

## RESEARCH OUTPUTS / RÉSULTATS DE RECHERCHE

### Apprehension about Psychosocial Risks and Disorders in Social Security

Flohimont, Valérie

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Aligning Perspectives on Health, Safety and Well-Being

Loïc Lerouge *Editor*

# Psychosocial Risks in Labour and Social Security Law

A Comparative Legal Overview from  
Europe, North America, Australia and  
Japan



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In a context of globalisation accompanied by the intensification of work, exposure to psychosocial risk is becoming increasingly common and the opportunities for solidarity in challenging poor working conditions are now increasingly restricted. The proliferation of poor conditions means that such conditions appear more and more “normal”. In this way, the increase in psychosocial risks and the resulting psychosocial problems appear to justify non-recognition of work-related psychological injuries caused by “normal working conditions”. This is an example of public policy that is diametrically opposed to the interests of not only society and the working population but also of organisations affected by the fall of workforce productivity, a phenomenon attributable to wilful blindness as to the sources of problems such as presenteeism<sup>44</sup> and absenteeism.

Those responsible for implementing public policies on health at work should ensure fairer recognition of work disability due to psychological illnesses attributable to psychosocial risks in the workplace. All working people should have the right to protection of their mental health in the workplace and financial support in the event of their inability to work. This necessitates institutional rules that apply a more flexible approach to the recognition of workers’ compensation claims for psychological injuries. This goal is achievable by applying the same rules to claims for psychological and physical injuries. A back injury suffered by a maintenance worker when lifting a heavy load is eligible for compensation, even though maintenance work “normally” involves heavy loads. This does not prevent recognition that the injury is work-related: the same approach should apply to psychological injuries.

Quebec has been and remains at the forefront of other Canadian provinces in recognizing work-related mental health problems. Indeed, some provinces have made legal changes that explicitly block access to compensation, although this is slowly changing.<sup>45</sup> Quebec could continue to exercise leadership in this area by encouraging workplaces to take a constructive approach to minimising exposure to psychosocial risks at work. A first step would be to condemn the practice of systematic contestation of claims relating to mental health problems by some employers and, in some cases, insurers. There should also be encouragement for trade union activities to promote protective behaviour among workers and their representatives. There are some promising recent developments in this area,<sup>46</sup> but workplaces could and should do more.

<sup>44</sup>*EQCOTESST*, *supra* note 10, chapter 6; Biron, C., Brun, J.P., Ivers, H., Cooper, C.L., “At work but ill: psychosocial work environment and well-being determinants of presenteeism propensity”, *Journal of Public Mental Health*, 2006, Vol. 5, n° 4, pp. 26–37.

<sup>45</sup>Lippel, K., Sikka, A., *op. cit.*

<sup>46</sup>Cox R., *Les effets du rôle accordé aux syndicats par le Projet de loi 143 sur la mise en œuvre et la réception du droit à un milieu de travail exempt de harcèlement psychologique ainsi que sur l’action syndicale au Québec*, doctoral thesis in law accepted by the Faculty of Graduate Studies at the University of Ottawa, 2014; Cox, R., “Québec unions’ role with respect to complaints of psychological harassment in the workplace: the peril and promise of implementing individual rights through collective labour relations”, *Policy and Practice in Health and Safety*, 2015, Vol. 13, n° 2 pp. 69–86.

## Chapter 18

### Apprehension About Psychosocial Risks and Disorders in Social Security: A Comparison Between the Approaches in Belgian and French Law

Valérie Flohimont

#### 18.1 Introduction

Belgian and French social law share a common approach to psychosocial risks, involving both labour and social security law. As several authors have pointed out, labour law is mainly concerned with risk prevention, while the main objective of social security law is individual compensation<sup>1</sup> when an injury or illness occurs. Prevention is merely a complementary concept in social security law, while it is an intrinsic part of labour law.

In Belgian law, for example, data relating to work-related accidents that occur in companies (social security law) must be submitted to the Committee for Prevention and Protection at Work (the equivalent of the French CHSCT), which not only examines them but also takes them into account in planning preventive measures on an annual and global (five-year) basis. These measures are adopted and

<sup>1</sup>See in particular Caron M., Verkindt P.-Y., “Le droit de la sécurité sociale confronté aux risques professionnels”, *RDSS*, 2010, p. 593.

