

The Italian legislation and directives concerning protection and safety of workers and members of the public against the exposure risk to ionizing radiation.

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The Italian Constitution at the article n. 32 says : “ The Republic protects the health as a fundamental right of each person and as a direct interest of the society . The Republic will therefore grant health cares to extremely poor people”.

Nevertheless for some years the legislation did not consider the problem of the protection of workers and members of the public against the exposure risk to ionizing radiation , as a main point to be treated. The first law on the matter was the law n. 1860 , issued on 31/12/1962: according to this law the use, the commerce and the transport of radioactive materials are to be licensed . Any offense is punished .

More detailed and precise directives and regulations were contained in the Decree, DPR n. 185, issued on 13/2/1964. It was up - to - dated with the decree n. 230 , issued on 17/3/1995, and the Decree n. 241 , issued on 26/5/2000. Recently was emanated the Decree n. 257 , issued on 9/5/2001, that allows the Govern to enact special decrees in order to restrict commercial activities including the trade of materials that contain natural radioactive elements. Moreover the same Decree obliges any subject to communicate to the authority, at least 30 days before, the expire of any activity involving radioactive materials. These three last Decrees complied with the most recent European Directives.

Italian jurisprudence of Supreme Court has examined the problems of workers' overexposure with these decisions:

- * any apparatus producing ionization radiations must be notified to the relevant authority;
- * any apparatus producing ionization radiations should be installed and kept in compliance with the requirements of its license and of the relevant good practice norms;
- * any user , with the help of a qualified expert , must adopt al disposition for workers' training , radiation protection and safety;
- * medical surveillance for workers must be ensure by an approved physician;
- * a personal register of periodic exposure and for health must be adopted for each worker;
- * for any installation , radiation protection and safety must be ensure both for workers and for members of the public ;
- * provisions must be adopted for potential exposures caused by incidents or accidents that can be foreseen.

Others decisions of Supreme Court have said:

- * the contraventions about ionizing worker's overexposition may exist only if there is the guilt's conscious will to break the law: therefore two hospital's administrators were acquitted because the causes of worker's ionizing overexpositions were derived by public regional financial weakness;
- * the employer must always ensure medical protection of workers even if different employers have already given the same protection to workers;
- * the general president of an hospital appears for the hospital but the contraventions about worker's overexposure to ionizing radiations must be intimated to the subject (administrative director or doctor of medicine) that is by the law indicated as the subject who has the general power to order to workers to obey to the security regulations ;
- * in order to protect anyway the workers , the law that defend workers by overexposure to ionizing radiations must be enforced even if the workers do not enter in the room where is installed the apparatus producing ionization radiations;
- * the rooms or the places where workers may receive ionizing radiations more than 1,5 REM every year must be signaled and delimited by employer: this obligation has defined by law and the judge can only establish if and in what space circle the limit of 1,5 REM is exceeded;
- * the protection of workers is not assured only by employer , but also by the authorized doctor of medicine who must:
 - book on workers' sanitary documents the absorbed doses of ionizing radiations;
 - revise constantly workers'sanitary documents because is not sufficient their annual adjournment.

The Decree n. 230 issued 17 March 1995 punishes , for example , with the minimum penalty of six months of arrest and the fine of maximum penalty of three years of arrest and with the fine of 10.330 euros and the maximum penalty of three years of arrest and the fine of 51.652 euros the guilty that carries on apparatus producing ionizing radiations without license and , in that way, doesn't protect workers by ionizing radiations .

Italian penal code foresees about these type of contraventions that the guilty may be punished even if he doesn't know with malice to violate the law : for his punishment is sufficient that the guilty knows with negligence to violate the law: thus the public prosecutor may obtain easier the condemnation of the guilty because it is more easy to prove negligence than malice. The reason of this difference between contravention and crime , that usually foresees the malice of guilty, is that contravention is punished with penalty less heavy than crime because the contravention wants to obtain the guilt's repentance in order to avoid that he , in the next future, commits again the same contraventions. Therefore the contravention that is punished only with the fine or alternatively with fine and with arrest allows the guilty to avoid punishment if he , before the criminal trial and with the consent of public prosecutor, pay the half price of the fine and , in the mean time, eliminates the dangerous or damaging consequences of the contravention .

Italian penal code foresees another difference between contravention and crime : indeed the crime , that punishes the heavier penal instances, is barred

at the end of more years than contravention. Italian penal code says that contraventions of Decree issued on 17 March 1995 n. 230 are barred at the end of two years if are punished only with fine or at the end of three years in are punished with arrest. The time of the statute of limitations of contravention is too short to ensure the defense of workers in penal trial : in truth the organization of Italian justice is often condemned by the European Court of Justice because of the slowness of criminal cases . Anyway in order to assure the protection of workers by ionizing radiations Italian Supreme Court has said , with two decisions, that the contraventions of the Decree issued on 17 March 1995 n. 230 have permanent character and the protection standards must be observed only because an apparatus producing ionizing radiations is used . Therefore the persisting use of the apparatus along the time without the respect of security rules involves the persistence of contravention.

About easiness to judge to apply the regulation about workers' or public's protection by overexposure to ionizing radiations is necessary to observe that the sanctions of Decree issued on 17 March 1995 n. 230 are too weak to face the problems of guardianship of the public health. The sanctions of the Decree should be changed from contravention to crime and the public should be informed of the risk of ionizing radiations. Indeed in Italy there is a widespread and cultural lack because this problem is not understood as a real danger of the life of common citizen. In order to protect workers' health from cancer caused by overexposure to asbestos recently some Italian Tribunals and Courts of Appeal have condemned employers for the culpable homicide of workers that worked for many years in contact with asbestos without the security protection imposed by special work laws . Maybe this should be the future legal way to protect workers from overexposure to ionizing radiations : time will give to us the right answer.