Google translation from Italian to English report featured in one of the most important Italian nationwide online law-specialised newspapers.

<http://www.quotidianogiuridico.it/documents/giuridico/2020/01/27/tumore-per-uso-del-cellulare-puo-essere-riconosciuta-la-malattia-professionale?fbclid=IwAR3pztLdGusxDPpqOiZIVIkmRJZ46Mbh1jzPGlnprQxsQzAgxsEg4-mkZg8>

Professional Disease – The Text of the Judgement PROFESSIONAL DISEASE - THE TEXT OF THE JUDGMENT

Cell phone cancer: can occupational disease be recognized?

With judgment of 3 December 2019, no. 904, the Turin Court of Appeal confirmed the decision of the Ivrea Court, labor section, no. 96 of 2017. The first degree judge recognized the professional nature of the worker 's right acoustic neurinoma due to the prolonged and continuous use of the mobile phone for work reasons from 1995 to 2010. The judge therefore sentenced INAIL to payment compensation for occupational disease. This decision was supported by a specific expert witness who had ascertained the existence of the causal link on the basis of the "most likely not" rule. In other words, based on the peculiarities of the specific case (the association between rare tumor and rare exposure for duration and intensity; the latency period congruous with the values ​​relating to non-epithelial tumors; the fact that the pathology arose on the right side of the appellant's head, a right-handed subject; the lack of other plausible explanation of the disease) was to be considered proven causal. Even the second-degree judges deemed the approach of the office consultants to be acceptable. According to the Turin Court of Appeal, since it is an unlisted occupational disease and a multifactorial etiology, the proof of the labor case must be assessed in terms of reasonable certainty. The professional origin of the disease can therefore be recognized in the presence of a significant degree of probability, as had happened in the present case.

The ruling in question deals with the issue of recognition of occupational disease in the case of using a mobile phone for the performance of work.

In this case, INAIL has appealed to the Court of Appeal of Turin the ruling of the Ivrea Court, labor section, no. 96 of 2017. This sentence had sentenced INAIL to compensation for occupational disease. The labor judge recognized the professional nature of the worker 's right acoustic neurinoma due to the prolonged and continuous use of the mobile phone for work reasons from 1995 to 2010. In particular, a worker, technician of a telephone company, had used the mobile phone for service reasons and for a period of fifteen years with a frequency of four hours a day. In 2010 the worker was found to have a neurinoma that had forced him to remove the acoustic nerve, with the consequent loss of hearing from the side of the right ear and a partial paresis in the vicinity of the oral cavity. CTU had ascertained the existence of the causal link on the basis of the peculiarities of the concrete case. In particular, he observed that the association between rare cancer and rare exposure in duration and intensity; the latency period congruous with the values ​​relating to non-epithelial tumors; the fact that the disease arose on the right side of the applicant's head, a right-handed subject; the lack of other plausible explanation of the disease were all elements from which the causal link should be considered proven on the basis of the rule of "more likely than not". In addition, epidemiological studies also claimed that exposure to radio frequencies emitted by mobile and cell phones for a period of time greater than 10 years entailed an additional risk for brain tumors.

Following the appeal, a new office technical advice and testimonial evidence was arranged. During the investigation it was confirmed that the worker had been exposed to radio frequencies for a period of time equal to four hours a day. Furthermore, it was ascertained that, at the time of the facts, the radio frequencies emitted by cell phones, in addition to being often above the maximum allowed threshold, could not be attenuated as there were no earphones, headphones or other instruments that would allow to avoid the direct contact of the mobile phone with the face. As for CTU, the consultants confirmed that "with a criterion of high logical probability, an etiological link can be accepted between the prolonged and conspicuous work exposure to radio frequencies emitted by mobile phone and the reported disease". These consultants' conclusions were based on a careful examination of the sources of the scientific literature, applied to the peculiarities of the concrete case (for quantity and duration of the exposure), in the absence of alternative risk factors, according to probabilistic certainty standards. In other words, the office consultants have identified the causal link taking into consideration the concrete exposure of the appellant to radio frequencies which, due to its peculiarities, had characteristics completely different from the average ones found generally by the population in the period in question.

