

The last battle over coal: the recognition of occupational damage to miners' health

Retired French miners and trade unionists who were exposed for years to silica dust, asbestos, oils and other harmful or toxic products both above and below ground, are fighting through the courts to have their health problems recognised as occupational diseases.



HesaMag+

Listen to an excerpt from our interview with François Dosso on www.etui.org

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1. On the origins of coal mining in Merlebach, see the three works by Robert Schmitz: *Le siège de Merlebach. Reflets historiques* [The Merlebach colliery, a history] (2001); *De la terre au charbon. Hommes, femmes et enfants, bâtisseurs du siège de Merlebach* [From soil to coal. The men, women and children who built the Merlebach colliery] (2003) and *La Chapelle: Regards sur le passé d'une cité minière* [La Chapelle: The story of a mining town] (2004), Metz, Éditions Serpernoise.
2. New cases of acute silicosis are now being seen in workers who cut artificial stone work tops for kitchens. See Ronsmans S., A global outbreak of silicosis in an unexpected industry, *HesaMag* No. 21, p. 51.

Listening, drafting, filing, documenting, photocopying, scanning, archiving and starting all over again... a visit to the historic old headquarters of the Lorraine miners' trade union, the French Democratic Confederation of Labour (CFDT) in Merlebach¹ might seem like happening upon a somewhat forgotten documentation centre on the Franco-German border, but each of the coloured files in question concerns a serious issue: former coal miners who were exposed to a multitude of toxic substances throughout their working lives and want their health problems recognised as occupational diseases.

It is just after three o'clock on a Thursday afternoon in September 2020, and retired coking plant worker Djilali Kendoussi is reading through the Social Security Fund's repudiation of a medical report on a former worker who is pursuing a claim for exposure to asbestos. "In your case, look at

table 30 paragraph 3 where it talks about pleural thickening and folded lung. That's what you have, an 'occupational illness caused by the inhalation of asbestos dust', it says so on page 241," explains the trade union man, originally from Algeria, as he brandishes a copy of the National Institute of Research and Safety's (INRS) 'Guide to the social security general and agricultural scheme' in front of today's interviewee. The Italian ex-worker, dressed in an Adidas jacket and white cap, doesn't seem to take it in straight away. "Well, you know, when it comes to pay-outs, the fund always uses every possible excuse to drag its feet," he laments. Kendoussi adds another piece of information which further complicates the work of helping retired miners: "When a workmate dies of Covid-19, we have to prove that he died of more than just the virus, but that the treatment which might have saved him was impossible because of

his occupational illness. Recognition of this is very important because it determines the kind of pension his widow receives.”

In the office opposite, his colleague Calogero Liduino has hardly any space left to file the asbestos cases he is handling. “We work with specialised lawyers; files are prepared in meticulous detail to help with the case and, above all, they cover all aspects related to employment in coal mines. For each case, we prepare a lung specialist’s report, an occupational illness certificate, a medical certificate and an official form for the declaration, and the ex-miner is then called in to see the insurer’s consulting physician who validates the medical part of the file. We fight hard to get health problems related to occupational exposure accepted. If the case is accepted, we have to wait to be notified, and then we submit an application, citing inexcusable negligence on the part of the employer, along with three sets of written testimony. We may then apply for compensation from the asbestos victims compensation fund. Few workers realise, but if this is refused we can challenge this decision before the courts, and obviously that is what we do.”

A few doors down, one of the prime movers behind the Lorraine CDFT miners’ campaign, François Dosso, shows us other files on former workmates who have died, been exposed or are sick, and whose battle for recognition is still being fought before the French courts. Just by reading the forenames on each box file, he can reel off by heart the type of illness each of these pit workers developed, and whether or not they have been recognised as having an occupational disease.

“Girls won’t dance with guys with filthy hands.”

