Work and illness: a disputed relationship (20th-century Spain)

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TRABAJO Y ENFERMEDAD: RELACIONES EN LITIGIO (ESPAÑA, SIGLO XX)

Abstract

The concepts of *occupational accident*, and especially of *professional illness*, do not express concrete realities that are self-evident by name alone. The recognition of a "link" between work and *illnesses* has always been a much more gradual, more problematic process than that linking work and *accidents* in the strict sense of the word.
In this article, we focus on the risks of *becoming ill* "on the occasion of or as a consequence of work". In a review of a sample group of around 1,000 court sentences between 1936 and 1983, we analyse the influence of *structural inertias*, highlighting in particular the signs of change, in line with the evolution of legislation and the way it was interpreted by the courts. The changing *social context* is also taken into account.
As a *normalized* expression of social facts (the occupational health risks to which workers are exposed), the concept of "occupational hazard" is still very much *under construction*, in a process that is contradictory and far from linear.

Keywords

work; illnesses; reporting; recognition; courts; dynamics

JEL codes: J28, J53, J83, K31

Resumen

El concepto de *accidente de trabajo*, y aún más el de *enfermedad profesional*, no designan realidades que se impongan invariablemente por su sola denominación. El reconocimiento de un "nexo" entre trabajo y *enfermedades* ha sido en todas partes mucho más tímido y dificultoso que el de los accidentes propiamente dichos.
Con el objetivo puesto en los riesgos de *enfermar* "con ocasión o por consecuencia del trabajo", una muestra de un millar de sentencias judiciales, repartidas entre 1936 y 1983, comprueba el peso de inercias *estructurales* y se detiene en los signos de inflexión, en función de la evolución de la legislación de referencia, pero también de sus interpretaciones por los tribunales y de *su contexto*.
Como expresión *normalizada* de hechos sociales (los riesgos del trabajo para la salud de quienes lo realizan), el "riesgo profesional" es un objeto *en construcción*, en un proceso más contradictorio que lineal.

Palabras clave

trabajo; enfermedades; (re-)conocimiento; tribunales; dinámica

Códigos JEL: J28, J53, J83, K31

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1. A question for historical analysis: illness as an "occupational risk". A tortuous, carefully limited process of "normalization"

This study approaches the concept of *occupational illness* as a historical construction. Ever since the relationship between work and illness became a subject of legal dispute, court decisions could offer a valuable source for historical analysis of this process[1].

2nd February 2021. The Council of Ministers officially recognized infection by Covid-19 as an *occupational illness* for health workers[2]. This declaration came one year after the first case of Covid-19 was confirmed in Spain and after repeated demands from the sector. The measure covered "all those professionals who work in the health sphere", although the same news story added later that the employees of subcontractors, such as the cleaning staff who work in health facilities, were not included.

28 May 2021. Another news report[3] referred to the first sentence issued by a Labour Court recognizing the infection by Covid-19 of a worker at a health centre as an occupational illness. Of the 120,000 professionals in this sector who are thought to have been infected up until then, just 10% had been officially declared as off work due to an *occupational accident*. By that time over 100 fatal cases had already been recorded[4].

There are certain risks involved in using these *present-day* references to introduce a *historical* analysis of the relationship between work and illness over the course of a long period of the 20th century. This could be a potential source of error when focusing, as we do, on the gap between the, often harsh, *reality* of occupational illness and our *knowledge* of it, from both a medical and a legal perspective.

1) The most misguided conclusion to reach would be to view this announcement as the natural *culmination* of a process, which if not exhaustive, at least tended in a clear, constant fashion towards this ultimate goal: that of the recognition, legal and *de facto*, of the risks for workers' health that their job and the conditions in which they perform it could involve. Such recognition would take medical conditions of all kinds (occupational accidents and "professional" or "ordinary" illnesses) into account and would also entitle those affected to a series of rights and benefits. However, this is not the case. This announcement is not the culmination of a process, without prejudice to the evident progress that has been made since the juridical principles defined by the expressions "professional risk" and "employer risk" were first incorporated into Spanish Law with the Law of Accidents at Work (LAT) of 1900. The objective of this law was defined as "*all bodily injury* that the workman

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2 Redacción Médica, https://www.redaccionmedica.com/secciones/sanidad-hoy/covid-medicos-pueden-compatibilizar-pension-labor-7214.

3 https://cadenaser.com/ser/2021/05/28/sociedad/1622179689_506881.html.

4 ConSalud.es, https://www.consalud.es/profesionales/homenaje-122-sanitarios-cruz-merito-civil-nombres_99706_102.html.

may suffer *on the occasion of or as a consequence of the work* he performs in the employ of another person", a description that survived various reforms in the legislation and continued to be used from 1963 onwards in the General Social Security Law (Articles 84.1 of the Articulated Text of 1966 and 156.1 of its updated version in 2015).

We should remember, in particular, two fundamental characteristics of the so-called "objective doctrine" in Law: 1) "professional risk" (juridical category) and "occupational hazards" (social phenomenon) are not synonymous. 2) "Employer responsibility", as defined in Spanish Law, excludes wilful misconduct or negligence, except in special concurring circumstances, in such a way that "the harm suffered by the workers must be integrated into the general costs of production, in the same way as the depreciation or destruction of materials"[5]. This responsibility is limited in two main ways: firstly, by the massive (real) risks that it does not cover; and secondly, by the system used to calculate the amount of *compensation* due to the victims (or to their relatives in the event of the victim's death), on the basis of the duration and the extent of the resulting *incapacity* or *invalidity*. Both *risk* and *responsibility* were established by convention, of limited application, and essentially boil down to an "arithmetic of reparation" (Mattei, 1976), in which the insurer repairs the damage[6].

The terms that we have highlighted in the definition gave the "occupational accident" less precise boundaries than in similar laws introduced in other European countries. Influential business lobbies fought hard for a particular wording of Article 1 that would expressly restrict the scope of the law to injuries caused by "an external, fortuitous, sudden, violent and involuntary cause" (Montero 1988: 153). In practice, this restriction remains in force to this day.

The recognition of a "link" between work and illness either in the form of a direct cause or as a determining and/or aggravating factor, has always been a slow process fraught with obstacles. Spanish Law took longer than other European legal systems to introduce specific protective regulations for certain specific pathologies recognized as *professional* or occupational. The Law establishing such Rules (*Ley de Bases*) passed by the Frente Popular government (13 July 1936) was never implemented (due to the outbreak of the Civil War) and the legislation introduced in the 1940s was limited to silicosis, almost the only officially recognized "professional illness" until well into the 1960s …at least[7]. Occupational afflictions that had been well-known for centuries, such as the mercury poisoning suffered by miners in Almadén (Parés & Franqués, 1778 and 1785; Menéndez Navarro, 1996) or the saturnine poisoning of lead miners and smelters (Bagés, 1851), were not considered, at least initially, to be deserving of special provisions. A Decree of 1926 on "Prophylactic measures against ancylostomiasis or miner's anaemia" scarcely interrupted what had been a long legislative silence. Indeed, some of its provisions had already appeared in Orders issued in 1912 and 1916[8].

At this stage, there was no explicit legal backing for the concept of an occupational illness, and when it did come, it was only accepted very sparingly and with very severe limitations. This meant that for a victim to establish a cause-effect link between work and illness, it had (necessarily until the 1940s and in most cases still today) to be classified as an "occupational accident". A frequently cited sentence from the Supreme Court of 1903 made this slightly easier by considering the lead poisoning of a worker at a battery factory in Zaragoza as an occupational accident. It came to this decision "because [the LAT] does not define the accident by referring to a sudden, more or less unforeseen event, but more to the event that in itself constitutes the injury …". In practice, this opened up a narrow, winding path with always limited, uncertain reach.

This historical background puts the news stories cited above into perspective. The decision to provide legal cover for a "common" illness (affecting the public in general), such as infection by SARS-CoV-2, by classifying it as an "occupational accident" when it affects certain specific professions of risk is nothing new. Nor is its limited success. If we look back in time and compare Covid-19 with other pathologies, the thing that most differentiates this measure in legal terms is the speed of its classification as a "professional illness" for certain groups of workers, in clear contrast with many other pathologies.

Indeed, the *general* problem lies in the *exceptionality* of the illnesses legally declared as "professional", at one time or another. They are very few in number within the *whole set* of illnesses or *pathogenic complexes* in which work *may* play a decisive role in the initial manifestations, progression and sequelae, due to the inherent characteristics of a particular job or workplace, its environment and/or its organization and conditions. This differentiation initially instituted in law converted a *medical* category (as inspired by the renowned foundational treatise on occupational pathology by Ramazzini) into another specific classification of a *medical-legal* nature (Rosental 2009: 84). In Spain, when "professional" illness was finally recognized after long being ignored by legislators, it was effectively limited to one kind of illness, namely silicosis (insurance for "silicosis" and "professional illnesses" was introduced by the Decrees of 3/09/1941 and 10/01/1947). In the 1960s this cover was extended, albeit quite specifically, to the illnesses set out in the "Table of diseases and list of occupations with a risk of causing them" (Decrees of 13/04/1961 and 12/05/1978). This fixed Table and List left little or no room for other possible illnesses to be considered as occupational. The most recent review of this Table (Royal Decree of 10/11/2006) added a "complementary list of diseases whose professional origin is suspected and whose inclusion in

[5] Gendre (1926: 9), a French engineer who gained a Ph.D. in Law with a thesis about the Spanish LAT of 1922.

[6] In Spain, in the amended text on Accidents at Work of 1932, it was made compulsory for employers to take out insurance covering accidents involving their workers. Until then it had been optional.

[7] See the table below containing a summary of the relevant Spanish legislation.