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implemented by the employer to comply with the legal principle of "dynamic risk management"<sup>2</sup> (labour law).<sup>3</sup> Conversely, the law on well-being at work<sup>4</sup> (labour law) requires the employer to implement preventive measures, above all to avoid exposing the worker to risk, which, *in fine*, should logically have repercussions for the application of social security law, particularly compensation for disabilities, work-related accidents, and occupational diseases (social security law).

In French law, the interaction between these two sectors of social law is relatively similar as "a real legal theory of prevention based on concepts, norms and institutions has been established in the field of work-related accidents and occupational diseases" and "preventive actions by the [social security] administration now have an effective point of reference in the French Labour Code that not only establishes an obligation of prevention but also a rational methodology for fulfilling it".<sup>5</sup>

In an ideal world, it would, therefore, be wise to address the issue of psychosocial risks from the overall perspective of social law, as the interactions between labour law and social security law are so significant. Nevertheless, for didactic reasons, this article is restricted to dealing with the subject in the context of social security law focusing, more specifically, on work-related accidents and occupational diseases.

Regarding terminology, we consider the difference between psychosocial risk and psychosocial disorders as defined by Caron and Verkindt<sup>6</sup>: "Psychosocial disorders appear to be the realisation of psychosocial risk",<sup>7</sup> so psychosocial disorders should be eligible for compensation under social security law.

We start by addressing the issue of psychosocial disorders and work-related accidents. What are the conditions for recognising a psychosocial disorder as a work-related accident in Belgian and French law? Then we consider the recognition (or non-recognition) of psychosocial disorders as occupational illnesses. Finally, we draw a few conclusions or, more accurately, suggest a few lines of enquiry.

<sup>2</sup>The system of dynamic risk management was introduced by the Royal Decree of 27 March 1998 on the policy on workers' well-being when performing their work, *M.B.*, 31 March 1998. It is based on the risk analysis that each enterprise is required to undertake, considering the different risks (risks linked to the nature of activities, specific risks linked to certain activities and risks linked to workers) present in the enterprise and their interactions. It finds expression in the annual plan and the overall prevention plan, see *Principes généraux relatifs à la politique du bien-être*, [www.emploi.belgique.be](http://www.emploi.belgique.be).

<sup>3</sup>Art. 12, Royal Decree of 27 March 1998 on the policy of workers' well-being when performing their work, *M.B.*, 31 March 1998; Royal Decree of 27 March 1998 on the Internal Service for Prevention and Protection at Work, *M.B.*, 31 March 1998.

<sup>4</sup>Law of 4 August 1996 on workers' well-being when performing their work, *M.B.*, 18 September 1996.

<sup>5</sup>Caron M., Verkindt P.-Y., "Le droit de la sécurité sociale confronté aux risques professionnels", *op. cit.*

<sup>6</sup>*Ibid.*

<sup>7</sup>*Ibid.*

## 18.2 Psychosocial Disorders and Work-Related Accidents

While recognition of a physical accident as a work-related accident in Belgian or French law no longer produces bitter arguments, provided the legal conditions required by legislation are met, this is not (yet!) the case for psychological disorders in the workplace. Psychological disorders are multidimensional<sup>8</sup> and generally caused by many factors. Consequently, it is often difficult to single out the context that formed the breeding-ground for the disorder, i.e. the workplace or the private sphere. Before we explore the heart of the matter, i.e. to what extent a psychosocial disorder may or may not be recognised as a work-related accident and thus be eligible for compensation, we briefly review the conditions to be met for a work-related accident to be officially recognised.