Mental distress

In its judgment of 11 September 2019, the social chamber of France’s Court of Cassation decided to widen* the scope of compensation for mental distress to cover any worker, whether or not (s)he was currently ill, who had been exposed to any harmful or toxic substance that gave rise to a high risk that (s)he might develop a serious illness. This ruling is consistent with the common law rules on the employer’s duty of care whereby any worker who can show that (s)he has been exposed to asbestos is entitled to claim compensation for any damage suffered as a result.

Mental distress occurs when workers are placed in a situation of permanent anxiety

that a serious illness may manifest itself at any time. Redress for this distress is the responsibility of those who profited from the fact that the workers were exposed to dangers at their place of work. Distress in this case equates to non-material damage suffered by the worker. It is a demand for justice, but also expresses a form of inter-generational solidarity. By its deterrent effect, mental distress helps to improve occupational safety and health.

* On the changes in jurisprudence in this domain, see Patrice A. (2019), *Préjudice d’anxiété: L’amiante et au-delà. Sur un changement de cap jurisprudentiel* [Mental distress: Asbestos and beyond. The law changes tack], *Le Droit Ouvrier*, 856, pp. 681-694.

A brief history lesson

We take this opportunity to ask him for a brief history of coal workers’ occupational diseases. Dosso wastes no time in telling us: “The biggest epidemic prior to the 1920s was ankylostomiasis, or miner’s anaemia. This is caused by hookworms – the parasite penetrates the body through the skin and literally eats you from the inside. It is a fatal disease and is still seen in warm, moist regions of the tropics. It is spread by larvae in standing water. The second most prevalent illness in miners was silicosis, the biggest killer, thought to have been responsible for between 100 000 and 150 000 deaths in France since 1945. Just for silicosis in coal mines, the figure is huge! It’s more than it will ever be for asbestos, and yet it is a health calamity that attracts little attention, far less than asbestos. Why? Because asbestos can affect anyone – journalists, scientists, bosses – whereas silicosis is chiefly a disease of coal miners. Back in the 1920s, Dr Jean Magnin battled the mining companies to get silicosis recognised as an occupational disease, with the backing of the International Labour Office. Some countries in Europe began to recognise silicosis as an occupational disease – Switzerland first, then Germany and England. France was one of the last major industrialised countries to recognise it, in 1945 only.”

Why is silicosis the leading disease of miners? “Because coal mining was mechanised using compressed air. By and large, prior to the 1900s, up to the start of the war in 1914, coal was mostly mined in France using picks. And picks don’t make much dust – at least, not as much as pneumatic

picks and jackhammers, both of which use compressed air. And since the French mining companies refused even to contemplate that dust can make you ill, they saw no reason to protect against it,” explains Dosso, who is a former pit electrician. “The jackhammer was used to make holes in hard rock and drill three-metre holes. You laid an explosive charge and you blasted. They dug semi-circular tunnels along the lines of a Roman arch to keep the rock stable. You know how much dust it makes when you drill a small hole in a wall in your house. Imagine how much there is when a miner is drilling dozens of three-metre holes. Unless you get your dust out of the hole, you’ll find that your drill rod jams. So you have to remove the dust from the hole regularly, and with a three-metre hole it’s the same, you have to get all the dust out. The inventor of the American jackhammer put a hole in the middle of the drill rod through which water was injected, and the dust was then removed as slurry. The French mining companies said that dust wasn’t a problem so they weren’t going to bother with water, they would inject compressed air instead. As a result, dust was expelled from the hole even more violently and everyone breathed in this highly silicogenic rock dust.”

It is worth noting that the working-life expectancy of miners employed in these underground roadways in the interwar period was two years. The first miners died of acute silicosis. “Yes, if it was like that nowadays, you’d start work today and, by 2022, you’d be dead of acute silicosis, which progresses very fast,” remarks Dosso. “The level of silica inhalation is such that two years’ exposure to the dust is enough to kill you.”²

3. See Devinck J.C. and Rosental P.A. (2007), *Statistique et mort industrielle. La fabrication du nombre de victimes de la silicose dans les houillères en France de 1946 à nos jours* [Statistics and industrial death: The fabrication of the number of silicosis victims in French coal mining basins from 1946 to today], *Vingtième Siècle. Revue d'Histoire*, 95, pp. 75-91.