[8] While treating miners from Linares at the General Hospital in Madrid, Dr Codina pinpointed its diagnosis more precisely and proposed an effective treatment and prophylaxis for this disease (Codina & Castellví, 1905). Records of the high incidence of infection in mineworkers can be found in: Corral & Mairá (1901), León & Castro (1904), Dir. Gral. de Agr., Minas & Montes (1911), Hauser (1913), González Castro (1922), Luengo (1928). See also Rodríguez Ocaña & Menéndez Navarro (2006).

the Table of Professional Illnesses could be considered in the future". This is a step forward … but also reflects the huge sea of *ambiguity* and *invisibility* underlying this issue.

In Spain, the possibility of the illnesses affecting workers being officially recognized as work-related is still largely covered by the rules governing accidents at work[9], with the strict set of conditions that they entail. The causal link must be exclusively or manifestly determining; it is not, in principle, something that could be presumed and the burden of proof lies with the affected workers or with those who (after their deaths) acquire their rights; multiple causality does not fit well within this framework; there is ample margin for covering up occupational illnesses as "common" illnesses or as unrelated to work. These conditions also strongly influence the administrative proceedings for the "assessment" of such cases and are a frequent source of dispute and of court litigation.

2) The limits on the legal recognition of occupational risks also affect the production of *data* concerning their frequency or impact. A relatively complete count of all cases seems hard to imagine. This does not mean, however, that we should give up trying to make sociodemographic analyses as part of a history of *work*. The complexity of this subject heightens the normal challenges inherent in demographic studies of morbidity/mortality (identification of the *main causes*) and of their evolution over time (new medical knowledge, changes in classification, "fashions" in diagnosis) (Vallin & Meslé, 1988: 76-81). As in all statistical analyses, close attention must be paid to *the definition of the variables* and in the case of time series, to any discontinuities. We must also be aware of all those other elements that help us *reflect* on other issues that go beyond strictly *measurable* parameters.

The concept of *occupational accident*, and even more so that of *professional illness*, do not define realities that are self-evident (invariably, once and for all and anywhere) by their name alone. The (unequal) *objectivization* of the two categories is inseparable from the development of capitalism, with the extension of the social relations of production between capital and work and of the fundamental contradiction that they entail. As Pierre Vilar (1983: 132) emphasized: "History *makes* the law; it also *unmakes* it". Alain Desrosières (2008: 7-20), a statistician who approached this subject from a historical perspective, warned about the frequent confusion between "quantification" and "measurement", when the conventions on which the latter is based are ignored. "To quantify is to agree and then to measure". In the processes involved in what he referred to as "*mise en nombre*", the most revealing stages were those involving "the negotiation of the conventions that make things commensurable". They offer a "privileged opportunity to explain the link between the constitution of the statistical fact and the invention of a new way of thinking about the social world". A disciple of Le Play, the engineer Émile Cheysson played an important role in regulating accidents at work in France. A Catholic and a Conservative, he made no secret of the ultimate goal of the project: "to reduce the social tensions resulting from accidents as far as possible", so promoting "social peace".

Professional risk and its derivatives (*occupational accident* and *professional illness*), together with the *employer responsibility* inherent in them are dynamic categories under (permanent) construction. When approaching them from a historical perspective, it is important not to lose sight of any of the factors that contribute to this process. These include not only medical and legal factors, but also socioeconomic (production systems and techniques, types of jobs and their organizational methods: Ortega & Galán, 2016; Boal, 2018) and sociopolitical ones (antagonisms, correlations of forces). This analysis involves a combination of temporary structural and dynamic factors and a diverse range of geographical scales: from national and international to local or workplace. It should also combine a range of analytical methodologies, clues and sources.

All these factors play their part and *risk prevention* has no fixed boundaries: if we return to an earlier analogy, the cost of *maintenance* work on "equipment" should be compared with the cost of having to *repair* and/or *replace* it. In the 1950s, a French technical mission to the former Soviet Union to learn more about their experiences of mining safety proved quite a revelation, something that some people might find surprising in the post-Soviet era since 1991 (Loison, 1959). We can set their minds at rest by adding that the measurements of "cost", expressed in terms of the calories consumed by miners in their diet per tonne of coal extracted, made in the middle of the war by the Kaiser-Wilhelm Institut für Arbeitphysiologie, were also picked up on by the flagship magazine of French mining engineers, and were documented in a note by the British intelligence services (Danloux-Dumesnils, 1946: 676). *Dates*, *places* and *contexts* matter.

Imagine if for example, someone were to refer to the pandemic of 1918-1920, incorrectly dubbed the "Spanish Flu", as a "professional" (or some other similar expression) illness in a particular place or field of work. This would be a flagrant anachronism, knowing as we do, that at that time the question of professional illness was very much in its infancy. This does not however prevent us from observing an excessively high death rate amongst *miners* during said pandemic in places so distant as the village of Alquife in Granada Spain and the coal basins of West Virginia and Pennsylvania. The mortality rates in the latter cases soon caught the attention of the statistical departments of American insurance companies (Dublin, 1920). In Alquife, the subsequent medical studies of the workers at the iron mines showed (normal) prevalence of morbidity (respiratory complaints), which at the time must have worsened the damage caused by the epidemic, rendering it more lethal (Cohen, 1987: 317-320 and 399-400; Cohen, 2021).

Laws and regulations, official tallies of the numbers off-work due to illness or accidents, the records kept by companies and other employer organizations… Each one of these sources provides *partial* points of support for an analysis of what is a *global* issue touching on a wide array of different aspects. Legislation is an essential reference and it is important to contrast it with deep-rooted social customs and to appraise its application (Vilar, 1983: 118-119). Official statistics paint broad panoramic pictures, ob-

[9] The distinction between professional illnesses and "work" illnesses is a common feature of Spanish legal treatises (for example: Martínez Barroso, 2002; Cavas Martínez dir., n.d.).

viously conditioned by the "conventions" followed when creating the different categories, as well as by the resources made available for collecting the data and presenting the results. The personnel records of large companies are, in essence, management tools and are deliberately orientated in a particular direction (focusing on a limited number of specific aspects, each company applying the criteria that most suited them). Company medicine is another management tool and the observations made by company doctors cannot be understood outside this frame of reference. Their work was also affected by the regulations with which they had to comply (although sometimes they also anticipated them). However, when analysing their day-to-day records, we sometimes come across the barriers they install between certain health problems suffered by the workers and those that the company might consider accepting as being work-related[10]. This type of information is only available from large companies and we know little about what went on in the large mass of small businesses.

For some years now we have centred our research on the court cases dealing with the consequences of workplace risks[11]. The records of sentences to which we have referred (from the Labour Section of the Supreme Court -SC- and the now defunct Central Labour Court -CLC-) contain a mine of information of undeniable value for historical analysis, regarding the realities of occupational hazards and the people who were exposed to them. They also shed light on the practical application of the juridical principles that were supposed to enable each case to be assessed objectively. These include for example the criteria applied in the labour courts when deciding to give cases leave to proceed or to dismiss them, and specific cases of interest. A review of the legal disputes being heard at different times reveals the structural inertias that held back change. It can also highlight signs of progress, in line with the evolution of legislation in this field and the changing context, and in the way the legislation was interpreted by the courts.

We focus in particular on the risks of getting ill "on the occasion of or as a consequence of work", in all the different forms set out in the sources (not only those classified as "professional"). The risk of falling ill is by far the least recognized type of occupational risk and as a result, the least visible, even in jobs such as mining in which these risks were very high. The fact that it was the least recognized and the least visible does not mean however that it was the least serious (Chastagnaret, 2000: 832; Rainhorn, 2014: 26-27). Due to the particular nature of Spanish legislation on these issues, our selection of sentences from the sample group has been guided to a large extent by the legal concept of "*accidente de trabajo*" (literally "accident of work"), without prejudice to the fact that "accidents" in the strict sense of the word are perhaps a minor aspect of our central theme. Special attention has been paid to cases in which there was a sequence or accumulation of incidents, an intercurrence of pathologies (and of "contingencies" of one kind or another) or delayed sequelae in which a possible occupational origin was decided. The mining sector is an important focal point of our study, although not the only one. Its presence within the sample we analysed gradually fell as we progressed towards the end of the last century, in line with widespread pit closures and the generalized decline in the number of people working in this sector.

Lastly, we should make clear that in this study we applied a qualitative methodological approach. The sample on which our analysis was based covered around 1,000 sentences, divided approximately into two halves (those from the SC and those from the CLC) and dated from a selection of seven different years between 1936 and 1983[12]. Given that this sample group was formed on the basis of a criterion that was principally thematic (but also chronological), rather than trying to extract statistics regarding the types of cases heard and the sentences in one direction or another, we were more concerned about the *facts* of each case and the *reasoning* behind each sentence: the regulations applied and in particular their recitals. The Catalogues omit some details that could have been of use (they only occasionally provide locations and names or initials of the companies; the job done by the workers and the type of activity are normally indicated, although sometimes they are missing; the age of the people affected is often missing …). In spite of all this, there are a large number of extracts of sentences that are full of relevant detail for our purposes, and as a whole they provide an excellent body of material for a *historical* investigation of *Labour law and social realities*, in relation with health and safety at work: our analysis is not the work of jurists, although it is based on studies they conducted. Due to their wide media impact, some well-known court cases have given international visibility to certain problems of occupational, and indeed of public, health (Markowitz & Rosner, 2002; 2009). Our research, however, centres on the work of the courts in their everyday practice, away from the limelight, observed over time[13].

Before going any further, a brief tour of some statistics will provide a concrete illustration of the uncertainties that form an inseparable part of any research on occupational risks. The fact that there are very marked differences in

10 We base our analysis on the experience of a long collective research project about the labour force at the industrial mining concern belonging to the Société Minière et Métallurgique de Peñarroya in the coal-mining basin of the Alto Guadiato (Córdoba) during the first half of the 20th century. Research focused in particular on occupational illnesses and accidents and their handling by company doctors and the main source of information was the documents drawn up by the medical department (see: Cohen, 2004; Cohen, Fleta, Ramírez & Reyes, 2006; Cohen & Fleta, 2011, 2012 and 2013; Fleta, 2017).