In French law, a work-related accident is an "accident that occurs as a result of or during their work, to any salaried worker or any person working, in any capacity or location whatsoever, for one or more employers".<sup>9</sup> The French Court of Cassation refined this definition by stating that "a work-related accident can be defined as "an event or a series of events that occur on certain dates as a result of or during their work, which result in injury, irrespective of the date on which they occurs"". <sup>10</sup> For an accident of an occupational nature, i.e. an accident that occurs as a result of or during work, to be recognised as a work-related accident, it is also important that the event or injury should be sudden and cause physical damage. This concept of "physicality" is understood in a relatively broad sense, as it used to describe a deterioration in physical condition, but has gradually come to integrate mental health.<sup>11</sup> By way of comparison, we can report here that when the Belgian parliament was drafting the law on work-related accidents,<sup>12</sup> it was decided to abandon the concept of "bodily harm" in order to avoid interpreting the concept too restrictively<sup>13</sup> (*infra*). Nevertheless, in France, Lerouge emphasises that: "for quite a long time, psychological suffering has been taken into consideration under legislation on work-related accidents when a physical injury has occurred in the course of work".<sup>14</sup> More recently, the French Court of Cassation adopted a more flexible attitude in framing the issue of psychological suffering that may affect a worker as a result of his or her work. For a deterioration in psychological health to be classified

<sup>8</sup>Durand V. M., Barlow D. H., *Psychopathologie: une perspective multidimensionnelle*, Paris-Brussels, 2nd ed., De Boeck University, 2007, 1 178 p.

<sup>9</sup>Article L. 411-1 CSS.

<sup>10</sup>See Lerouge L., "Le renouvellement de la définition de l'accident du travail", *RDSS*, 2007, p. 696; Soc. 2 April 2003 n° 00-21768.

<sup>11</sup>*Ibid.*

<sup>12</sup>Law of 10 July 1971 on work-related accidents, *M.B.*, 24 April 1971.

<sup>13</sup>Draft bill on work-related accidents, *Senate Parl.Doc.*, 1970/1971, n° 215, p. 5, report on behalf of the Commission on Employment, Work and Social Security Provisions by M. Pedé.

<sup>14</sup>Lerouge L., "Le renouvellement de la définition de l'accident du travail", *op. cit.*

as a work-related accident, there has to be a "sudden change in mental faculties"<sup>15</sup> related to the person's work.

In Belgian law, a work-related accident is an "accident resulting in an injury that occurs to a worker in the course of and arising out of performing a contract of employment".<sup>16</sup> Case law consistently considers that a work-related accident is "a sudden event that produces or is one of the causes of a bodily or mental injury resulting in death, or in inability to work, or at least in medical expenses or damage to prostheses, (even if these consequences do not necessarily occur at the same time as the event), arising during and as a result of the performance of the employment contract".<sup>17</sup> Belgian law, therefore, like French law, not only requires a sudden event<sup>18</sup> but also a physical or psychological injury, which must all, naturally, be work-related.

Regarding psychological disorders, this "work-related" condition is generally the point contested by some insurers, in order to avoid an accident being classified as work-related and, consequently, entitled to compensation. This phenomenon is even more significant if the injury occurs outside the strict context of work. As stated previously, it is true that, as psychological disorders are generally multifactorial, it is complicated to determine whether the disorder has indeed arisen due to or while performing one's work. Nevertheless, in this respect, the Belgian courts consider that "from the moment when a causal relationship, even partial, even indirect, is reasonably established between (...) the state of the victim and the accident", there are grounds for compensating the victim and covering all the damages<sup>19</sup> under the heading of compensation for work-related accidents. In other words, compensation cannot be refused on the grounds, for example, that other factors than the accident that occurred in the context of work were involved, or that the victim had a "predisposition"<sup>20</sup> towards psychological disorders.

Note that, in both Belgian and French law, case law recognises a psychological disorder that arises following a "physical" injury or accident that occurs in the

<sup>15</sup>*Ibid.*, Civ. 2nd 24 May 2005, n° 03-30.480.

<sup>16</sup>Art. 7 of the Law of 10 July 1971 on work-related accidents, *M.B.*, 24 April 1971; FPS Social Security, *Aperçu de la sécurité sociale en Belgique 2011*, Strategic support, Directorate General, Federal Public Service Social Security, Brussels, 2012, p. 461, [www.socialsecurity.fgov.be](http://www.socialsecurity.fgov.be) "publications" section.

<sup>17</sup>*Ibid.*

<sup>18</sup>The Belgian Court of Cassation considers that "the sudden event should be a decisive fact in a relatively brief period of time. It is up to the judge to decide if the period of an event exceeds the limit of what can be considered to be a sudden event". Belgian Cass. 28 April 2008, R.G. S.07.0079.N, [www.juridat.be](http://www.juridat.be).

