

BRUNO DEBAENST, Gent

To Be Killed Over and Over Again A Case Study on Juridification

The article discusses the lethal labour accident of Adolphe Dufer (17 May 1894) as a case study illustrating the complex phenomenon of juridification. Firstly, the accident itself, the subsequent administrative and criminal investigations and civil trial are being discussed. Secondly, these facts are situated within their (legal) historical context. Thirdly and finally, the distinct worlds of industry, administration and justice are interpreted as so-called 'semi-autonomous social fields'. On the one hand, these social fields all have distinct characteristics, objectives and evolutions. On the other, they influence each other, catalysing and explaining some complex (legal) evolutions described as 'juridification'.

Introduction

This article discusses the lethal accident of Adolphe Dufer on 17 May 1894 in the metal factory of Gustave Boël in La Louvière in the industrial south of Belgium. It will serve as an illustration of the complex phenomenon of juridification.¹ After a description of the accident itself, the administrative and criminal investigations and the civil trial following the accident, these elements will be situated within their (legal) historical context and interpreted as so-called 'semi-autonomous social fields'. On the one hand, these social fields all have distinct characteristics, objectives and evolutions. On the other, they influence each other, catalysing and explaining some complex (legal) evolutions described as 'juridification'.

¹ More extensively on juridification, see Blichner, Molander, Mapping juridification; Debaenst, Study; Habermas, Theorie; Mayer-Mall, Ausgewählte Schriften; Simitis, Verrechtlichung; Stolleis, Entstehung; Voigt, Verrechtlichung; more extensively on the evolutions regarding labour accidents: Bronstein, Caught; Debaenst, Study; Debaenst, Relativity; Debaenst, Proces; Ewald, L'État; Witt, Transformation.

First time killed: in real life

La Louvière, Spring 1894. Foundry owner Gustave Boël ordered a new boiler from the 'Société anonyme des aciéries, forges et ateliers de la Biesme' in Bouffioulx, to replace an old, defective one.² On 16 May 1894, the installation of this new boiler was finalized by a team of specialised labourers and the test run could start. Everything went well and Emile Moucheron, responsible for the installation, returned satisfied to his factory, while two of his labourers stayed behind to finish the job. The next morning, around 5h30, the machine was switched on again. At the moment it gained full speed, the boiler exploded, bursting its shell, weighing approximately 400 kilograms, into pieces. Head of service Joseph Menestré managed to get away safely, but when he returned after a few minutes, he saw Adolphe Dufer, his mechanic, suffering heavily from injuries at his head and legs. Dufer was carried home where he was treated by

² State Archives (Mons), tribunal correctionnel Mons, dossiers 'non lieu', 1894, Dossier Adolphe Dufer – La Louvière 17. 5. 1894.

Dr. Grégoire from La Louvière, who diagnosed a skull fracture with brain expulsion, a broken right leg and several wounds covering the body.³ Dufer died the next day around noon, without having gained conscience.

Second time killed: the administrative investigations regarding steam accidents

Aforementioned story not only describes a labour accident, but also a steam engine accident. According to the Royal Decree of 28 May 1884, every accident with a steam engine had to be reported to the mayor and to the mining administration.⁴ The next day, mining engineer Jules Demaret arrived at the *'aciérie'* of Gustave Boël, in order to investigate the causes and circumstances of the accident. He first visited the poor victim, but Dufer could not be interrogated – he was unconscious and would die only a few hours later. Luckily, there were other witnesses of the accident, telling him that the explosion had come as a total surprise. All the preparatory works had gone smoothly and there was no reason to expect that something could go wrong. During the following days and weeks, Demaret worked hard and on 28 June 1894, he finished his 30 pages report on the circumstances and causes of the accident and handed it over to his superior, chief mining engineer Orman.⁵

³ Record 28. 6. 1894 of mining engineer Demaret, 2.

⁴ Art. 59 Royal decree 28. 5. 1884 *'concernant l'emploi et la surveillance des chaudières et machines à vapeur'* in: *Moniteur Belge* (7. 6. 1884) 2241–2245; see also in: *Annales des travaux publics de Belgique* (1885) 138–156.

⁵ This accident is also mentioned in: *Annales des Travaux Publics de Belgique* (1896) 246–247. That year, five steam engine accidents occurred.