↴ **The site of the old mines in Algrange, Grand Est, France.**
Photo: ©Belga

Propaganda in the battle for coal

After the 1940–1945 war, newly liberated France, along with the rest of Europe, waged a propaganda “battle for coal”, glorifying the coal miners’ commitment to the race for coal, which had been deliberately slowed down during the occupation as a sign of resistance. The stated aim was to rebuild the country, tackling the shortages of electricity and fuel needed to keep the population warm.

How was it possible to recognise silicosis as an occupational disease in these circumstances? “There were propaganda campaigns at the time painting the miners as lazy good-for-nothings who were actually depriving families of heating, and depriving industry of coal or energy,” explains the trade union man. “The miner who did not kill himself by his work was a traitor to the nation. That’s what they claimed, because coal was absolutely vital. This battle for coal killed thousands, quite apart from silicosis. The real change came with the work of the International Labour Office and of Dr Jean Magnin and his colleagues in France. Not until 1945 did the National Council of the

Resistance exert pressure, together with the socialists, communists and trade unions, to get silicosis recognised as an occupational disease.

“Somewhat paradoxically, recent scientific work has shown that the Vichy Government too was moving towards recognition of silicosis even before the liberation.³ Why? Because the German Reich had recognised it in 1929. So here in the Moselle region, when we were annexed, Moselle workers became German as of 1 July 1941, and could get coal workers’ silicosis recognised because it was already recognised in Germany. As a result, after liberation, we had a table of recognised occupational diseases, but only a minimum – that is to say, the criteria for recognition were draconian, because the mine bosses were slow to accept it. Nowadays, thanks to modern diagnostic aids like CT scanners and other medical imaging devices, it is easier to detect signs of silicosis. After the national scandal over asbestos, we called for screening programmes as soon as this became possible. Since 2000, the widespread availability of scanners has made all the difference. Diseases can be picked up earlier than they could with radiography.”



“We didn’t have any dust”

Faced with a growing number of demands for recognition of occupational causality, the initial strategy of the mining bosses was to deny that dust was harmful to their workers. Today, however, they can no longer deny this. Instead, they argue in court that “we didn’t have any dust or asbestos”. Now that the mines have closed, the French state has taken the place of the mining employers, in the form of ANSES, the French Agency for Food, Environmental and Occupational Health & Safety. The new defence argument boils down to the claim that there is no asbestos underground in mines. Above ground, there is admittedly very little, and only in a number of well-identified places, but people doing a range of jobs are exposed. And as far as dust is concerned, it was certainly present underground in the pits. Why all this resistance to admitting the damage caused? “The master engineers, those we call in France the *corps des mines*, can’t imagine ever being wrong – it is inconceivable,” says Dosso. “So, as they are never wrong, they never exposed anyone to risks. In 2006, there was a seminar marking the 100th anniversary of the 1906 Courrières disaster, when 1 099 coal miners were killed. A hundred years on, they questioned these people who have never been wrong, and their general response was that

Left to right: Alain Bobbio, ANDEVA; Valentin Quadrone, CGT SPPTTE; Georges Arnaudeau, CAVAM; and François Dosso, CFDT Miners’ trade union. Photo: ©Belga



“When one of our workmates dies of Covid-19, we have to prove that he died of more than just the virus.”

the disaster was just bad luck. That accident triggered one of the biggest protest actions by miners in the spring of 1906. The miners were joined by other occupations, and the resulting strikes led to Sunday being decreed a statutory rest day.”