<sup>19</sup>Brussels Labour Court, 4 June 2007, R.G. 48.245, [http://www.terralaboris.be/spip/IMG/pdf\\_2007\\_06\\_04\\_-\\_48245.pdf](http://www.terralaboris.be/spip/IMG/pdf_2007_06_04_-_48245.pdf).

<sup>20</sup>"Predisposition", means "a characteristic of a subject, very generally ignored by this person, that has no expression in his daily life but that, during a trauma, favours the appearance of a disputable pathology that did not exist before", Lucas P., "Accident du travail et état antérieur" in Fagnart J.-L. (ed.), *1903-2003. Work-related accidents: 100 years of compensation*, symposium organised on 5 December 2003 by the Law Faculty of the ULB, Brussels, Bruylant, 2003, p. 66.

context of work as a work-related accident. Thus, in France, Lerouge reported the example of a miner who committed suicide a month after a work-related accident, involving bruises on the forehead, which caused neuropsychological disorders, and a mechanic who suffered from psychological disorders that were diagnosed following a work-related accident.<sup>21</sup> In Belgium, specific cases concerned a public-transport worker, employed by the STIB,<sup>22</sup> involved in two work-related accidents a few months apart, following arguments with passengers, who consequently developed post-traumatic stress disorder,<sup>23</sup> and a teacher who was hit on the head in class by a projectile while he was being insulted by another pupil and who, as well as a head injury, later developed depression, due to the offensive, humiliating context of the accident.<sup>24</sup>

Recognising a psychological disorder as a work-related accident is a more sensitive issue when no physical accident has occurred. On the Belgian side, case law shows that the courts do not seem too reluctant to classify psychological disorders following hold-ups or threats of this kind as work-related accidents.<sup>25</sup> The Antwerp Labour Tribunal thus recognised post-traumatic stress following two armed robberies in an insurance office as a work-related accident, even though the victim was not unable to work immediately after the first attack and was not even present during the second.<sup>26</sup> It should be said that the Belgian parliament had already declared that an injury could just as well be mental as physical, in preparatory papers for the law of 10 April 1971 on work-related accidents.<sup>27</sup>

What should we say now about the difficult issue of suicides, the ultimate expression of psychological suffering? Like other forms of work-related accidents, the injury, suicide in this case, must have been caused by a sudden event that occurred in a work-related context. The French Court of Cassation "refuses to classify suicide as a work-related accident when the act is voluntary and deliberate".<sup>28</sup> Similarly, Belgian case law considers that, to avoid compensating the victim (or his beneficiaries, if the act had a fatal outcome), insurers have to prove the voluntary nature of the act and the deliberate intent to commit suicide.<sup>29</sup> In other

<sup>21</sup>Lerouge L., "Le renouvellement de la définition de l'accident du travail", *op. cit.*; Soc. 13 June 1979, *Bull. civ. V*, n° 535 and Soc. 31 October n° 89-15.408.

<sup>22</sup>Brussels Intercommunal Transport Company (STIB).

<sup>23</sup>Brussels Labour Court, 4 June 2007, RG 48.245, [http://www.terralaboris.be/spip/IMG/pdf\\_2007\\_06\\_04\\_-\\_48245.pdf](http://www.terralaboris.be/spip/IMG/pdf_2007_06_04_-_48245.pdf).

<sup>24</sup>Liege Labour Court, 7 April 2008, RG 34 771/07, [www.juridat.be](http://www.juridat.be).

<sup>25</sup>See in particular Brussels Labour Court, 12 March 2001, RG 39 306.

<sup>26</sup>Anvers Labour Court (Hasselt), 23 January 2002, R.G. 2000/300, [www.juridat.be](http://www.juridat.be).

<sup>27</sup>Draft bill on work-related accidents, *Doc. Parl. Senate*, 1969/1979, n° 328, p. 10, Preamble; *Doc. Parl. Senate* 1970/1971, n° 215, *op. cit.* p. 5.

<sup>28</sup>Lerouge L., "Le renouvellement de la définition de l'accident du travail", *op. cit.*; Soc. 23 September 1982, *Bull. civ. V*, n° 241.

