheme offering on the one hand, universal protection for all citizens in situations of need, and on the other, professional or occupational protection for employees or self-employed workers.

The general scheme for the protection of employees covers 4 risks divided into 2 generic groups: occupational risks, including occupational diseases and occupational accidents, and non-occupational risks, including non-occupational diseases and non-occupational accidents.

Occupational health and safety regulations are more favorable in both financial and medical terms (the corresponding insurance company, rather than the public health service, is responsible for

covering costs<sup>5</sup>) than those covering non-occupational diseases. In addition, companies found to be in breach of occupational health and safety regulations may be fined if a worker contracts a disease as a result of the company's failure to observe general or specific health and safety measures in the workplace, or as a result of doing a job for which they are inadequately trained.

Respiratory disease associated with the handling of asbestos is included in the generic occupational risk group, and more specifically, is classified as an occupational disease. Although occupational exposure to asbestos has been indirectly regulated in Spanish health and safety laws since 1940, asbestosis was specifically included as an occupational disease in 1961, when legal limits on the maximum concentration of asbestos in the workplace were introduced.<sup>4</sup> In 1978, lung cancer and pleural and peritoneal mesothelioma were added,<sup>6</sup> and in 1984, regulations governing jobs that involved a risk of asbestos exposure were approved.<sup>7</sup> In December 2001, before the deadline set by the European Union,<sup>8</sup> Spain banned the sale and use of chrysotile, the only type of asbestos still used in the country. The latest list of occupational diseases, set down in Decree 1299/2006,<sup>9</sup> dates from 2006, in which the following were acknowledged to be asbestos-related occupational diseases: asbestosis, fibrosing diseases of the pleura and pericardium that involve respiratory or cardiac restriction, mesothelioma in any site, and malignant disease of the bronchus and the lung (groups 4 and 6, respectively). The list was recently expanded to include laryngeal cancer as an occupational disease when associated with asbestos exposure.<sup>10</sup>

Injury caused by an occupational disease can entitle the worker to claim Social Security benefits, supplementary benefits and personal injury compensation, and can expose employers to administrative penalties and prosecution for criminal liability.

Legal judgments in matters of asbestos-related injury are not necessarily limited to a single subject-matter jurisdiction, although most claims were heard by labor courts, since asbestos fiber was widely used by numerous industries during the second half of the 20th century. Since 1996, the provincial courts, the high courts of justice, and the Supreme Court handed down at least 115 sentences regarding civil liability or state liability for asbestos injury.

In [Annex 1 \(additional material\)](#) to this editorial, Judge Glòria Poyatos analyzes some of these decisions. Almost all of the judgments involve workers contracting an asbestos-related disease as

<sup>☆</sup> Please cite this article as: Poyatos G, Diego Roza C. La justicia y el amianto. Arch Bronconeumol. 2017;53:5–6.

\* Corresponding author.

E-mail address: [carmen.diego.roza@sergas.es](mailto:carmen.diego.roza@sergas.es) (C. Diego Roza).

a result of handling the substance as part of their job. If in some cases the causal relationship, however obvious, is difficult to prove, even more challenging is the task of associating the disease with proximity to polluting factories (environmental exposure of individuals living nearby) or with domestic exposure. A recent case of domestic exposure was widely reported in the media following the judgment of the Civil Chamber of the Supreme Court on December 3, 2015, which recognized the right of 3 housewives (one already deceased) to receive compensation for asbestos exposure. Their contact was indirect: as wives of workers in an asbestos factory, they had been exposed in the home while cleaning, shaking out and ironing of their husbands' working clothes and footwear. Legal decisions in cases not involving occupational exposure are very important because they demonstrate judicial recognition of the relationship between non-occupational exposure and asbestos-related diseases. Cases in which the victim has had no occupational exposure are heard by the civil courts.

**Annex 1 (additional material)** also includes an explanation of general legal matters, concluding with a comment on the importance of the evidence of the medical expert witness.

Respiratory medicine specialists have a key role in ensuring that justice is served in the complicated area of asbestos injury: on the one hand, they are usually responsible for diagnosing asbestos-related diseases, and on the other, they write the reports that are often submitted to substantiate injury compensation claims. The submission of medical reports that will convince the judge of the existence of a causal link between asbestos exposure and the development of a characteristic respiratory disease is undoubtedly important. However, with the exception of administrative reports, the medical report is only legally effective when ratified in court by an expert witness, in this case a physician. These professionals have an important social mission that must be recognized in the fight against asbestos. Supplementary data

Supplementary data associated with this article can be found, in the online version, at [doi:10.1016/j.arbr.2016.11.012](https://doi.org/10.1016/j.arbr.2016.11.012).

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