11 Within the framework of research projects HAR2014-56428-C3-1-P and PGC2018-097817-B-C32.

12 *Repertorio de Jurisprudencia*, (Catalogue of Jurisprudence) Aranzadi: an annual compendium of extracts from sentences issued by the Supreme Court since 1945, although the series began retrospectively in 1930-31. *Repertorio de sentencias del Tribunal Central de Trabajo* (Catalogue of sentences issued by the Central Labour Court) Aranzadi (1973-1989). The CLC was set up in 1940 and remained in operation until May 1989, when its functions were transferred to the Labour Section of the High Courts of Justice of the Spanish regions. It operated as a court of appeal within the labour law jurisdiction, independently of the Labour Section of the Supreme Court. The latter heard the appeals known as "recursos de casación" while CLC heard the "recursos de suplicación". The only courts of first instance were the Labour Magistrates Courts (MT) from their creation in May 1938, in the area controlled by Franco's armies. These Courts replaced the earlier industrial tribunals and mixed juries and were themselves replaced by the Labour Courts in 1989.

13 In this paper, our study period continues until 1983. In a previous publication we came to a temporary halt in the 1970s (Fleta & Cohen, 2020). In order to provide an overall view of the changes over the whole period, we offer a summary of the most important aspects of this previous publication and describe in more detail the most recent stages of this timeframe (1970s and 80s).

the number of cases depending on the particular source of information consulted highlights the importance of the barriers erected between these sources (the accident records from a large company often show much higher figures than the official records for the whole province). Another problem is that the different sources often count slightly different things, making comparison impossible. Highlighting these disparities can help understand the value of making a historical analysis of occupational hazards: as a subject *under construction* in a process that is much more contradictory than linear.

2. Occupational illnesses and accidents in records and in numbers: who registered these events and for what purposes? How many and what did they count? Examples

Accident figures were first included in an annual report entitled *Estadística Minera* (EM - Mining Statistics) soon after it was first published, over three decades before the concept of "professional risk" became institutionalized in Spain. The "statements" (or from 1918 "accounts") about these events (referred to as "misfortunes" until 1956 and as "accidents" since then) can be followed for more than one century (1869[14] to 1973-74). The figures referred to mines, quarries and (until 1956) factories for the treatment of minerals and were provided by the head offices of the different Mining Districts. This information was classified separately by provinces, and also by minerals and by cause of accident. The workers hurt in these accidents were divided into "dead", "serious" and "slight". This last group (the vast majority) were no longer mentioned from 1920 onwards. In many cases, repeated "slight" accidents could have serious consequences on the worker's health. The reconstruction of the medical histories of the workers of *Peñarroya* and its analysis over time corroborated the impact of these recurring accidents in the general wear and tear suffered by the workforce (Cohen & Fleta, 2012).

From 1957, the *EM* changed the way it classified accidents, dividing them into the types of incapacity or invalidity they produced: "injured and temporarily incapable for work", "permanent invalidity" (for their normal profession), "absolute invalidity" (for all kinds of work) and "dead".

Above all in the first decades when statistics were kept, the Heads of the Mining Districts were far from naive about the veracity of the figures they were given[15]. Even at the beginning of the last century, with very few personnel to "police" the mines, the Head Offices relied on the mine owners making honest declarations. The "figures are not complete or true in spite of being the official truth" said Dr. Eladio León & Castro (1904: 12), working in the Guadiato Basin, where he later became Head of the Health Department at the Société de Peñarroya.

The classification by causes left little room for doubt regarding the types of "misfortune" that had taken place: "collapses", "carbonated hydrogen explosion", "blasthole explosions", "asphyxiation", "floods", "breakage of machines, apparatus or cables, falling stones, etc.", "falls down shafts" and "various causes". From 1910 a new cause, "transports", was added. There was *no mention whatsoever of illness* before it first appeared in 1957, under a separate heading from "accidents", under the generic name of "illnesses". These were classified into three degrees of seriousness but no more detail was provided. The following year this group was divided into "silicosis" (itself subdivided into 1st, 2nd and 3rd degree) and "other professional illnesses". There are earlier references to silicosis in several of the annual reports from the provincial Head Offices of Mines, included in the same volumes of the *EM*. The first references from Asturias date from 1943, while those from Jaén are from 1946.

In the first three decades of the last century, the fatalities counted by the *EM* within Spain as a whole generally oscillated between 200 and 300 a year and the seriously injured between 200 and 500. When added together, this gives a maximum rate of 50 to 60 victims of serious accidents per 10,000 workers. These were *accident* victims in the strict sense of the word. The figures for the 1930s were slightly lower, although in the next two decades they returned to previous or even higher levels. In the first third of the 20th century, five provinces concentrated three out of every five cases: Jaén, Murcia, Asturias, Vizcaya and Huelva. In the decade 1940-1949, Asturias alone almost reached this same level with annual averages of over 80 deaths and almost 200 serious injuries. These geographical differences are linked to the numbers of workers in each area, but also to the particularly arduous nature of coalmining at that time, during the swift decline in working and production conditions in the long post-war period. From 1906 onwards, the number of "minor" injuries counted by the statistics (undoubtedly their weakest aspect) came to over 10,000 a year, while between 1916 and 1919 they ranged between 18,000 and over 25,000. From 1957, over 70,000 miners suffered injuries that rendered them temporarily incapable for work (not all "minor"). The "minor" accidents figures for these two periods are not really comparable, because they were counting slightly different things.

In order to assess the significance of these figures, it is important to remember that in the Guadiato Basin, there were about 2 to 3 times as many reports of injuries treated at the hospital belonging to the Société de Peñarroya (coal mines and factories)[16] than the accidents recorded by the

[14] The data available prior to this year are very sketchy.

[15] Another disciple of Le Play, Federico Botella worked hard to improve mining statistics in Spain when he was appointed as the head of the Mining Statistics Executive Committee, created in 1887. Botella was fully aware of the deficiencies of the accident counts, one of his main concerns (Chastagnaret, 2020: 188-189). Concealing the real number of victims was commonplace in the mining districts and although the worst, most persistent offenders were the small mines, even the most important companies were involved in scandalous examples of misreporting (Chastagnaret, 2017: 211-213).

[16] The years for which there are records in a quite incomplete series with a total of 39,000 entries between 1902 and 1950.

EM for the whole of the Cordoba mining district. On occasions this figure was even higher. It is obvious, therefore, that the official statistics did not simply reproduce the internal records of the most important (albeit not the only) mining centre in the province. There were various powerful filters in place between the two that reduced the official tally of accidents.

In a previous review of the jurisprudence regarding occupational accidents over the period 1901-1930 (Cohen & Ferrer, 1992: 224-228), we analysed over 300 sentences referring to miners, smelters and quarrymen. 55% of these referred to trauma injuries; the rest were divided in similar proportions between hernias and other types of damage (almost always lead poisoning and in sentences from the 1920s). Two out of every three appeals to the Supreme Court were presented by workers or their families, but only 10% of them received a favourable response. The remaining third were brought by employers and almost 60% were successful. These figures give us some idea of the modest cover provided by the LAT (via the courts) for "work illnesses" over this long period.

In previous papers we focused particularly on hernias (above all Cohen & Fleta, 2011). We decided to study hernias because of their inclusion in the 1903 Regulations about Incapacity for Work resulting from occupational accidents, so enabling us to conduct a longitudinal demographic analysis at a local level with the support of an exceptionally robust database. The main mining companies took active steps to avoid hernias being considered as occupational injuries. To this end, they instructed their medical departments that when examining new workers prior to joining the company and in all subsequent checkups they should note down the slightest sign of inguinal or femoral hernias or any *propensity* to suffer from them. As with other mining companies, *Peñarroya* did not wait for the Decree of 1917 that "authorized" companies to carry out medical examinations with this main, very specific aim. Between 1904 and 1950, more than a third of the over 65,000 examinations performed in their offices in the town of Peñarroya mention signs of hernia (mostly "predisposition" or "propensity"). Around half of the cohorts of young workers (under 18 years old) recruited by the company during the first two decades of the 20th century were registered as such in the medical records of the company: a strikingly high proportion, although it did not reach the "75 per cent of working class individuals" who, according to Spain's largest employers, "presented a natural predisposition to suffering hernias".

The Decree of 1917 (and the successive amended versions of the LAT with its corresponding Regulations[17]) severely limited the possibility of declaring a worker as permanently incapable for work. This was restricted to cases involving a "true hernia induced by force or by accident" that took place "suddenly as a result of a violent trauma suffered at work and which caused breakages or tears in the wall of the abdomen or diaphragm"; or "in workers with no predisposition as a consequence of a trauma or effort, providing that this were violent, unforeseen and abnormal in relation to the work that the worker normally performs". The conditions that had previously been excluded from the general definition of the concept of occupational accident in 1900 were now made explicit in the regulations implementing the law.

In contrast with the "epidemic" of workers with "predispositions" revealed by the *Peñarroya* health records, hernias were almost never mentioned in the accident reports they issued (just 0.5% of those included in the study), and even then, only as a reason for ruling out an occupational accident. It was as if the workers' "natural propensity" to hernias somehow immunized them against them. It seemed irrelevant that, in many cases, several years had passed between their first medical examination on joining the company and the first report referring to hernias; the reports alluded to the "progressive" formation of hernias or that they appeared "gradually and effortlessly", and were therefore completely beyond the control of the employer.

In the first twenty years of the 20th century, the Supreme Court issued an average of two sentences a year in relation to miners with inguinal hernias. This increased to four in the 1920s. Afterwards, in the years covered by our new sample of jurisprudence (workers in any branch), with the exception of 1936 (16 cases in the first semester, half of whom were granted compensation), the hernia rates were very close to zero, with none at all in 1963. The difficulty of winning a case in Court raised a wall against possible claims. Employer practice had successfully redefined the law, restricting its boundaries to a minimum.