Third time killed: the criminal investigations

On 18 May 1894, Orman sent a letter to the public prosecutor, as foreseen by article 61 of the aforementioned 1884 Royal Decree,⁶ giving a short résumé and his professional advice about the liability question. According to Orman, the factory *'de la Biesme'* was to be blamed for the accident, but since nobody had been able to notice the flaws in the boiler, he did not believe criminal prosecution was opportune. When the letter from the mining administration arrived at the public prosecutors' office, it was added to the criminal record. The criminal instances had already started an investigation following the record of police officer Joseph Capot from the LLPD, who immediately after the accident had been alerted by factory owner Riche.⁷ When police commissioner Jean Baptiste GirLOT sent this report to the public prosecutor in Mons, he wrote an additional remark that Dufer had succumbed to his injuries. In Mons, judge Louis Spronck was appointed to conduct the criminal investigations concerning this possible case of manslaughter.⁸ His first act was to appoint mining engineer Victor Watteyne as judicial expert to investigate the causes of the accident that had lead to Dufer's death and to give his advise about the liability question – *'sur le point de savoir à qui doit en incomber la responsabilité'*.

Watteyne went to La Louvière on 30 May 1894 and visited with police officer Capot the factory. He investigated the place where the accident had happened and interrogated the witnesses. After some preliminary investigations, he went to the factory where the boiler was produced. In

⁶ Art. 61 Royal decree 28. 5. 1884.

⁷ The factory owner first made an oral declaration and later also a written one.

⁸ *'Manslaughter'* could be found in the Art. 418–420 of the Belgian Criminal code. NYPELS, Code 112–119; BELTJENS, Encyclopédie 506–512.

his final report Watteyne basically came to the same conclusions as his colleague mining engineer Demaret: he also held the factory '*de la Biesme*' responsible for the accident.

On 31 January 1895, examining magistrate Louis Spronck confronted Victor Watteyne with the report from his colleague mining engineer. Watteyne repeated his point of view. There could be no doubt that the factory '*de la Biesme*' was liable for the accident, but it was not possible to pinpoint one or more precise actors: '*il est plus difficile de préciser sur quelle personne déterminée doit retomber cette responsabilité*'. Several persons had made small mistakes, and the combination of these had led to the accident. First of all, Moucheron could be blamed for the insufficient thickness of the metal plate – he had made the calculations. Secondly, director François should not have given this important job to Moucheron, who was not even an engineer. The third person mentioned was '*chef-fondeur*' Thomas who had not noticed the irregularities in the metal plate. Another one was foreman Dargent who also should have checked the piece of metal. Watteyne concluded that all these individual mistakes and the failing supervision had led to the accident. Now, examining magistrate Louis Spronck had acquired sufficient elements. He terminated his investigations and handed the criminal record back to the public prosecutor, who advised to dismiss the case. On 2 March 1895 the '*chambre du conseil*' of Mons did so accordingly.

Fourth time killed: the civil trial

Our story could have ended here, if Rosalie Navez, widow of Adolphe Dufer and mother of their under aged daughter Marie Adrienne Dufer, not had filed a lawsuit for damages payments from the '*Société anonyme des aciéries, forges*

et ateliers de la Biesme'.⁹ Consequently, the latter sued Gustave Boël in order to let him pay the bill. As the two cases were connected, the judges ordered on 18 March 1896 to treat them together. In the same judgment, they allowed the plaintiff to use of the criminal record as proof of evidence in the civil trial. The judges delivered their final judgment on 18 June 1896.¹⁰ After solving some procedural matters, they made an analysis of the labour accident and its causes.¹¹ They started with stating a number of certain facts: '*attendu qu'il est constant au procès que [...]*'. Thus, Adolphe Dufer was killed by the explosion of a steam boiler on 17 May 1894. This boiler was delivered by the '*Société de la Biesme*', who had given a six month warranty for all defects in material and fabrication.¹² Moreover, there were two very thorough technical reports about the accident, written by mining engineers Watteyne and Demaret. Both of them came to the same conclusion: that the accident was due to a deficiency of strength in the shell of the boiler.¹³ The court concluded, in accordance with these two

⁹ Mons, State Archives, tribunal civil Mons, 'Feuilles d'audience' 1^e chambre, 1896, judgement 18. 3. 1896.