Our discussion with Dosso then turns to a case currently before the court of Douai, a town in northern France, brought by former CFDT miners for “damage to health resulting from contamination”. “From the outset, the reason behind our lawsuit was that this mining company had to be declared culpable for having exposed its employees to danger. There was mine dust, of course, but subsequent mechanisation also generated toxic substances during the use of hydraulic

equipment, which introduced extremely harmful coal tar oils produced in our coking plants. After the Marcinelle disaster in Belgium in 1956, people began to think that flammable oils needed to be removed from underground workings. French Mines, “Les Houillères”, tried to keep their oils by adding lead to improve the oil quality, but also to make them slightly less flammable. Then, under pressure from the German mines and the European Coal and Steel Community (ECSC), research was done which led to transmission fluids being brought in that were 95 per cent water. But these contained additives, often PCBs (polychlorinated biphenyls). When heated, these give off dioxin – and PCBs are also biopersistent. We

want this hazardous exposure to be recognised by the courts. We want an admission that they exposed us to toxic substances, because people get ill several years after they have stopped work. If these exposures are recognised, there is a far better chance that the resulting healthcare costs will be covered.”

And the strategy of the other side seems to shift automatically when faced with new evidence, with such arguments as: “We didn’t have this product underground in our pit; there wasn’t any in the workshop either; there was no dust, no formaldehyde and no coal tar oils. And even if there was, this worker didn’t come into contact with it...” Dosso remarks: “We find in court cases that it was strangely always someone else who came into contact with hazardous products, never our fellow-miners... ‘Not him, not in our mines...’ When there’s an appeal concerning musculoskeletal risks, we are told that the victim didn’t work long enough to get sick. Nowadays, we are the last workers fighting this battle, because there is no one to take the baton. In addition to compensation, we want recognition of our past exposures to these various carcinogens. We took 22 carcinogens classified by the International Agency for Research on Cancer (IARC) as carcinogenic to humans. We questioned each of the initial 760 miners, and each of them drew up a detailed table listing what they had been exposed



↑ Mine entrance in Audun-le-Tiche, Grand Est, France. Photo: ©Belga

4. On hygiene in the mines and related diseases, see Bluma L. (2014), *L'ankylostomiase dans la Ruhr: Corps, environnement et réseaux sociaux dans l'industrie minière de l'Empire allemande* [Hookworm disease in the Ruhr: Individual, environment and social networks in the mining industry of the German Reich], in Rainhorn J. (ed.) *Santé et travail à la mine XIX^e-XXI^e siècle*, Villeneuve d'Ascq, Presses Universitaires du Septentrion, pp. 35-58.

to at work. When we started in June 2013, none of these 760 individuals were sick. Indeed, it was a requirement of inclusion in the study that we had to have turned down their case. At the time, the Court of Cassation always held that you couldn't claim damages for mental distress if you had already been recognised as having an occupational illness. Of the initial 760, who are now 727, no one was sick, and we turned down 500 other people who wanted to be part of the cohort. We had to turn them down because they already had either silicosis, chronic bronchitis, an asbestos-related disease, or cancer. In the end, we won. In 2019, the Court of Cassation widened the scope of qualifying health conditions to include mental distress, whereas to begin with, this was recognised only for asbestos victims. In tandem with this change in jurisprudence, the rules on time-barring of claims also changed. When we first made our demands, in spring of 2013, the relevant period was 30 years. Now, following a

judgment of September 2020, it is two years from the date on which the worker became aware that he was at high risk of developing a serious illness. Now, in France, if you want to challenge your employer on issues related to your contract of employment, you've got two years to do it."