The data about professional illness (understood exclusively or essentially as silicosis) included in the *EM* show various striking contrasts. Without distinguishing between the different degrees of the illness, a very high incidence was reported in the iron mines in Lugo (over 400 cases in 1957 out of a total workforce of 750, half of whom were classified as underground workers) and in the salt-flats of Cadiz (300 cases out of 1,200 workers in 1957; 130 cases out of almost 3,000 workers in 1958). These figures are far higher than those for the lead mines of Jaén and Murcia (fifty cases in the first and slightly less in the second, in both 1957 and in 1958, out of 4,000 workers in each province, almost all of whom worked underground). They also exceeded those of the coal mines: less than 200 cases a year in the mines of Ciudad Real which at that time employed about 5,000 workers (over 3,000 of whom worked underground) and similar figures in the coal mines of León, amongst around 24,000 workers (about 17,000 underground). Asturias reported over 400 cases in 1958 (including about 100 classified as "other professional illnesses"), out of a total of 55,000 workers (of whom 40,000 worked underground).

Of the pneumoconiosis family of diseases[18], the "deadliest" occupational pathology of the 20th century was silicosis (Rosental, 2009: 83). Although it was not exclusive to

[17] 1922, 1933, 1956.

[18] Group of bronco-pulmonary fibre alterations produced by the inhalation of dust. "Classic" studies on silicosis include: Davis, Salmonsen & Earlywine (1934); Rosen (1943); Jansens & Gandibleux (1946)… A brief synthesis of the identification of the illness from a historical perspective can be found in Trempé (1971: 579-580). For a seminal study of silicosis, see Rosner & Markowitz (2005, 1st ed. 1991). On its recent historiography: Rosental, ed. (2017); Rainhorn, dir. (2014), and two special issues (Rosental & Omnès, coord., 2009; Ehrlich, Rosental, Rosner & Blanc, ed., 2015). On Spain: Menéndez Navarro (2008).

miners, they were amongst its most frequent victims, and mining tended to be the main focal point of the increasing attention paid to this disease in medical, technical, political, business and insurance circles. In the end, this led to it being treated as both a medical and a legal problem. Disguised for a long time under vague names or descriptions and poorly differentiated from other lung diseases, silicosis was first identified as an illness in itself in the 1870s (not without controversy). However, it was not until the start of the next century, with the arrival and gradual spread of radiological exploration, that its effects really became clear and the first measures were taken at the gold mines in Witwatersrand (South Africa). These companies were pioneers in the promotion of better knowledge of the disease, which paved the way for its recognition as an occupational illness. The ILO Conference in Johannesburg (1930) proved a turning point in the recognition of silicosis as occupational disease, "a pathological lung condition caused by the inhalation of silicon dioxide" or crystalline silica dust. This definition was endorsed at the 1938 Conference in Geneva, after the introduction in 1934 of ILO Convention 42 on professional illnesses[19].

In mining work, the level of exposure depends on factors that vary from one mine to the next and at different times, conditions and stages within each mine. The size of the silica particles, their age and their solubility all affect the concentration of silica dust. The preparatory work is often the most dangerous, especially if it involves perforating large quantities of rock. In general, all underground workers were exposed and in particular, blasters and diggers. Mechanization (pneumatic drills, rigs, crushers) caused dust production to shoot up; ventilation (natural and mechanical), the long hours and the intensity of the work, the application of protective measures (masks, watering of seams or wet drilling), and job rotation so as to limit the time spent working the rock all influenced levels of exposure.

The Decree issued in 1941 to create the Spanish Silicosis Insurance (ceramics factories and lead and gold mines) and the Order of 1944 that extended it to coal mines[20] established periods of two and three months respectively, for an initial examination of *all* the personnel of the companies affected. Both these legal provisions established, for claims from workers who had *previously* worked in companies of this kind and their rights-holders, another period of three months, which had to be extended on several occasions due to the practical difficulties involved. The new Professional Illnesses Insurance that came into being in 1947 established compulsory medical examinations, prior to joining the company, periodically during their employment and on leaving, for all workers in the sectors covered by the insurance. For their part, the Regulations of 1949 established a minimum period of one year for holding the first medical examination in the industries with a dust risk that were not yet included in the compulsory insurance regime. A similar one-year minimum was also established for successive periodical reviews. On the basis of the medical examination, the workers could then be classified in medical and legal terms and, when applicable, awarded the corresponding compensation. For these purposes, they were classified as "normal", "under observation" (with symptoms although "without incapacity"), first degree (silicosis identified but with no loss of functional capacity), second degree (incapacity that prevents them from continuing "in any job in dust-creating industries") and third degree and "silico-tuberculosis" ("incapable of the slightest physical effort, incompatible with any job": permanent and absolute incapacity).

The complications inherent in initiating what were slow, tedious procedures could explain the delay on the part of the *EM* in including the silicosis figures in its tables. However, complaints were soon received from the engineer responsible for the Head Office of the Asturias Mining District regarding the perverse effects of the new protection of professional illness: "errors of [medical] diagnosis", "mistaken" sentences issued by the Labour Magistrates' Court, "a trade in x-rays [and] some people impersonating others at medical examinations". He also referred to the "deplorably macabre fact of the frequent autopsies performed on workers who had never worked in jobs with silica risks" (Annual Report of 1945). Of the 21,000 miners examined "up until now", about 1,200 were classified as first-degree silicosis sufferers, a further 600 as second degree and almost 400 as third. A further 1,100 were placed "under observation [...] who will almost certainly produce positive results for silicosis". In total, just over 3,300 people were affected (confirmed or probable), almost 16% of the workers examined, a figure that was substantially higher than those which twelve years later opened the statistical table of the *EM*. This same manager from Asturias also compared these figures with those for coalminers in England and Wales (between 1% and 5%). Consequences: disorganization of work due to having to transfer "incipient" silicosis patients to surface jobs, "loss of production", "foreseeable costs in pensions"… There was an urgent need "to bring some order into the whole question of silicosis, which is so complex and complicated", also defending "the [rights] of Companies [...] in the face of attacks from unscrupulous workers, for whom silicosis, rather than a professional illness, is a way of living without working" (*sic*).

Any analysis of this question should not lose sight of the urgent economic and social problems of the post-war period at both a general and a local level: the opportunities given to marginal mines; the militarization of production centres; penal colonies for mineworkers; a long, very severe period of repression; a deterioration in the workers' diet … The difficulties continued through the 1950s and came to a head in the "conflictive polarization" of the 1960s (García Piñeiro, 1990: 49-50, 67-75, 88-106).

The Chief-Engineer of Jaén also complained about the loss of workforce in the mines, although he approached it from a different angle: "we must avoid the Jaén mining district becoming known as a 'breeding-ground for silicosis

[19] Without wishing to detract from its landmark achievements in the recognition of occupational illness, the Johannesburg Conference focused exclusively on silicosis as the only risk associated with exposure to silica, ignoring its other pathogenic effects, an approach that is nowadays called into question. By focusing solely on exposure to silica and silicosis and overlooking the other pathogenic hazards, they were taking a very narrow, simplistic view of dust-related risk.

[20] For a more detailed account of the delay in including coalmining within the Spanish Silicosis Insurance system and the prevailing biased view of the causes of pneumoconiosis in coalminers, see Menéndez Navarro (2014).

patients', as it was branded in a recent International Congress on Professional Illnesses. Either we fight this terrible evil [...] or it will be the end of the Mines in this District"; the "numbers off work are increasing by the day and, as a result, the workers are fleeing from underground jobs, *and with good reason*" (Annual Reports of 1951 and 1952; highlighting by the authors). It is clear that change was required for all kinds of *reasons*.

3. From "occupational accident" to "professional illness": how official recognition of occupational illness has advanced slowly and in a very limited fashion (court sentences from 1936 to 1973)

As explained above, the main source for our analysis was a sample of court sentences that were selected on the basis of very specific initial criteria, in line with the subject we are analysing, i.e. illnesses and the real chances of them being recognized as *occupational hazards*. We began our search with the "Alphabetical Index by subject" of various volumes of the *Catalogue of Jurisprudence* by Aranzadi[21]: selecting above all, headings such as "reason for occupational accident", "professional illness(es)" and "incapacity to work". We also looked for references to workers from certain specific branches, including all those sentences involving miners. Our selection of certain specific years sought to include at least one per decade and also bore in mind certain chronological milestones in the legislation on "professional hazards" (see table): 1936[22], 1945, 1949, 1953 and 1963. It also includes other SC sentences dated between 1930 and 1959, which were detected in the amended index for this period (Employment Law Section)[23]. We acted in the same way when reviewing the CLC sentences for the years 1973 and 1983. In total, for each Court, we selected about 700 entries on the basis of their thematic indices (ranging from a minimum of 99 in the months documented in 1936 to a maximum of 370 in 1983). These entries refer to a slightly lower number of sentences, due to the fact that some sentences are referenced by more than one entry. In total, we ended up with about 500 sentences for each Court, once the sentences for the different years had been added together.

The first six years of this sample group were analysed in detail in a previous paper (Fleta & Cohen, 2020: 6-21). Here is a brief summary of the main conclusions:

3.1. *Illness* as an "occupational accident": more of a barrier than a filter

A sentence issued by the Supreme Court at the beginning of 1936 summarized the very narrow limits of the legislation on *occupational accidents* as a channel for the recognition of an occupational component in the origin of pathological processes: "the illnesses suffered by workers on the occasion of or as a consequence of work performed in the employ of another person may be classified either as occupational accidents in the strict sense of the word [...], or as professional illnesses [...], or as mere illnesses suffered by the worker when his lack of health is the result of the natural wear and tear of his body, which takes place at different rates depending on his particular idiosyncrasy and predisposition …" (SC, 24/01/1936). In practice, as we have seen, with all the *predispositions* and gradual *progressive* development, the illness is in principle, an illness "*relating to the worker*" rather than "to the work", and the "*wear and tear*" that it produces on the worker's health is "*natural*". In other words, it is not a "professional risk" nor does it entail any "employer responsibility". This only applies if the illness in question is officially classified as "*professional*" (according to the conditions set out in the legislation) or if a *causal link* (work-injury) can be certifiably demonstrated, something that was virtually never accepted unless it were *evident*, *immediate* and *exclusive*, in other words unless there was an accident in the strict sense of the word. For the sick worker or for the relatives of the dead, embarking on the judicial route once an application for recognition had been rejected by the administration, meant venturing down a road that could potentially be very long - in the event of appeals to higher courts against unfavourable decisions issued at lower levels, there could be delays of 8, 10 or even 14 years between the events on which the claim was grounded and the final decision by the SC. All of this with a very slim chance of success for any case that did not fall within the tightly specified limits.