¹⁰ Mons, State Archives, tribunal civil Mons, 'Feuilles d'audience' 1^e chambre, 1896, judgment 18. 6. 1896.

¹¹ The '*Société de la Biesme*' had written in her defence two so-called '*conclusions*', dated 7. 5. 1896 and 26. 5. 1896. Here she articulated a number of arguments, wanting to prove them with testimonies. The plaintiff and also Gustave Boël refused to accept these (new) '*conclusions*'. The judges disagreed: they decided that the previous judgment (of 18. 3. 1896), where they had ordered the delivery of the certified copy of the criminal record, had reopened the case, so that the parties could discuss the new elements, if they wanted.

¹² In his judicial expertise, mining engineer Victor Watteyne mentioned a letter dated on 25. 1. 1894 from the '*Société de la Biesme*' to Gustave Boël giving this guarantee.

¹³ In the judgment we then get a résumé of the technical causes of the defective cover. Basically, it comes down to the fact that there were two causes: miscalculation so that the metal plate was too thin and irregularities in the metal plate.

experts, that the '*Société de la Biesme*' was liable for the accident.

Then the court decided on the '*appel en garantie*' question: during the trial, the '*Société de la Biesme*' tried to shift the blame to Gustave Boël, for example because he had neglected to put the name of Adolphe Dufer on a list of labourers that were at the disposal of the '*Société de la Biesme*' for the installation of the new boiler. Because of this, the '*Société de la Biesme*' had not insured Dufer in case of possible labour accidents. The '*Société*' also claimed that the personnel of Boël had made a mistake that had caused the accident. The court rejected these arguments.¹⁴

The court had still one question to solve, namely the amount of damages that had to be paid to the plaintiff. The court stated that Adolphe Dufer was 33 years and 10 months old at the moment of the accident. His probable life expectancy was another 32 years according to the current death tables and his yearly salary was estimated at 3.000 francs.¹⁵ Taken into account the cost of living, he could spend around 2.200 francs to his family each year. The necessary capital to guarantee this yearly sum, at an interest rate of 3,5 %, came down to 41.958 francs.

¹⁴ The name of Dufer did not have to be on the list, because he was not a member of the staff that helped with the assembly of the new boiler: at the moment of the accident, that was finished and they were only testing the machine. Dufer, who was the chief of repairs, had to be present at that moment. So, Gustave Boël had not made a mistake by not putting the name of Dufer on the list. The second argument was technical: the defendant argued that the personnel of Boël had made a mistake by letting the steam come too fast and too abundant into the engine and that this had caused the explosion. The court rejected this argument by referring to the expertises.

¹⁵ His yearly salary was approximately 3.320 francs, including the advantages of the job: free housing and a participation into the factories profits. The court also took into account the diseases and the diminution of labour productivity at higher age.'

The court also took into account the moral damages that the plaintiff and her daughter had suffered and decided therefore to raise the sum to 50.000 francs, completely to be paid by the '*Société de la Biesme*'.

Fifth time killed: legal historical research

More than one hundred years Adolphe Dufer rested in peace, until his tragic story was retraced in the archives during the fieldwork of a PhD research concerning the process of juridification of labour accidents in the nineteenth century in Belgium.¹⁶ It was just one example in a whole series of deadly labour accidents that could be found there. Nevertheless, the case of Adolphe Dufer is particularly interesting, because it is illustrative for a number of aspects that are of importance to understand the complex phenomenon of juridification of labour accidents.

The industrial background of the Dufer accident is the first aspect that can be mentioned. At that time, Belgium was one of the leading industrial nations. Our case offers a glimpse of the activities of two factories in the iron and steel industry, a prosperous sector that had reached a high level of development. *In casu*, Gustave Boël contracted with the '*Société de la Biesme*' to install a new steam boiler on an existing machine. This involved a lot of sophisticated technical knowledge, explaining a team of specialised labourers being sent to La Louvière to install the boiler. Part of the deal was a six month warranty for any possible problem concerning the material or construction of the boiler. Further on, the '*Société de la Biesme*' requested a list of names of Boël's labourers who would cooperate to install the new boiler. These labourers would

¹⁶ DEBAENST, *Proces*.

then be insured by a separate insurance contract, concluded with an insurance company only for this occasion. This way, the contract parties anticipated on a possible labour accident and its obvious negative financial consequences. All these elements indicate a professional advanced environment.

