



The criminal liability of boiler technicians

The technicians who deal with the maintenance of the boilers respond to manslaughter when they do not inform the owner of faults so serious as to kill him.

The Court of Cassation has decided that the technician who controls a boiler and does not warn the owner of the building of faults such as to cause the death of the owner of the property, responds to manslaughter, or involuntary. The technician should have warned the occupant from using the boiler indicating the operations necessary for the restoration of safety conditions (judgment of 26 October 2016 No. 44968).

The case concerns a malfunctioning boiler installed in an unsuitable place.

A first technician checks the boiler, certifying that it works well and does not prescribe other instructions.

After a few years, a second technician checks the same boiler and declares its good functioning despite the failures and the high smoke concentration. In particular, the technicians have violated the provisions of the relevant legislation (Uni 1729 and Legislative Decree No. 192 of 2005), declaring the following verification items as positive:

- suitability of the installation room;
- adequate dimensions of the ventilation openings;
- ventilation openings free from obstructions;
- check smoke evacuation efficiency.

The owner of the property died as a result of terminal cardiorespiratory collapse due to acute asphyxiation from carbon monoxide poisoning.

The amount of carbon monoxide, due to the malfunction of the boiler itself and the inability of the room where the boiler was located, was higher than the threshold of lethality.

Yet the open-type boiler was in a room with glass windows, with an aeration grid built from grease and dust, and the carbon monoxide value was very high (198 parts per million, which is a quantity that causes of head, fatigue and nausea after 2 hours of exposure).

In addition, the technician in the "recommendations and prescriptions" space did not prescribe any intervention regarding the type of room, unsuitable for open boilers (type B).

The Court of Appeal upheld the conviction of the court considering that the technician had violated the technical rules of the sector, as established by the specific legislation (Legislative Decree 192/2005, Presidential Decree No. 412/93 and related annexes, constituting implementation of Directive 2002/91 /THERE IS).

In particular, the Court underlined that the maintenance technician, in the first technical report, had attested that the installation room was not suitable for open boilers, without exercising the power of warning or the putting out of service expressly provided for by the current legislation.

The technician appealed to the Supreme Court requesting the annulment of the decision.

The Court of Appeal erroneously held that maintenance technicians have the power and the obligation to order the owner of the boiler to stop the exercise when they detect the immediate danger to people, animals or things, without indicating the suitable situation to integrate this immediate danger.

In fact, a prescriptive reference standard would be lacking.

Moreover, the technician convicted of culpable homicide, in presenting an appeal to the Supreme Court, relied on the interruption of the causal link, placing the fault of the death event in charge of the maintenance technician intervened subsequently, who, like him, had failed to certify the malfunction of the boiler.



The explanation of the sentence

For the Cassation, both maintenance technicians are responsible for the manslaughter as a competition.

When the obligation to prevent the event falls on more than one person who has to intervene or intervene at different times, the responsibility for the causal link between the conduct of the holder of a guarantee position does not fail due to the subsequent failure to intervene another person, also recipient of the obligation to prevent the event.

By configuring, in this case, a competition of causes pursuant to article 41, first paragraph, cod. pen. in this hypothesis, the non-elimination of a dangerous situation (deriving from the commission or omission of the agent), by third parties, is not a separate cause alone sufficient to determine the event, but a negative cause / condition thanks to which the first continues to be effective.

The first technician was the guarantor and, violating precautionary rules, did not impose the shutdown of the boiler; the subsequent maintenance technician who intervened did not remove the dangerous situation due to the fault, with the consequence that the two maintenance technician guarantors will both be responsible in an equivalent way pursuant to art. 41 c.p. under the rule of the competition of causes.

The Court also excluded the interruption of the causal link for the imprudent conduct of the victim consisting in having disposedda

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