3.2. *Illness* and *occupational accidents*

The jurisprudence reviewed for the first 60 years of the twentieth century shows signs of a modest opening up towards a slightly simpler, less rigid approach to the relationship between work and illness. There were an increasing number of sentences that accepted an occupational link, above all in muscular-skeletal disorders and less frequently in other illnesses (ophthalmic, cardiocirculatory…), sometimes upholding and other times overturning the judgments issued at lower instances. It is important to remember that these sentences *precede* the LSS (1963) and the publication of its Articled Text (22/04/1966) in the Official State Bulletin. This stated that the "common" illnes-

21 The digital edition, which contains a search engine, began in 1981.

22 This stopped on 15th July and did not start again until 1939.

23 *Índice progresivo de Jurisprudencia 1930-1959. Refundición definitiva*, Aranzadi, 1960.

Table 1. "Work illness" and "professional illness" in Spanish Law (1936-1978): main milestones

Law and date	Purpose	Application/Contents
Law 13/07/1936	Basic Rules governing Professional Illnesses	Never implemented due to the Civil War of 1936-1939
Decree 3/09/1941	Creation of the Silicosis Insurance	Workers in lead and gold mines, ceramics and related industries
Order 26/01/1944	Silicosis Insurance	Extended to coal miners
Decree 10/01/1947	Creation of Professional Illnesses Insurance	List of illnesses that would "progressively be covered". Initially, just silicosis and the same sectors as its predecessor
Orden 19/07/1949	Regulations governing Professional Illnesses Insurance	Initially, just silicosis and the same sectors; extended to "miners' nystagmus" (Order of 6/10/1951)
Decree 13/04/1961	Reorganization of Professional Illnesses Insurance	List of illnesses, subject to the existence of certain clinical manifestations and limited to specific risks and jobs. Development of the regulations (Orders of 9/05/1962, 12/01/1963, 8/04/1964, 15/12/1965 and 29/09/1966; the last included some illnesses that were prone to "intercurrence" with silicosis, with repercussions for the classification of the sick)
Law 28/12/1963 Decree 21/04/1966	Bases for the Social Security System and its Articled Text I	Concepts of "occupational accident" (Art. 84) and "professional illness" (Art. 85)
Order 15/04/1969	Rules on invalidity benefits in the General Social Security Regime (Art. 45: Specific rules for silicosis)	Adaptation of the classification of those affected, taking into account possible intercurrent illnesses in accordance with the criteria of the Regulations governing Professional Illnesses
Decree 17/03/1969	Regulates the Special Social Security Regime for Coal Mining	Updated by Decree 298/1973 of 8th February and the Order of 3/04/1973 for its application and development
Decree 30/05/1974	Amended Text of the General Social Security Law	Concepts of "occupational accident" (Art. 84) and "professional illness" (Art. 85)
Decree 12/05/1978	List of Professional Illnesses covered by the Social Security System	New list of professional illnesses and of jobs capable of causing them

Source: prepared by the authors.

ses caught by the worker "as a result of him doing his job" should be "considered as occupational accidents, provided that it could be proved that performance of his job was the exclusive cause of the illness" (Article 84.5e). In all these sentences the illness was accompanied by a trauma injury caused by a workplace accident in the strict sense. The latter was a necessary condition that enabled the worker's injuries to be recognized as an occupational accident, with the benefits arising from the corresponding incapacity to work. The sentences referring to miners often offer detailed descriptions of the arduousness of their profession and of the physical capacities they required. Although such descriptions were fairly frequent, in that the particular characteristics of the worker's "usual profession" affected the type of invalidity status that they might be granted, they are worth noting due to their emphasis, repetition and relative detail[24]. This was a period of important protests by mineworkers, especially in the Asturias mining basins.

3.3. "Professional illness": silicosis

In general, and in Spain in particular, "professional illness" and "silicosis" have, *de facto* and for long periods, been used almost synonymously. It could be argued that the legal recognition of this specific form of coniosis was both a *milestone* and an *exception*, as the first and only officially recognized occupational illness. When it was first

[24] Among others, sentences issued by the SC on 9/01, 25/01, 7/02, 23/05 and 9/10/1963…

declared as such in 1947, it was planned to extend this cover to other illnesses. However, this process was extremely slow and full of obstacles to the extent that, almost four decades later, silicosis was still being cited as a "*model*" for the (controversial) classification of other pathologies as "professional". Even the recognition of silicosis itself was hampered by its "hidden, slow and progressive nature [...], which does not enable [doctors] to determine precisely when it started, when and how it developed and at what point it reached a specific degree that affected the sufferer's capacity for work" (TS, 4/12/1962). The slowness of the procedure reflected and reinforced the fact that decisions were far from automatic and was both a result of and a contributory factor in the *invisibilization* of this illness. The bureaucratic obstacles were even greater outside the few economic sectors that were covered by the compulsory insurance regime for professional illnesses. This even included miners who worked in mines other than lead, gold or coal mines. In these cases, the only kind of cover available was through the LAT. However, the difficulties involved in specifically defining the duties carried out by the sick worker and the exposure times, the changes in the ownership of the mines and the volatility of many companies, the subcontracting of particular tasks and the mobility (between jobs and geographical) of the workers made it very difficult to establish "employer responsibility" and on many occasions conspired against effective recognition. The first mentions of silicosis in the jurisprudence date from 1945 and the highest frequencies were reached from the middle of the following decade and continued until the 1970s, after which they fell quite sharply.

3.4. Silicosis and "intercurrent illnesses"

In 1966, the Regulations governing Professional Illnesses were modified (Order of 29/09), changes that were later applied to the Rules on Invalidity Benefits in the General Social Security Regime (Order of 15/04/1969). This proved a small step forward (constrained in two ways) towards the acceptance of *multiple causes* in pathological conditions attributable to work. From then on, first-degree silicosis, which by itself was insufficient cause for the sufferer to be granted invalidity, was considered equivalent to second-degree silicosis if it occurred at the same time as "chronic bronco-pneumonia", "organic cardiopathy" or a history of tuberculosis "with suspicions of activity" or "residual injuries caused by this disease". It was considered equivalent to third-degree silicosis if there was intercurrence with a confirmed case of tuberculosis. This upgrading of first-degree silicosis gave the patient access to permanent invalidity status: total invalidity for their usual profession if they now had second-degree status and absolute invalidity for all kinds of work if they had third-degree status. Both situations entitled claimants to a pension for life of 55% of the regulatory base figure in the first case and 100% in the second. In our selection of sentences, those issued by the CLC in 1973 confirm both the application of this new option … and the fact that it was not automatic. The "doctrine and regulation of intercurrent illnesses appeared in response to the facts and the link between silicosis and cardiorespiratory function" (CLC, 3/01/1973) and it was confined to silicosis and its accompanying illnesses (duly established by the administration or by a court). Declarations of incapacity for work were reviewable and could be revoked. Another novel aspect was that various sentences from the CLC considered medical reports presented by the workers in support of their claims more "convincing" than the official reports by the Technical Committees that assessed the claims (sentences 30/01 and 16/02/1973).

3.5. Common "illnesses" and work

In addition to the possibility, referred to earlier, of a "common" illness *caused* by work, (Article 84.5e of the 1966 version of the Law), the LSS offered, quite confusingly, another small loophole to enable medical conditions with complex causes that included illnesses to be recognized as occupational. This was done by expanding the concept of "occupational accident" to include its "consequences", "although [...] their nature, duration, seriousness or outcome may be altered by intercurrent illnesses that are themselves complications of the pathological process determined by the accident itself …" (Art. 84.7). Some of the sentences issued by the SC had already started down this route, albeit very gingerly. The interpretations by the CLC in 1973 were quite diverse and many resulted in apparently contradictory sentences. One claim, for example, was rejected on the grounds that the "possibility", for example, that a trauma injury incurred in an accident at work could heighten the pain produced by a dorsal spondyloarthritis considered to be degenerative, "was not a probability". This contrasts with another claim that was upheld: "if the worker's normal job brings out a latent bronchitis [...], there must undoubtedly be a direct causal relationship between that [his work] and the intensity of the illness, even though it is not caused exclusively by the performance of his job" (27/06 and 20/02/1973). The legal options, at least in terms of *litigation*, had expanded slightly, although none of the brakes had been removed.

4. New steps forward and lasting limitations: a snapshot from the CLC "observatory" in 1983

A quarter of our sample was made up of sentences issued by the CLC in 1983 (258). Most of these cases began their long legal journeys at the beginning of the 1980s or at the end of the 70s. In some cases, however, the events that gave rise to them took place at the beginning of the 1970s or even earlier.

Although we cannot go into great detail here about the situation in Spain at that time, it would also be wrong to take shortcuts in our analysis, Perhaps, the most important thing to remember about this initial period of the transition to democracy (*La Transición*) was that it was one of widespread worker protests, especially between 1976 and 1979. These increased continually from one year to the next, in terms of both the number of people taking strike action and the duration of these strikes, within a general atmosphere of new, sociopolitical change. After that, the figures began to fall although they remained substantial. There was also a significant change in the objectives of the protests. The social advances gained initially were frequently followed by defensive, resistance movements in the face of the drastic restructuring processes, which continued throughout the 1980s and into the next decade and beyond. In the mining industry, a generalized policy of pit closures was announced, with a devastating impact on local society. At a regional level, the coal sector and its bastions in Asturias and León were particularly hard hit by these changes. In the early 1980s, however, this trend was still gathering strength and the final scenes were yet to unfold. It could be argued therefore that for industrial workers (and some of the miners), 1983 was something of a watershed moment between an initial phase in which significant improvements in their conditions had been achieved and a subsequent phase of retreat.