<sup>29</sup>Anvers Labour Court (Hasselt), 20 December 2010, R.G. 2009/AH/239, [www.juridat.be](http://www.juridat.be); Mons Labour Court, 19 January 2010, R.G. 21 108, [www.juridat.be](http://www.juridat.be); Belgian Cass., 2 November 1998, *Bull. Ass.*, 1999, n° 326, p. 34; Belgian Cass., 25 January 1982, *Pas.* 1982, p. 658.

words, both the Belgian and French courts distinguish between intentional or conscious suicide, on the one hand, and unintentional or unconscious suicide, on the other hand. In Belgian case law, conscious suicide is “the result of a considered resolution, committed by an individual who, although acting under the influence of serious concerns that distort his judgement and reduce his courage and power to resist, still possesses his free will. Despite everything, he is able to understand the moral significance of the act that he is about to commit in cold blood, and for which he assumes responsibility”. *A contrario*, unconscious suicide is “the result of an irrational and overwhelming impulse, carried out by a being who is deprived of reason or who is, at least, no longer in full possession of his mental faculties, whose will is obscured, whose power to resist is suppressed, to the point where he does not understand the moral significance and consequences of his act”.<sup>30</sup> In French law, the concepts of conscious and unconscious suicide are similar. Indeed, Lerouge states: “Conscious suicide is the result of a rational resolution of an individual who possesses free will and is able to understand the significance of the act that he is about to commit. On the contrary, unconscious suicide is the result of an irrational impulse by an individual who is no longer in full possession of his mental faculties, whose will to resist is suppressed to the point where he does not understand the moral significance or consequences of his act”.<sup>31</sup> The similarity between the vocabulary used in the two countries is obvious; the only remaining difference is how the courts apply and interpret these definitions.

We can therefore state that, regarding psychological disorders and work-related accidents, developments in case law in the two countries have been quite similar, in terms of both the objective in applying the legislation and the interpretative method. The only significant difference is, perhaps, that the French courts do not explicitly mention the concept of predisposition and its impact (if any) on the classification of work-related accidents. Nevertheless, this assertion is “without prejudice”, as this specific point deserves a more in-depth study than we were able to conduct in preparing this contribution.

### 18.3 Psychological Disorders and Occupational Diseases

Psychological disorders that arise in a work context are not necessarily the result of a sudden event, as interpreted by legislation on work-related accidents, but may equally result from a slower, more gradual deterioration. The question then becomes: to what extent can these psychological disorders be classified as occupational diseases? For example, let us consider stress, depression and burn-out.

<sup>30</sup>For these two definitions (conscious suicide and unconscious suicide), the Mons Labour Court refers to J. Ernault, *Le droit de l'assurance vie*, Bruylant, 1987, p. 131; Mons Labour Court, 19 January 2010, R.G. 21 108, [www.juridat.be](http://www.juridat.be).

<sup>31</sup>L. Lerouge, “Le renouvellement de la définition de l'accident du travail”, *op. cit.*

In France, certain Regional Committees for the Recognition of Occupational Diseases (CRRMP) “sometimes recognise (...) the nature of occupational disease” with respect to disorders not listed in the tables of occupational diseases, particularly depression.<sup>32</sup> However, the procedure is long and difficult. In Belgium, in the light of available information, this type of recognition is manifestly rarer, or even non-existent.

Belgian law has two systems for recognising occupational diseases.<sup>33</sup> The first, known as the “closed list”, defines the disorders classified as occupational diseases, subject to fulfilling the required legal conditions.<sup>34</sup> The second, known as “non-listed” (or “open system”), allows a disorder that is not on the closed list to be classified as an occupational disease, provided that the victim proves that this disease was directly and decisively caused by performing his work.<sup>35</sup> Irrespective of the system, the victim therefore has to prove the existence of the disease and exposure to risk.<sup>36</sup> In the case of the closed list, the causal link between exposure to risk and disease is subject to a conclusive presumption; in the case of the non-listed system, the victim also has to prove the causal link. The legal requirement to prove direct and decisive causality makes it more difficult for victims to prove the causal link. Although the Belgian Court of Cassation has somewhat relaxed the criteria for direct and decisive causality in its application, by accepting the possibility of a certain predisposition of the victim,<sup>37</sup> the Federal Agency for Occupational Risks (FEDRIS)<sup>38</sup> remains relatively firm on the subject and, by “direct and decisive cause”, it considers that “performing the occupation should be the prevailing cause of the disease” and that “the causal relationship between performing the occupation

<sup>32</sup>Lerouge L., “Le renouvellement de la définition de l'accident du travail”, *op. cit.*

<sup>33</sup>Laws on the prevention of occupational diseases and compensation for damage resulting from these, coordinated on 3 June 1970, *M.B.*, 27 August 1970.