The second element of importance is the (steam) inspection service and its activities. Due to the obvious dangers of the use of steam, the government had already soon installed an obligatory inspection of the steam engines. From 1839 on, every steam engine accident had to be examined by government officials.¹⁷ The technological evolution and increase in the number of steam engines made this task more and more demanding. Therefore, the mining administration, which was competent for these cases,¹⁸ consisted out of well-schooled officials, very experienced in this complicated matter.¹⁹ As its name already suggests, the mining administration also inspected the coalmines and the heavy industry that was directly connected to it.²⁰ This inspection service is interesting for a number of reasons. To start

¹⁷ Royal Decree 24. 6. 1839 in: *Moniteur Belge* (1. 7. 1839) 182. This obligation was repeated afterwards. Royal Decree 15. 11. 1846, 'concernant l'établissement et la surveillance des chaudières et machines à vapeur' in: *Moniteur Belge* (27. 11. 1846) 1413–1417 and Royal Decree 21. 4. 1864 in: *Moniteur Belge* (26. 4. 1864) 1909–1912.

¹⁸ Originally, in the areas where there were no mines, it was the '*administration des travaux public*' that was competent for this matter. By the end of the nineteenth, these administrations were brought together in the same department.

¹⁹ In 1838 for example, in Liège a special school was founded to train the mining engineers: the '*école spéciale des arts et manufactures et des mines*'. In the *Annales des travaux publics*, we also find many scientific studies written by the mining engineers on several aspects of their work, demonstration their technical skills.

²⁰ The legal ground here was the '*loi de 21 avril 1810 concernant les mines, les minières et les carrières*', in: BRIXHE, *Essai* 266–267.

with, the administration conducted detailed and technical investigations on the possible causes of the accident. The results were written down in an administrative report that was sent to the public prosecutor and added to the criminal record. The administration also formulated a professional advice about the liability question, having a direct impact on the subsequent criminal and civil investigations.

The third relevant element is the criminal investigation. As the Dufer case shows, the judicial instances in Mons performed thorough investigations to find a possible culprit for the death of poor Adolphe Dufer. The examining magistrate not only relied on the administrative report, but he also used the professional opinion of an expert in steam engines. This resulted in a comprehensive technical report and an advise about a possible criminal liability. In our case, the investigations were not followed by prosecutions, but at least, the criminal instances had done their job thoroughly.

Last but not least there is the civil trial. The relatives of Dufer went to court to demand financial compensation for the loss of their loved one. They were able to deliver the difficult proof that the '*Société de la Biesme*' was responsible for the death of Dufer, due to the accumulation of a number of mistakes that had led to the explosion of the steam boiler. Therefore, the court condemned the *Société* to pay a sum of 50.000 francs to the plaintiffs.

Analysis: an illustration of juridification

In the literature, juridification has been described as "the process of increasing legal intervention in the employment relationship that can be seen in an expanding volume of legal regulation of employment and increasing recourse to

legal process to resolve employment disputes".²¹ When we apply this definition to the Dufer case, a number of interesting observations regarding this complex phenomenon can be made.

To start with, when we study the "increasing legal intervention in the employment relationship", we have to distinguish a number of so-called semi-autonomous social fields, each with their autonomous evolutions on the one hand and their mutual interferences on the other.²² When looking at the 'world of industry', one can see that the Dufer accident is specific because it is the result of preceding processes of industrialisation (e.g. steam engines, technical matter, heavy industry) and modernisation (e.g. industrial labour insurances). Therefore, the setting of the accident is not neutral: it is a highly sophisticated workplace governed by the rule of law.

When looking at the 'world of administration', we can again determine a number of autonomous evolutions: during the nineteenth century, these kinds of administration became more and more professional, leading to highly technical reports and constantly improving legislation.

The same observation can be made for the 'world of justice'. When studied over a longer period, the criminal instances show a more and more professional attitude and interest in the 'world of industry'. In the early 1880's for example, mainly big disasters like mine collapses were investigated, whereas by the end of the century, even relative small labour accidents like ripped off fingers were object of study. One can

detect a similar evolution regarding the civil trials. In the 1870's, only a few trials were initiated, following big mining disasters, whereas by the end of the century, the number of civil trials had risen enormously.