The sentences issued by the CLC show some signs of progress towards a wider recognition of illness as an occupational risk. These signs were clear… but *carefully measured*, and in essence remained within the same long-established confines. It is important to underline: 1) that the changes with regard to our previous reference year (1973) were more in terms of the *contents of the sentences* than of the legislation on which they were based; and 2) that the steps taken fell within the very narrow boundaries within which illnesses could be recognized as *occupational accidents*. The signs of increasing acceptance of *professional illnesses* (outside the new "Table of Illnesses" published in 1978) were in any case minimal. As we made clear earlier, as time went by, miners featured less and less frequently in the sentences. The examples cited here refer to other workers, unless otherwise stated. The central focus of our analysis is the concept of occupational risk and the realities of its dynamics, without restricting ourselves to one particular economic sector.

4.1. Injuries in the workplace and during work time

Article 84.3 of the Amended Text of the LSS of 1974, stated that "it will be assumed, unless there is proof to the contrary, that the injuries suffered by the worker in the workplace and during work time are occupational accidents". Although these provisions had already appeared in the Articled Text of 1966 (Art. 84.6), they left no obvious mark on the sentences in our sample from previous years. In 1983, by contrast, the CLC issued more than two dozen sentences applying this principle to illnesses normally considered as "common". The earliest jurisprudence from the SC cited in support of these sentences dates from December 1975 (CLC, 21/06 and 15/07 of 1983). For there to be a presumption *iuris tantum* of the link with work, the two conditions that must apply are *locus et tempus laboris*. This implies a reversal of the burden of proof: a change in the cover available for "occupational accidents". At this stage of the proceedings, this small step in the right direction was to be welcomed despite its limited scope. This "presumption" was far from covering any pathology: most of the cases involved heart attacks (the majority) and strokes, almost always fatal. For example, the possibility of occupational involvement was completely ruled out in a case of acute pancreatitis (CLC, 2/11/1983), in which the CLC overturned an earlier decision by the Magistrates Court granting the claimant temporary incapacity for work due to an occupational accident.

A fact worth highlighting is that the "accredited predisposition" of a worker to heart attacks did not override the presumption of a link with work (CLC, 28/06/1983), which "will only be undermined when acts of such importance take place that the absolute lack of any causal relation between the work and the medical condition is evident for all to see" (10/05/1983). "It will not be undermined by the pathological conditions to which the victim was predisposed" (15/06/1983). Even though it accepts the worker's "evident" predisposition, another CLC sentence regarded as decisive the fact that "the heart attack came on while [the worker] was breaking rocks with a large sledgehammer and that the attack *may* have been triggered by the effort he was making" (16/11/1983[25]). More generally, "it is well-known that this kind of illness, according to the current state of the science, is closely linked with situations in life of effort, tension, responsibility, etc. [...] which are an everyday part of work" (30/05/1983). Similarly, in the case of a worker who died of pulmonary oedema, "even while in an abstract sense [...] it is a common disease", the possibility of an occupational cause must be the first assumption, if the disease manifests itself in the workplace and during work time (24/05/1983).

We have already highlighted the extensive lengths to which company doctors were prepared to go (ever since the first LAT came into force) to detect any previous history or signs of predisposition to particular diseases amongst the workers. This was considered as evidence that their illnesses were unrelated to their work, so excluding them from being considered a professional risk and from employer responsibility. This also excluded the workers concerned from the rights to which they would otherwise have been entitled. This continued to be the main argument put forward by the employer's insurers, accepted on occasions by the Magistrates of First Instance in sentences that were later overturned by the CLC (2/03, 25/05, 7/06 of 1983). This was not always the case. For example, an appeal against a worker with hepatomegaly who suffered a stroke was upheld on the grounds that he was "quite a heavy drinker" (23/11/1983). Another involved a worker who died in April 1981 after suffering two consecutive heart attacks, eight

[25] Hereinafter, any underlining of quotes is the work of the authors.

days apart, the first in the workplace and the second at home, "which means that the [latter] has nothing to do with work" (28/06/1983). In this case the CLC upheld the appeal by the employer against the sentence issued by the Magistrate's Court which had recognised the heart attack as an occupational accident.

In reality, the norm was still to reject any causal link between work and illness. One of the main bones of contention was that two conditions (place and time) had to be fulfilled for this link to be accepted. For example, a claim from the widow of a man who had died of a heart attack when getting off the company bus, within the factory grounds, "about 250 metres away from the place where the victim performed his normal duties" was rejected because it took place *just a few moments before beginning his work day* (CLC, 14/02/1983). A similar case was that of a worker who died of a cerebral haemorrhage and "was found in the showers [at the workplace] after his working day had come to an end" (9/06/1983). At a more general level, "the presumption *iuris tantum* does not extend to accidents in itinere" (18/04/1983); in these cases (injuries or illnesses that take place in the journeys to work from home and vice versa) are "not authorized by the letter or the purpose" of Article 84.3 of the LSS of 1974 (3/03/1983). There are numerous examples amongst the sentences of 1983 expressing a "doctrine" (of the SC and the CLC) which sets out "precise limits for the interpretation of the aforementioned case" (CLC, 20/09/1983). For an accident *in itinere* to be accepted by the courts as occupational, "more significant proof [is required] than in the normal occupational accident, given that the fiction of considering [for the purposes of protecting workers' lives and physical well-being] the time spent going to and returning from work as falling within working hours requires, for said causal link to be established, the intervention of a sudden, external agent related with their work" (7/11/1983)[26].

The accident *in itinere* was not the only legal "fiction" within the process of *normalization* of occupational risks. Its origin dates back to a SC sentence of 25/10/1930 (CLC, 10/11/1983)[27].

As regards the scope of the assumption of a link with work, in 1983 it was already obvious that "a restrictive criterion regarding this type of deaths is gradually imposing itself, [although] the cases that have been resolved in this way [...] are limited to *de facto* situations in which one of the stated requirements - place or time - is missing, as happened with the long-suffering *in itinere*". This comment from one of the sentences issued by the CLC (25/05/1983), offers a reminder that these concepts are not written in stone and do not follow a linear dynamic. The fact that this sentence was issued in the midst of a period of social and industrial transformation raises certain questions, as does its assertion that the restrictive criterion was "gradually imposing itself". The observations of one of the other magistrates from this same tribunal appeared to question more than just incidents *in itinere*: "in a wide range of cases, the fact that a heart attack has taken place at the workplace has no connection whatsoever with said workplace and is a logical consequence of the fact that over a third of anyone's existence is invested in his or her respective profession, [which] means that the criterion upheld in repeated sentences issued by this court must be applied with great care" (16/06/1983). A few, carefully measured, steps forward had been taken while looking backwards all the time.

4.2. Between convention and reality: "joint consideration of contingencies"

The Amended Text of 1974 of the LSS included within occupational accidents "those illnesses or defects suffered in the past by the worker, which are *worsened* by an injury that constitutes an accident" (Art. 84.2,f). It also included illnesses "that *they might catch* while doing their job", on condition that they could provide proof of exclusive cause (Art. 84.2,e). As we have seen, these already appeared in the Articled Text of 1966. In fact, the principle of "considering the protected contingencies or situations jointly" (injuries caused by accidents at work in the strict sense and "professional" or "common" illnesses) had appeared as early as 1963 in the Law establishing the Basic Principles for the Social Security system (28/12/1963 - Base I-2ª). Slightly earlier, it had been insinuated in SC sentences of 1962 and 1963. The earliest SC sentence cited for this purpose in one of the CLC sentences from 1983 also dates from this period (13/02/1962). For their part, the first sentences issued by the CLC itself that were mentioned in its 1983 sentences date from 1976-1977 (CLC sentence, 15/02/1983). The "joint assessment of all injuries" was also incorporated into the Special Social Security Regime for Coalmining (Order of 3/04/1973), which established that "in the case of injuries of different origins, in order to identify the event from which the invalidity (common or occupational) is derived, one must refer first of all to the event that caused the last functional or anatomical impairment, and if this cannot be specifically identified, to the most serious event" (CLC, 4/05/1983).

This type of sentence was well represented in our sample from 1983 (with about fifty cases). The court decisions are again divided (into two halves more or less) between on the one hand, decisively inclusive judgments; and on the other, an emphasis on more restrictive conditions and support for very strict assessments. Rather than simply recognizing the existence of an occupational accident, the issue at stake in almost all these cases was to evaluate its extent (and therefore the type and amount of the economic benefits or compensation associated with it).

[26] Please note that certain age-old conditions continued to apply and were described using much the same vocabulary.

[27] This sentence by the CLC overturned a previous sentence by the Labour Magistrates' Court which had rejected a claim for an accident that had taken place in itinere to be declared an occupational accident. The claim had been presented in the name of two under-age children of an office worker at the Spanish National Health Service, who had been stabbed to death by her husband, from whom she had separated due to the fact that he abused her and had abandoned the marital home. The CLC based its decision on the fact that the murderer "took advantage of the fact that his victim normally left [...] work at around the same time and took the same route home".