<sup>34</sup>Royal decree of 28 March 1969 drawing up the list of occupational diseases leading to compensation and establishing the criteria which exposure to occupational risk should meet for some of these, *M.B.*, 4 April 1969.

<sup>35</sup>Art. 30bis, laws on the prevention of occupational diseases and compensation for damage resulting from these, coordinated 3 June 1970, *M.B.*, 27 August 1970.

<sup>36</sup>The legislator has provided for an exception: exposure to risk does not have to be proved if the worker has worked in certain industries listed in a Royal Decree, the Royal Decree of 6 February 2007 establishing the list of industries, occupations or categories of enterprise in which the victim of an occupational disease is assumed to have been exposed to the risk of this disease, *M.B.*, 27 February 2007.

<sup>37</sup>Verdeyen V., “Deel VI. Beroepsziekten” in Put J., Verdeyen V. (ed.), *Praktijkboek sociale zekerheid*, Mechelen, Kluwer, 2013, p. 419; Belgian Cass., 2 February 1998, R.G. S.97.0109.N, J. T.T., 1998, p. 409.

<sup>38</sup>Before called the Occupational Diseases Fund. The Federal Agency for Occupational Risks (FEDRIS) was recently formed through a merger between the Occupational Diseases Fund and the Fund of Work-Related Accidents. For more information about FEDRIS, <https://www.fedris.be/en>.

and the disease should be almost indisputable”.<sup>39</sup> In other words, “it is not enough that performing the occupation played an unforeseen role, acting as a catalyst, or that there was a slight aggravation. Furthermore, the possibility that the disorder was unrelated to occupational exposure should be negligible”.<sup>40</sup>

The law governing the French occupational disease regime is relatively similar. Firstly, it recognises a “table” system, listing diseases considered to be occupational, provided they were contracted under the conditions specified in the table.<sup>41</sup> Secondly, an “open” system provides for a disease not listed in the table to be classified as an occupational disease, subject to proof “that was mainly and directly caused by the victim’s regular work and that it resulted in his or her death or permanent disability at a rate assessed in the conditions mentioned in Article L. 434-2 and at least equal to a defined percentage”.<sup>42</sup> It should also be made clear that French law allows a disease that does not meet all the conditions mentioned in the occupational disease table (period of treatment, length of exposure, or a restricted list of tasks) to be recognised as an occupational disease, subject to proof that the disease was caused directly by the victim’s regular work.

Neither the Belgian closed list nor the French occupational disease table include psychological disorders. However, concerning the open system, the legislative similarities between French and Belgian law mentioned above do not extend to its application when the victims suffer from psychological disorders. Indeed, the Regional Committees for the Recognition of Occupational Diseases (CRRMP) sometimes agree to recognise psychological disorders, such as depression or generalised anxiety, as occupational disorders, which is not the case with the Belgian Federal Agency for Occupational Diseases (FEDRIS).<sup>43</sup> According to the latest statistics published by FEDRIS, only physical pathologies have been recognised as occupational diseases.<sup>44</sup> In addition, in France, the Advisory Council on Working Conditions (COCT) has examined the issue of psychological pathologies with an

<sup>39</sup>FEDRIS, *Réparation en cas de maladie professionnelle. Aperçu général*, brochure, janvier 2017, p. 8–9, [https://fedris.be/sites/default/files/assets/FR/Depliant\\_brochures/brochure\\_-\\_reparation\\_en\\_cas\\_de\\_maladie\\_professionnelle.pdf](https://fedris.be/sites/default/files/assets/FR/Depliant_brochures/brochure_-_reparation_en_cas_de_maladie_professionnelle.pdf).