Mental distress or permanent anxiety for workers

François Dosso acknowledges that trade union activists in other countries do not always understand this idea of mental distress too well, but he remains upbeat: "Let me assure you, no one understood in France either when you talked about this to activist friends in other companies; their reaction was usually 'Huh? What are you on about?'. But it is very important because we are talking about non-material damage here: the permanent anxiety of a worker who reflects that he already has three or four mates who

have died of cancer and that it could happen to him too. It's a very real fear. I accept that outsiders find it hard to understand this mental distress, but I try to cast my mind back to the conditions we worked in. Put yourself in a pit worker's shoes. You are in contact with carcinogenic substances all the time. Trichloroethylene (TCE), for example, we didn't know that was dangerous. As a young electrician working down the mine, I washed my hands in the stuff because I was up to my elbows in used oil. Completely black. Sump oil, and if you add coal dust, you get something that's really hard to remove... you can't shift it with ordinary soap. At age 18 when you leave work at 10 or so in the evening and go dancing, you'll very soon realise that girls won't dance with guys with filthy hands. We all relate in a very special or particular way to people who aren't clean. We tried to leave the mine clean, we didn't know that TCE was toxic. We didn't know the oil itself was toxic."

We ask him to tell us more about working conditions underground in the pit. "You have to remember that underground there are no washbasins, and no canteen. You

can't warm up your lunch pail. There are no toilets.⁴ So you do what you have to as best you can. And if your hands are covered in toxic products, you can't wash them before you eat. In the years 1960 to 1980, there were very few places where you could wash your hands. Things got better later when they introduced drinking water and so on. You could do stuff, but it was very hard. So think about it – the miner who wants to eat has to wrap his sandwich in paper so that he doesn't touch it, he eats and peels back the paper as he goes. Fine, for a banana! But eating an orange, that's more complicated. So that was our everyday life. No hot food underground in the pit for 30 years, morning, noon and night."

What does he expect from the Douai court, which will give its judgment on 29 January 2021 on the mental distress claim of the 727 miners? "Firstly, the Douai appeal court must recognise that we were exposed to toxic and carcinogenic products. Secondly, we want this exposure to be judged negligent, the result of errors and infringements on the part of French Mines, that is to say negligence by the employer.

If the employer hadn't been negligent, we wouldn't be where we are. So we laid our evidence before the court, some of it in the form of written documents which show that the employers were aware of certain things and have not changed their opinion. And other things which came to light after 2008, when the records, especially occupational medical records, were moved to the departmental archives. Thirdly, we want it recognised that this exposure to toxic carcinogens causes people mental distress which must be taken into account and thus compensated for as non-material damage, because that's what it is. Fourthly," the trade union man says, "the right to damages for mental distress must be widened to include all workers, whatever their employer or employment status, so that they can act before they actually become sick."

Thinking back to a detail concerning the content of the coloured files seen at the start of our visit, we ask François Dosso what method he uses to memorise each of the occupational illness cases of the former miners on his union's books. Does he use colour coding, a special sign? No, not at all. His eyes fill, his gaze drops, and after a moment of silence, he replies in a serious voice: "They are my mates... my mates from work and that's all there is to it. Once, when we were in front of the employment tribunal, the liquidator for French Mines challenged what we had said about people's life expectancy. He asked me to come to his office to look at all the death certificates. But why would I need to do that? I worked with them. I watched them clock in at work every day. When their occupational illness was identified, they came to the CFDT miners' info centre. To begin with, they came alone, and then, little by little, I saw them in clothes that had got too big for them as their cancer took hold and the light went out of their eyes. And then, later, they couldn't come on their own any more; their wives brought them. Later still, the wives came alone because my mates were so ill that they couldn't come at all. And now they are dead of their disease. I know when they died because I went to the funerals, we looked after the families. Why would you want me to come and look at death certificates? I don't need to look at those documents."

In Merlebach, the last mines closed down for good in 2008, but the battle over coal is not really over. The final act has the miners facing off against the French state in the courts, to gain recognition of occupational diseases caused by a type of employment that has left behind more traces than dust. ●

The mechanisation of coal mining using compressed air led to more cases of silicosis.



↩ The mine shaft exit on 26 November 1997, before the last mine cage and the last cart were brought up at the Simon mine on the Forbach mining site, Grand Est, France. Photo: ©Belga