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HOW THE LAW CAN TACKLE PSYCHOSOCIAL RISKS AT WORK: CONSIDERATIONS FROM THE FRENCH LEGAL SYSTEM

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Objectives

Since the XXth century because of the use of machines and the concentration of workers in frequently unsuitable workplaces, the number of accidents and disasters increased.

The XXIst century could be characterized by psychosocial risks and the widespread mental strain at work. The objective is to analyse how the French juridical system is able to take into account this evolution and to draw a general approach.

Method

A critical analysis of the literature and legal texts was conducted.

Results

Recognising a right to the protection of the mental health at work questions a certain number of principles. One of these is interpreting the ability to work exclusively as a physical ability. **Psychosocial risks also question work organisations because of their potential effects on worker health.**

Northern Europe countries were among the first to consider the protection of the mental health at work. The development of a French legislation dedicated to the protection of mental health at work took much longer.

Historically, French labour laws focused on the physical health of workers. Given the intensification of work and the increasing importance of new management techniques and work organisation, as well as a growing awareness of the phenomenon of moral harassment at work, the labour law had to be adapted.

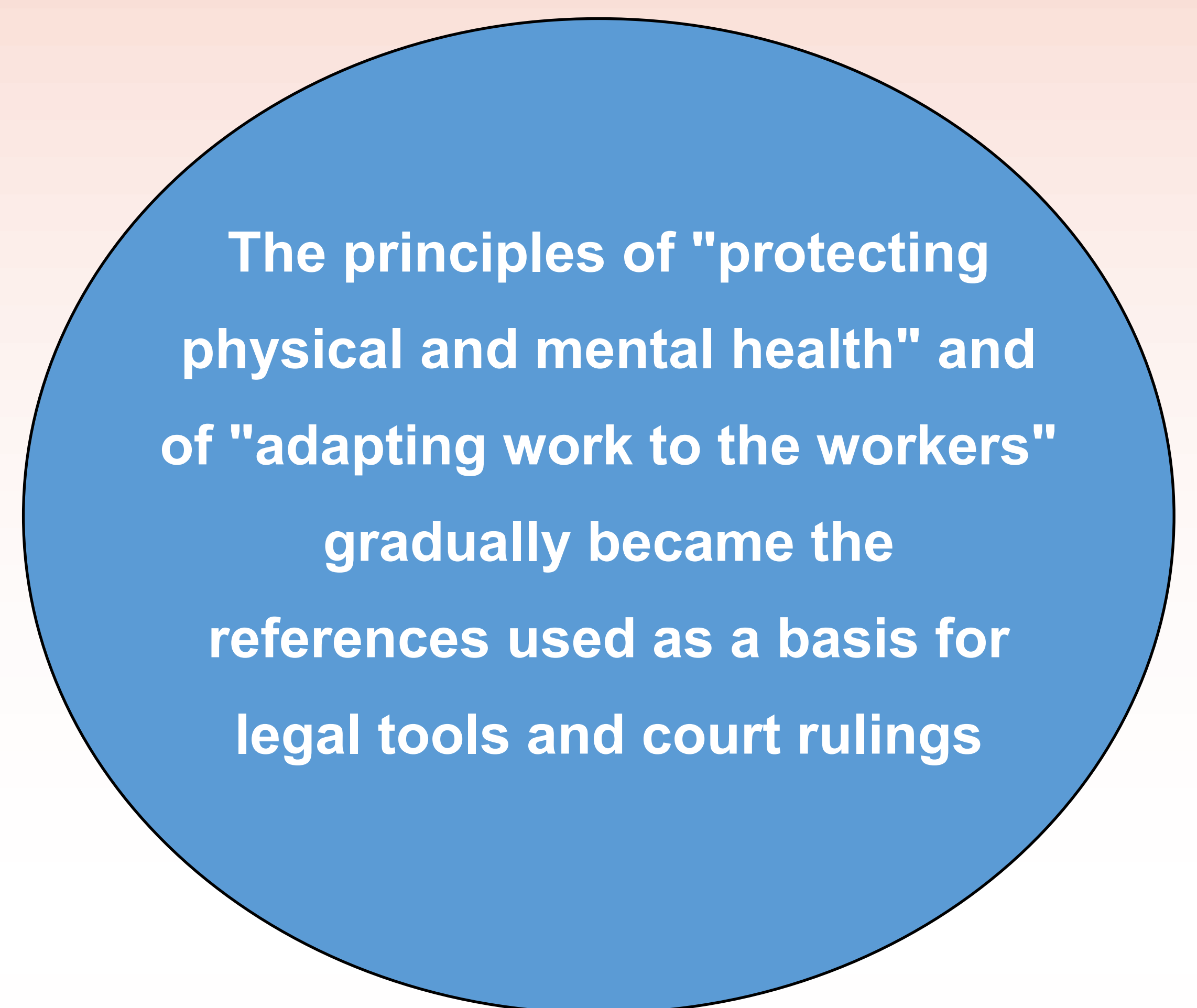
The principle of the employer's general obligation of prevention was transposed into French laws from the directive 89/391/CEE on the improvement of working conditions. However, until a law from 2002, French Legal system was not aware of mental health at work. From this law resulted the consideration of both "physical and mental" health.

Indeed, a chapter on moral harassment allowed this consideration. Then employees were considered as moral and sensitive beings and not as employees in a subordinate relationship of full physical and moral dependence on their employers.

Should the adjectives "physical" and "mental" be added to the legal texts, or does the general concept of health automatically cover the both aspects? Labour law practice used to recognise the physical aspect of the health only. **It was thus essential to clarify the Labour Code by inserting the terms of "physical" and "mental" health.**

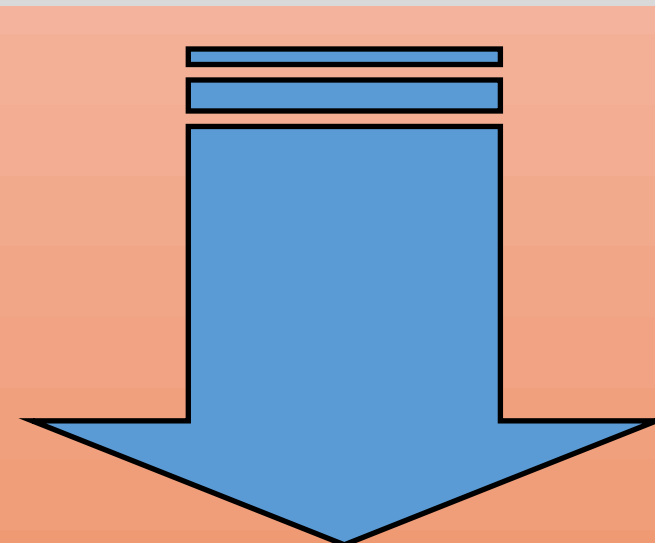
Conclusion

Occupational risks should be developed on a collective level, including psychosocial risks. The law has to promote this aspect in particular by giving **priority to collective instruments of prevention of occupational risks.**



KEY ROLE OF THE COURTS

- Case law follows the social reality of work very closely and has also a key role to play. A complex topic as psychosocial risks forces Courts to **be creative**.
- The employer is also under a **very strict obligation of security**.
- French Courts tend to interfere with the employer's management prerogatives in terms of employee health protection.
- Projects of work organizations have to take into account their potential impact on workers health. If not, the judge can remove the new work organization.
- The employer must take into account medical data in the projects of work organization.



**MAKE THE LAW ONE OF THE KEY INSTRUMENTS
TO PREVENT PSYCHOSOCIAL RISKS AT WORK**

COMPTRASEC

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