<sup>40</sup>FEDRIS, *Réparation en cas de maladie professionnelle. Aperçu général*, brochure, janvier 2017, p. 8–9, [https://fedris.be/sites/default/files/assets/FR/Depliant\\_brochures/brochure\\_-\\_reparation\\_en\\_cas\\_de\\_maladie\\_professionnelle.pdf](https://fedris.be/sites/default/files/assets/FR/Depliant_brochures/brochure_-_reparation_en_cas_de_maladie_professionnelle.pdf).

<sup>41</sup>Article L. 461-1 CSS.

<sup>42</sup>Article L. 461-1 CSS.

<sup>43</sup>In his book, Laflamme mentions two cases of recognition of psychological disorders as occupational diseases by the Belgian Occupational Diseases Fund (now the Belgian Federal Agency for Occupational Diseases), but none of the Fund’s reports that we have read mentions these cases. We are not questioning the author’s remarks, but we wonder about the FEDRIS’s discretion on this point; Laflamme A.-M., *Le droit à la protection de la santé mentale au travail*, Brussels, Bruylant, 2008, 595 p.

<sup>44</sup>FEDRIS, “Maladies professionnelles. Premières statistiques 2016”, 2017, [https://fedris.be/sites/default/files/assets/FR/Statistiques/Statistische\\_jaarverslagen\\_BZ/premieres\\_statistiques\\_2016.pdf](https://fedris.be/sites/default/files/assets/FR/Statistiques/Statistische_jaarverslagen_BZ/premieres_statistiques_2016.pdf).

occupational origin and, in December 2012, it issued a documented report on the basis of a “pragmatic approach consisting, initially, of facilitating the examination of requests by the Regional Committees for the Recognition of Occupational Diseases (CRRMP) in the context of the existing legal framework, and, secondly, considering other ways to provide better coverage for psychological pathologies”.<sup>45</sup> This report considers three psychological illnesses: depression, generalised anxiety and post-traumatic stress disorder, and aims to document a possible recognition of these disorders as occupational diseases. In Belgium, in the context of “work-related diseases”, a concept introduced by parliament in 2006, a committee of the Federal Agency for Occupational Diseases (FEDRIS) was tasked in 2008 with examining the issue of burn-out<sup>46</sup> but, although a preliminary report was presented in 2009,<sup>47</sup> its work has not been completed at this stage.

Work-related diseases, a Belgian specificity, are not occupational diseases as previously defined. These diseases, “according to generally accepted medical knowledge, are partially caused by exposure to a harmful influence, inherent to an occupational activity, and greater than that suffered by the population in general, without this exposure constituting the dominant cause of the disease in exposed groups”.<sup>48</sup> Without going into the details of the procedure, every work-related disease must be specifically recognised in a Royal Decree, which also defines the measures financed by the Federal Agency for Occupational Diseases (FEDRIS), as well as the funding terms and conditions.<sup>49</sup> Today, only one disease has been classified as work-related: back pain, mainly due to material handling<sup>50</sup>! Certainly, the French report on occupational psychological pathologies may inspire the Federal Agency for Occupational Diseases (FEDRIS) and the Belgian parliament to examine the issue of depression, generalised anxiety, etc. via the concept of

<sup>45</sup>Ministry of Labour, Employment, Training and Social Dialogue, Advisory Council on Working Conditions, Occupational Pathologies Committee, Working Group on psychological occupational pathologies, *1st part: psychological pathologies. Final report*, December 2012, 19 p., [www.travailler-mieux.gouv.fr](http://www.travailler-mieux.gouv.fr).

<sup>46</sup>Mairiaux P., “Le modèle belge des maladies en relation avec le travail”, symposium on *Évaluation et prévention des risques psychosociaux*, Charleroi, 27 April 2010, [www.istnf.fr](http://www.istnf.fr).

<sup>47</sup>According to Mairiaux, the first report by the committee highlighted two problems: on the one hand, the reluctance of employers in relation to a recognition of *burnout* as a disease related to work because they consider that the prevention of stress should remain the responsibility of the employer, on the other hand, the fact that, from a medical standpoint, identifying ‘evidence-based’ intervention strategies still need to be undertaken, *ibid*.

<sup>48</sup>Art. 62bis, laws on the prevention of occupational diseases and compensation for damage resulting from these, coordinated 3 June 1970, *M.B.*, 27 August 1970.