The most common of the complex conditions described in the CLC sentences are muscular-skeletal pathologies, frequently spinal, but there were also cardiopathies, chronic respiratory and other illnesses such as diabetes and even a gastroduodenal ulcer, which had been aggravated by the treatment received for trauma injuries caused by accidents at work (CLC sentences, 13/10, 20/10 and 19/12/1983, the first overturning and the others upholding decisions taken by the Court of First Instance and rejecting appeals presented by employers). Although trauma was not "the only cause in the production of the pathology [consecutive infectious pleuropericarditis], it did act as a cause" (CLC, 12/04/1983), so establishing "the existence of a relationship between the trauma injury and the pathological condition". This occurred regardless of the order of the factors involved: although "the remote cause of his [the worker's] state was a pre-existing degenerative illness of the spinal column [...], the processes that rendered him incapable of doing his job were triggered [...] during the performance thereof" (CLC, 30/03/1983). In the case of a worker who had suffered an accident in 1975, the CLC upheld the absolute invalidity status granted to him by the Magistrate's Court in a sentence that "*sets out the history* of [all] the different illnesses [and establishes that] they are connected with the sequelae of the occupational accident, with the exception of the neo[plasma] of the lung submitted to cobaltotherapy [...], which viewed as a whole acquire such seriousness [...] that they must prevail over [the sequelae] arising from the common illness [all of which were in his right leg]" (21/03/1983). The arguments put forward by the company's insurers insisted on "separating" everything that was not an immediate, direct effect of the occupational accident. The overall evaluation, by contrast, had to take into account the "functional equilibrium" of the worker: "if prior to the accident, he could do his job [as a digger] in spite of the problems in his spinal column, after it [his faculties] have been diminished to the point that they can no longer compensate for the problems in [his] back" (CLC, 15/04/1983); other sentences along similar lines include, 4/05/1983, referring to blaster, and 1/06/1983, to a miner's assistant. In all these cases they were granted total invalidity status for their professions, after this had been rejected by the Magistrate's Court. These court judgments explicitly place the spotlight on the "real situation of the worker" (CLC, 27/01/1983), bearing in mind the overall extent of their medical condition and the particular characteristics of the job they normally do. They had to assess whether a new injury produced "important, clear, transcendental degradation [of the previous functional equilibrium]": for example, the loss of the "essential movements required to form a pincer or fist" in the left hand of a bricklayer as a result of two successive accidents, the second of which "has broken, destroyed, undone [what was already] a precarious and unstable situation [...] as the last four fingers have been seriously damaged" (26/05/1983). In the same way as "they bear in mind [the sequelae of a previous accident] when measuring the extent of any new ones, [...] they must also have borne in mind congenital or of any other kind of limitations" (CLC, 26/01/1983).

The CLC upheld an appeal presented by another construction worker and accepted his application for partial invalidity due to the loss of two thirds of the sight in his right eye in an occupational accident: it is true that the previous Regulations governing Accidents at Work of 1956, required complete loss of sight for this degree of invalidity to be declared, "nowadays [this provision] is purely for guidance purposes, and *neither today nor when it was in force* did it prevent [the acceptance of] impairments *that came close to* those set out in the text" (CLC, 30/03/1983). The Court took a similar decision (24/02/1983) in relation to another worker (a formworker) who had had a kidney removed as a result of an occupational accident, in spite of the fact that in the Regulations (Annex to Order issued on 15/04/1969), this case appeared on the list of those entitled to compensation as a "permanent, non-invalidating injury" (and therefore entitled the worker to compensation according to the scale, but not to a pension). In another sentence, the CLC accepted the (controversial) accident at work *in itinere* as a determining factor in the absolute invalidity of a medical assistant whose vehicle had been struck from behind in a crash in July 1977. The Magistrate's Court had attributed her neck problems (accompanied, among other sequelae, by a vascular problem that caused dizziness and loss of consciousness) to a pre-existing common (congenital) illness. In the CLC sentence, this was outweighed by the "important trauma that impacted on an insufficient spinal column" (7/06/1983). The same Court rejected an appeal from an employer's insurer against a Magistrate's Court sentence that recognized an occupational accident in the case of another worker who had killed himself. In 1974, he had suffered head injuries in an occupational accident *in itinere* (proven), "and although he later returned to work, he was subsequently declared [...] totally and permanently incapable for work. This caused him mental issues that [...] led him to suicide" (16/11/1983).

It is beyond doubt that during this period the labour courts encouraged a flexibilization of the criteria for considering illness as an occupational hazard. The possibility of an illness having multiple causes also gained ground. All of this within the limitations inherent in trying to get the illness in question classified as an accident, including years of litigation… and uncertain outcomes *a priori*. Similar situations, at least in appearance, obtained opposing court decisions. One case in point was the rejection (by both the Magistrate's Court and the CLC) of an occupational link in a spinal column injury, due to the fact that "it cannot be deduced" from the medical reports that the worker had not felt any discomfort "before the accident", which happened in 1980 (CLC, 1/06/1983). This would seem to contradict the "principle of considering all the different ailments as a whole" and of treating illnesses that were "exacerbated" by accidents at work as occupational accidents. This nexus had to be proved "with the due level of certainty" (CLC, 20/10/1983). The CLC upheld an appeal by the INSS (National Social Security Institute) against a decision to accept that a "common" illness in a worker's spinal column (dorso-lumbar arthritis, essential juvenile kyphoscoliosis and Scheuermann disease) had been "exacerbated" by an accident (a fall with fractured ribs). The appeal was upheld because the Magistrate's Court had taken their decision without "even trying to prove" a link that must be "clearly" established (CLC, 3/10/1983). This was always more difficult

in cases in which (possible) sequelae occurred at different times. One example was a worker who had a stroke in the temporoparietal region one day after returning to work, after a long period off sick after undergoing an operation on a herniated disc caused by an occupational accident. The fact that he had returned to work was not considered sufficient for this illness to be treated as occupational, without "expert evidence of sufficiently convincing strength" (CLC, 5/07/1983). An "overall assessment of the sequelae shall apply in those cases in which the sequelae of the accident *by themselves* result in a limitation in the victim's capacity to work" (CLC, 4/02/1983). In addition, there was "repeated jurisprudence of this Court [...] that the strain associated with a worker's regular job cannot be classified as an occupational accident unless he can accredit *a trauma injury or an evidently unusual effort* that causes the reactivation of a previous illness, so aggravating it" (CLC, 6/12/1983).

To interpret these arguments for rejecting claims as signs of a return to square one would mean ignoring the countless others that this court has issued that point in quite the opposite direction. But certain *lines of dispute* are difficult to push back, even though the exact detail and the seriousness of the points being disputed are not always the same. These lines mark out the boundaries between what is "usual" and "unusual" or "excessive", and also between "accidental" and "occupational" injuries and "congenital" and "degenerative" illnesses, as well as the interactions between them.

We have cited various sentences that refer to a degree of "fiction" in the legal and judicial response to "professional risk". These referred solely to accidents *in itinere*, but, in reality, *abstraction* is an essential aspect of the process of regulation of occupational risks. Two of the SC sentences that we consulted from 1953 (from 5th and 18th June), pointed out the "anomaly" of two diagnoses of third-degree silicosis about which the patients had not been informed. However, they declared that the "real incapacity (*sic*) and therefore entitlement to compensation" dated from the moment the workers were officially informed, two and five years respectively after being diagnosed. This decision completely ignored the social reality behind the relations of production and the correlations of forces that guaranteed them. All the power lay in the hands of the employer, and workers were often obliged to continue working even when they were in no fit state to do so.

In the sample we analysed, no further examples of this kind were found. However, there is a typical argument running through many of the CLC sentences of 1983 that was cited as grounds for recognizing incapacity for work of a lower degree than that for which the workers concerned had applied. Some examples amongst those referring to miners include (in brief): a blaster with "post-traumatic osteoporosis affecting his feet when stationary and in motion and preventing normal walking… [although] he still retains a residual capacity for sedentary jobs", which made him ineligible for the total invalidity status for which he was applying (CLC, 11/04/1983). Another case involved a miner's assistant aged 63 in 1983, with a history of "advanced vertebral arthritis with serious osteoporosis and lumbar scoliosis [...], together with bronchitis for which he is currently receiving treatment [...]; this only prevents him from performing those activities that require great physical effort and the sentence [issued by the Magistrate's Court granting him total invalidity for his profession] was already quite favourable to him" (CLC, 10/05/1983). The same occurred with another miner who combined silicosis with a chronic first degree broncopathy: "the Magistrate's Court was quite benevolent when it granted him total invalidity after the Technical Assessment Committees had not seen fit to grant him invalidity of any kind" (CLC, 8/02/1983). At the request of the insurer, the defendant in this claim, the CLC (2/02/1983) reduced the absolute invalidity awarded to the worker by the Magistrate's Court to total invalidity, because "it took into account [his] age [born in 1927], his professional experience and the difficulty he might have in finding a new job [...], in this way clearly breaching Article 135.5 of the LSS and the jurisprudence of the SC, which had argued in a sentence of 3rd March 1980 that *the personal circumstances of the accident victim may not be objectified*". Hence the frequent referrals to the "wide range" of "more sedentary, more comfortable" jobs and professions (CLC, 2/03/1983, farmworker) "compatible", with "less physical effort"… as late as 1983! Decisions had to be taken regardless of the age of those affected, "and [bearing in mind that] his cultural or other similar problems can have no influence on the degree of invalidity" (CLC, 4/05/1983, farm labourer).

Article 136.2 of the LSS of 1974 included an increase in the pension for permanent incapacity for work "by the percentage established in the regulations, when one might assume that it would be difficult for [the beneficiaries] due to their age, lack of training and experience [...] and the social and employment situation in their place of residence, to find employment in a profession other than their previous regular job". This provision had already appeared in the Decree issued on 23/06/1972 on the benefits payable under the General Social Security Regime, which had set the increase at 20% with 55 being the minimum required age. The CLC upheld an appeal presented by a digger who had been denied the pension by the Magistrate's Court because he was a few months short of the minimum age when he was awarded total invalidity for his profession by the Central Assessment Committee. The sentence (22/03/1983) charted an interesting *timeline* of the application of this criterion by the Court: firstly, the requirement to be 55 years old "at the time the causal event took place" (sentences of 23/02/1978, 24/11/1980 and 10/12/1980); later however "this argument was alleviated to some extent" by other sentences (10/06/1981, 9/03/1982) that recognized the victim's entitlement to the pension from the moment he turned 55, if he had applied for absolute invalidity and had only been granted total invalidity, and even if he had not applied for the increase in the pension. "And following this tendency and after reconsidering this issue once again, this Court finds [...] that it would be advisable to modify this criterion" and extend the recognition of entitlement to the moment the worker turns 55 (after discounting any bonus time for years worked underground). This was another example of adjustments to the rules that sought to narrow the gap between the law and the realities of workers' lives through court action.