Next to these autonomous evolutions, we can detect a number of interferences between the distinct semi-autonomous social fields. First, we can see that the administrative reports were added to the criminal investigations, containing a professional advice regarding possible liability. Second, there is clear evidence that the civil judges were influenced by these administrative and criminal investigations. After all, the plaintiff only had to deliver the criminal record, to deliver the (difficult) proof needed to get compensation.

This way, the "increasing recourse to legal process to resolve employment disputes" cannot only be explained by autonomous evolutions in the judiciary or in law in general, but also by its specific context. It is only by including the 'world of industry' and the 'world of administration' that we get a better understanding of the accelerating causes of this aspect of juridification in the 'world of justice'.

Conclusion

Adolphe Dufer has been killed over and over again. In real life, he died because of an exploding steam boiler. Afterwards, his killing was repeated during the administrative and criminal investigations, the civil trial and, last but not least, for legal historical purposes. After all, the Dufer case can be situated on the crossroad of several evolutions which are all of importance to understand the complex process of juridification of labour accidents at the end of the nineteenth century.

²¹ "juridification" Oxford Reference Online. [<http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t162.e674>] (retrieved on: 6. 4. 2012)

²² "The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance." FALK MOORE, *Law and social change* 720.

Korrespondenz:

Bruno Debaenst
 Faculteit Rechtsgeleerdheid Universiteit Gent
 Universiteitstraat 4, 9000 Gent, België
 bruno.debaenst@ugent.be

Abkürzungen:

LLPD La Louvière Police Department

Literatur:

- Annales des Travaux Publics de Belgique 1885, 1896.
- Gustave BELTJENS, *Encyclopédie du droit criminel belge* (Brussels 1901).
- Lars BLICHER, Anders MOLANDER, Mapping juridification, in: *European Law Journal* 14 (2008) 36–54.
- Eugène BRIXHE, *Essai d'un répertoire raisonné de législation et de jurisprudence, en matière de mines, minières, tourbières, carrières, etc.* (Liège 1833) 266–267.
- Jamie BRONSTEIN, *Caught in the Machinery. Workplace Accidents and injured workers in nineteenth-century Britain* (Stanford 2008).
- Bruno DEBAENST, *Een proces van bloed, zweet en tranen. Juridisering van arbeidsongevallen in de negentiende eeuw in België* (Brussels 2011).
- Bruno DEBAENST, A study on juridification. The case of industrial accidents in nineteenth century Belgium, in: *Tijdschrift voor Rechtsgeschiedenis* 81 (2013) 247–273.
- Bruno DEBAENST, The relativity of turning points: labour accident legislation and its 'hidden' prelude, in: Szabolcs HORNYÁK, u.a. (Hgg.), *Turning points and breaklines* (Munich 2009) 207–213.
- François EWALD, *L'État providence* (Paris 1986).
- Sally FALK MOORE, Law and social change: the semi-autonomous social field as an appropriate subject of study, in: *Law & Society Review* 7 (1973) 719–746.
- Jürgen HABERMAS, *Theorie des kommunikativen Handelns* (Frankfurt am Main 1981).
- Theo MAYER-MALI, *Ausgewählte Schriften zum Arbeitsrecht* (Vienna 1991).
- Moniteur Belge* 1839, 1846, 1864, 1884.
- Jean-Servais-Guillaume NYPELS, *Le Code pénal belge interprété principalement au point de vue de la pratique* (Brussels 1898) 112–119.
- Spiros SIMITIS, Zur Verrechtlichung der Arbeitsbeziehungen, in: Friedrich KÜBLER (Hg.), *Verrechtlichung von Wirtschaft, Arbeit und sozialer Solidarität* (Baden-Baden 1984) 167–228.
- Michael STOLLEIS, Die Entstehung des Interventionsstaates und das öffentliche Recht, in: Michael STOLLEIS, *Konstitution und Intervention. Studien zur Geschichte des öffentlichen Rechts im 19. Jahrhundert* (Frankfurt am Main 2001) 253–282.
- Rüdiger VOIGT (Hg.), *Verrechtlichung. Analysen zu Funktion und Wirkung von Parlamentarisierung, Bürokratisierung und Justizialisierung sozialer, politischer und ökonomischer Prozesse* (Königstein 1980).
- John Fabian WITT, The transformation of work and the law of workplace accidents, 1842–1910, in: *Yale Law Journal* 107 (1997–98) 1467–1502.