<sup>49</sup>It should be noted that this type of disease is never subject to the payment of an income aimed at compensating for temporary or permanent disability or the death of the worker who is ill. The possible funding is mainly aimed at health care, measures encouraging reintegration into or readjustment to the workplace, etc.

<sup>50</sup>A.R. 17 May 2007 establishing the entry into force of Article 44 of the law of 13 July 2006 and enforcing Article 62bis of the laws on the prevention of occupational diseases and compensation for damage resulting from these, coordinated 3 June 1970, *M.B.*, 11 June 2007.

work-related diseases. Even if physical illnesses have not disappeared from the workplace, it is important that institutions live in the present and take present-day realities into account.

## 18.4 Conclusions

Belgian and French legislations on work-related accidents and occupational diseases are clearly quite similar in their wording. Regarding work-related accidents, both legal systems require a sudden event and an injury, as well as a work context. Furthermore, even if the wording differs slightly, both physical and psychological injuries may be eligible for compensation under legislation on work-related accidents. In the same way, on both sides of the border, suicide may be recognised as a work-related accident, provided that it is unintentional or unconscious. Finally, in both systems, the whole problem regarding psychosocial disorders lies in proving the link with work. This seems less difficult to prove when a psychological disorder is preceded by a physical accident or (threat of) assault. However, some types of violence, which do not affect the individual's physical integrity, are much more harmful and intrinsic to performing one's work. Yet it should be noted that case law has difficulty dealing with this type of situation, when the courts have to rule on whether a psychosocial disorder was the result of a work-related accident. The judge's discomfort is certainly understandable but, we believe, above all, it expresses a strict causality-based approach (fact—causal link—damage). Perhaps this issue should be addressed more systematically, by accepting the possibility of interactions and reinforcement mechanisms.

Concerning occupational diseases, the French and Belgian legal regimes apply both a closed list/table and an open/not-listed system. The closed lists in France and Belgium do not include any psychological diseases. In the open system, the conditions for a victim to obtain recognition of his or her disorder or disease as an occupational disease are also similar. In particular, it is important that the pathology was directly and decisively caused by performing tasks involved in the victim's regular work. Nevertheless, providing such proof for psychosocial disorders is extremely difficult, as psychological diseases are intrinsically multidimensional.<sup>51</sup> However, the French institutions are apparently more progressive on this point than those in Belgium. On the one hand, the Regional Committees for the Recognition of Occupational Diseases sometimes recognise depression or generalised anxiety disorders as occupational diseases. On the other hand, even if we will have to wait for its practical application in the long term, we welcome the COCT's work on depression, generalised anxiety and post-traumatic stress disorder. It is particularly aimed at facilitating the recognition of these disorders as occupational diseases under existing legislation, with the objective of supporting the CRRMP in dealing

<sup>51</sup>Durand V. M., Barlow D. H., *Psychopathologie: une perspective multidimensionnelle*, op. cit.

with cases. We believe that this is a good initiative, particularly as it takes current realities in the work world into account. Conversely, we regret that the work of the Belgian FEDRIS-committee on burn-out has not been completed. At a time when the OECD estimates that the cost of mental illness in Belgium amounts to 3.4% of gross national product<sup>52</sup> and health care costs are less burdensome than productivity losses at work, declining performance and job losses,<sup>53</sup> it would certainly be wise for all the stakeholders concerned to work together to achieve results, in terms of not only providing support for victims, but also prevention.

Finally, even if the law's relationship to time – sometimes too slow, sometimes too fast—is constantly an issue for debate, we think that it is essential for our legal systems to take the new realities in the work world into account today. Legislators, courts and social security institutions cannot disregard the main illnesses that workers and employers are facing and try, more or less discreetly, to “pass the buck”, as the popular expression says. When the first legislation on work-related accidents and occupational diseases was being developed over a century ago, physical safety was, quite rightly, the major concern. Today, despite the problems that this implies, it is vital to accept that psychological safety is a key issue and is, thus, the main priority.

<sup>52</sup>OECD, *Santé mentale et emploi: Belgique*, Paris, OECD Publishing, 2013, 135 p.

<sup>53</sup>*Ibid.* p. 22.