As regards *transitions*, we should also remember some newspaper articles by the "young" Karl Marx of 1842-43, establishing "the *principle* of a *historical criticism of rational law*" (Vilar, 1983: 110).

4.3. "Professional illness": silicosis and the long life of a hypothetical "model"

The "List of Professional Illnesses" contained in the 1978 decree classified them into six groups: those produced by *chemical agents* (a total of 43 "agents", including lead and mercury, age-old enemies of miners); *Illnesses of the skin* caused by other agents; those caused *by the inhalation* of other substances (subdivided into 6 subgroups, including pneumoconiosis); *infectious and parasitic illnesses* (4 subgroups which included, among others, ancylostomiasis and malaria in marshy areas); those produced by *physical agents* (another six subgroups, one for miners' nystagmus, and another for damage to tendon sheaths, with an explicit reference to mine workers, among others); *systemic* illnesses (9 in total, including asbestosis).

The sentences of the CLC in 1983 did not reveal any significant, quantitative or qualitative changes with regard to this question compared to that of 1973. Professional illnesses are only rarely cited in the Catalogue. Of course, this might be due to progress in the *normalization* of professional illness as a result of which most of these cases would be resolved in applications to the relevant administration, making court action unnecessary. This interpretation however clashes with our long experience of the much more established "accident-at-work" category and also with the references to professional illnesses in the 1983 sentences. The very few we found, apart from (residual) silicosis, rarely go beyond dermatosis, a few cases of deafness and a possible epicondylitis. The CLC (9/12/1983) partially rejected an appeal by the INSS, which refused to accept the "professional" origin of a case of dermatosis and pityriasis versicolor (a cutaneous infection caused by a type of yeast), on the basis of a report by the National Institute of Medicine and Safety at Work. The sentence by the Magistrate's Court opposed this decision by citing the "multitude of medical reports that state the contrary" and placed particular weight on the fact that the report only ruled out professional illness due to cutaneous contact, without excluding a possible allergy due to respiratory sensitivity. The CLC only agreed to reduce the invalidity status that the Magistrate's Court had granted the worker from total to partial. In the case of "bilateral deafness with a sensation of vertigo", the Technical Assessment Committees issued "resolutions that were so dramatically different, such as granting absolute invalidity [the Provincial] or not observing invalidity of any kind [the Central] [...] [which] is sufficient [...] to enable us to understand the ambiguous nature of the problem": the CLC (11/07/1983) rejected the appeal presented by the INP (National Welfare Institute) and confirmed the sentence issued by the Magistrate's Court which, after a third expert examination, had granted the worker absolute invalidity due to acoustic trauma injury in the workplace. This "ambiguity" was also noted in an injury suffered by a mechanic in his right arm: the medical inspector of the Workplace Accident and Professional Illness Insurance Compensation Fund and the doctor from the employer's insurer both observed an "inflammation of the tendon insertions [which] locks the muscles on the front of the forearm in the epicondyle, [with] pain irradiating out towards the arm and a very manifest lack of muscle power to do anything involving effort, [all of which] stems from his handling of heavy tools in his job". The Technical Committees accepted that this problem was of "professional" origin, although they did not consider it to be disabling. For its part, the Magistrate's Court agreed that his condition was serious but rejected his claim on the grounds that it was not included within the List of Professional Illnesses. Finally, the CLC overturned the sentence and granted the worker total invalidity for his normal profession (19/10/1983). The physiotherapy treatment and the three surgical operations that the worker had had to undergo, all to no avail, proved that his condition was irreversible.

Along a slightly different tack, interesting insights can be gained from the appeal presented by the INEM (National Employment Institute) against a sentence by the Magistrate's Court, which had accepted a claim from a worker who was suffering from an allergy to cement in both hands. The worker was applying for a benefit payment (according to 1964 modification to the Regulations on Professional Illnesses) in the event of him becoming unemployed because the company had no jobs in which he would not be exposed to this risk (12 months' full salary payable by the company, six months payable by the Compensation Fund and six months more, which could also be extended by a further six months, payable by the INEM). The Magistrate's Court, in line with the Provincial Technical Committee, had acted in accordance with the established procedure for silicosis cases and the INEM based its appeal on the fact that the victim "was not suffering from silicosis". But as the CLC reminded them (10/10/1983), the sentence they were appealing referred exclusively "to a professional illness that was different from the typical one of silicosis". The CLC rejected the appeal, "given that according to the INEM, [the protective measures] were established [solely] to protect silicosis patients and were not intended to protect all those affected by any other professional illness, [when in fact the legislator had only considered] the protection of [silicosis] patients as *more urgent* [...], and did not develop the possible protections for other professional illnesses any further". In addition, the INEM "was not responsible for granting [the subsidy], all it had to do was pay it…". It is surprising that as recently as 1983, it was still necessary for the Court to issue this kind of clarification about professional illnesses, especially to a body that was part of the public administration.

Just a few days earlier, the same court had confirmed as "legitimate" the dismissal of another worker who found himself in a similar situation as in the previous example. In this case, "the company did not dismiss the worker of its own volition but rather in compliance with current le-

gislation [...], a measure imposed essentially as a means of protecting workers' health".

Work and health, rights and realities: by now the contradictions were peeping out through more than one crack.

5. By way of conclusion

It goes without saying that the issue we are tackling here (in part) cannot be wrapped up with a simple "end of history". To paraphrase Josep Fontana, our choice of 1983 as the final year in our analysis of CLC sentences is "just as valid, or just as unsuitable as any other". The same could also be said of the earlier dates we chose for our survey into the construction of the concept of occupational health (and illness).

1983 can in no way be considered as a terminus at the end of the line, nor can the recent declaration of Covid-19 as a professional illness for health staff be viewed as a solution for one last loose end. It would be wrong also to view it as a more or less timely updating of the legal recognition of the realities of the hazards associated with work, its conditions and organization. By exploring the jurisprudence - a small part of the huge body of material resulting from relations that are either poorly visible or hidden -, we have discovered the enduring limitations surrounding the assessment (with all its effects and consequences) of the pathogenic factors linked to work. Silicosis, illnesses that are "intercurrent" with silicosis, illnesses that were "caught" at work and others that were "aggravated" by it: bridges between the law and reality; sometimes, since the early 1960s and above all from the mid-1970s, anticipated by court judgements, in specific sociopolitical circumstances. These small steps on the road to recognition of professional illness have all been undeniable advances, although they have often been ambiguous or fragile.

For some time now, there has been talk of new phenomena such as occupational stress, mobbing, burnout syndrome and even occupational suicide (a case from 1983 that was recognized as such was mentioned earlier). The quite recent (late) configuration of the psychopathology of work (Billiard, 2001) and the legal and public interest in "new psychosocial risks" have so far failed to leave their mark on the Catalogue of Professional Illnesses. They are still not even on the list of those "suspected" of being occupational illnesses, which might legally be considered as such at some indefinite time in the future. But it would be wrong to think that these gaps and insufficiencies in the law only affect these "new risks". The development of the concept of occupational hazards has been influenced by a whole range of factors. Neither the particular direction that this process has taken at any given time or its rates of progress are necessarily linear.

Fontana remarked at a lecture he gave in 2016 that it was the dominant classes and Western governments' fear of communism and social strife that inspired "the three happy decades after the Second World War with the development of the Welfare State and the achievement of levels of equality in the share out of the profits of production between businesspeople and workers on a previously unrivalled scale". The end of this nightmare "encouraged them to gradually reclaim not only the concessions that they had made during the Cold War years, but also a lot of those gained earlier in a century and a half of workers' struggles". All of which has resulted in an "unstoppable increase in inequality".

Deregulation, subcontracting, the atomization of labour relations, the increasing proliferation of self-employed people (real or bogus), the very high levels of black economy, irregularity … These tendencies have been part of the dynamics of the capitalist economies since the middle of the 1970s, and have impacted with even greater force since the 90s. But what has been the cost of all this in terms of occupational hazards, starting with their reporting and recognition (without forgetting deliberate, organized non-reporting[28])? What has been the impact on "employer responsibility" and the protection of workers against these risks? The CLC itself provides a lot of examples in its 1983 sentences of the diminished protection afforded to self-employed workers. We could also mention, for example, the sentence offering a foreign worker with no work permit protection against occupational accidents and professional illnesses. In response to the company's allegations of "invalidity of contract", the Court made clear that this protection "covered the foreign [worker] with no conditions of any kind" (CLC, 26/10/1983). At that time, not even the most imaginative of analysts could have predicted the massive scale that immigration into Spain would later acquire. In other European countries where this happened a long time earlier, researchers have found that immigrant workers "enjoy" lower levels of protection than locals. Although this applies throughout the economy, it is particularly evident in the sectors that employ most immigrant workers, where pressure is applied to reduce their remunerations and the quality of accident prevention (Bruno, 2004; Rosental & Devinck, 2007, Rosental, 2009).

Some years ago, both sides of the industrial divide took a united approach to this issue in demonstrations *Against accidents at work* which were branded a "*scourge on society*". This could be considered something of a partially belated tribute to the spirit of social reform and appeasement that enlightened European legislation on occupational risks more than a century earlier, if we could only convince ourselves that this united front was not just part of the script.

[28] The fact that health in general, and occupational health in particular, are fertile fields for agnotology is nothing new.

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The contradiction and conflict at the heart of "professional illness" (protest by Silestone's workers, 2019)

Source: eldiario.es

Annex. Mining districts (provinces) and towns referred to in this article