In addition, the technical consultants focused on the reliability of the assessments of scientists financed by the telephone industry or members of the ICNIRP that excluded the carcinogenicity of exposure to radio frequencies. In particular, the technical consultants claimed that the authors of the studies indicated by INAIL were members of ICNIRP and SCENIHR (private institutions that had received funding from the telephony industry). Therefore, they were in a position of conflict of interest that was not always declared. It followed that less weight had to be given to the studies published by authors who did not declare the existence of a conflict of interest with respect to the assessment of the effect on the health of radio frequencies.

The Turin Court of Appeal considered the approach of the office consultants to be acceptable and rejected the INAIL appeal. In particular, the second-degree judges argued that it is "evident that the investigation, and the conclusions, of independent authors give greater guarantees of reliability than those commissioned, managed or financed at least in part, by subjects interested in the outcome of the studies . On the other hand, "The extensive scientific literature cited and applied by the Office Consultants, completely independent, must therefore be considered reliable, as well as the conclusions, at the epidemiological level, to which it has reached". Since it is an unlisted occupational disease and multifactorial etiology, the proof of the cause of work must be assessed in terms of reasonable certainty. Therefore, the relevance of the mere possibility of the professional origin of the disease which, on the other hand, can be recognized in the presence of a significant degree of probability, as had happened in the present case, must be excluded. In other words, the epidemiological data, the results of animal experiments (not currently contradicted by other experiments of the same type), the duration and intensity of exposure (which take on particular importance given the ascertained dose- relationship). response between radiofrequency exposure from cellular telephone and risk of acoustic neuroma) together with the lack of another factor that may have caused the pathology constitute "solid elements for affirming a causal role between the exposure of the appealed to radiofrequency from cellular telephone and the disease that arose ”...

The ruling in question complies with the dominant orientation of the jurisprudence of legitimacy. In particular, the Court of Cassation has repeatedly stated that in terms of occupational disease deriving from a non-tabulated process or a multifactorial etiology, the proof of the work cause must be assessed in terms of reasonable certainty "in the sense that, excluding the relevance of mere possibility of professional origin, this can be recognized in a significant degree of probability. To this end, the judge, in addition to allowing the insured to test the admissible and ritually deduced means of proof, is required to evaluate the technical consultant's probabilistic conclusions regarding the causal link, making use of any "ex officio" initiative, directly to acquire further elements in relation to the extent of the worker exposure to risk factors, being able to deduce, with a high degree of probability, the professional nature of the disease from the type of processing, from the characteristics of the machinery present in the workplace, from the duration of the service itself, as well as the absence of other alternative or competing extra-working causal factors "(Court of Cassation, section, 10/04/2018 No. 8773; in accordance with Cassation, section of work, 12 / 10/2012, n. 17438).

The probabilistic conclusions of the technical consultant regarding the causal link are decisive. The professional nature of the disease can therefore be inferred with a high degree of probability considering various factors such as the type of work carried out, the nature of the machinery present in the workplace, the duration of the work performance and the absence of other non-working factors , alternatives or competitors that may be the cause of the disease

The analysis of the judgment in question and the previous conforms raises a reflection: technological progress has introduced increasingly sophisticated products on the market that determine exposure to new health risks. The cause that generates these new "technopathies" acts slowly on the worker 's body and the effects are manifested only after many years. In some cases, science is able to ascertain the level of harmfulness of a risk factor only after the entry into the market of the technology that generated it. In this context, the employer is responsible for safety at work: pursuant to art. 2087 cod. civ. the employer must adopt (i) all the safety measures provided for by the special laws and (ii) all the safety measures, even if not foreseen by the law, necessary to guarantee health and safety at work, taking into account the type of activities and the organization through which it is carried out. Therefore, the technological development and the rapid spread of "technopathies" entails a strong uncertainty for the entrepreneur who risks having to be subjected to civil and criminal proceedings without having been able to know beforehand the rule of conduct to be put in place to avoid (or at least mitigate) the risk of the occurrence of the event. All with the sole screen of having put in place all the technically, technologically and economically implementable security measures according to the parameter elaborated by the jurisprudence of the cd. maximum technologically feasible safety.

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