

DEPRESSION AND WORK RELATED STRESS PROBLEMS, WITH NOTES OF COMPARATIVE LAW

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SUMMARY

This paper supplies both a medical and legal analysis of work related stress problems, by going through the role of prevention in the European legal system.

The Authors, after reviewing the negative role that stress has in the management of the employment relationship, describe the main steps that have brought Europe to recognize the importance of the role of prevention, and to recognize the role of well-being in the workplace.

Key words: work related stress - Europe - Italian Law system - depression - protection

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PART I

The management of stress as a skill for the improvement of performance at work

In Europe, work stress occupies the second place among health problems of the work, involving over 40 million people, i.e. about 28% of workers in Europe. The cost to the member states is of about 20 billion euros year and cause over 50% of the cases of absenteeism. As is known, according to the World Health Organization, depression will become by 2020 the first cause of disability in workplace. The workplace is, thus, a privileged place for the prevention of psychological disorders and the promotion of better mental health. There is also, the concept of stress which is an on specific response to any request coming from the environment (Seyle), which involves a reaction of adaptation. Basically, the factors that influence the quality of stress are related on the one hand to the nature of the request of the environment (objectivity), and on the other hand the feelings that each person has of it (resources that you feel that they possess, motivations, desired control on reality, etc). It is clear that each person gives a different value to the event on the basis of individual differences: the level of perceived coping (locus of control) will affect the way to deal with the stressant events, so for example the commitment, the challenge or personality traits, such as resilience, (Kobasa 1979) to better deal with chronic and lasting stress.

However, in the workplace, if stress is not given adequate importance in the management of human resources and if it is not understood that the subjective variables may have a relative importance in the conditions of well-being of the workers, they may become determinants of the organizational components which increase stress levels. Whereas the stress response involves three phases (alarm-resistance-depleted) and only

the last of these is the source of a maladaptive reaction, we can define stress as the process that engages the individual in its interaction with the environment of work, proving the maladaptive reactions when the stimulations which come from the environment organization exceed the capacity and resources of an individual.

The maladaptive reactions will involve the individual in the form of somatizations, depression, anxiety, and the organization in the form of inadequacy of possible answers, conflict with respect to values and needs, ultimately of individual suffering and organizational problems. It is necessary still to mention that on the individual level coping and resilience are fundamental to employment strategies for coping with stress.

Strategies for coping include cognitive and behavioral techniques implemented by an individual to cope with stressful situations. They are fundamental to the achievement of wealth by making the individual active subject the protagonist of situations. Resilience is the ability to react positively to the detriment of the difficulties, and uses the experience born of difficult situations to build the future.

At the organizational level, on the other hand, there are stress factors such as the the structure or organizational climate related to hours of work, the shifts, the workload rhythms of work, repetition, monotony etc. There are, then, the so-called psychosocial factors related to the working environment, which concern the relationship with the work environment and the content of the job (if you like it or not), and are mostly related to the lack of organizational culture, motivational and communications strategy (a company that does not know how to motivate, that does not transmit information, which does not develop a good system of industrial relations generates a greater chance of experiencing stress).

Other factors are potentially stressful interpersonal relationships, horizontal and vertical conflicts at work and work-family conflict, and aspects related to the content of the work (work not appropriate to their skills and expertise: working too hard generates anxiety; an easily created sense of frustration, lack of perception of the usefulness and meaningfulness of their work, excessive flexibility, rigidity, etc.). And again, there are factors such as career development with excessive competition among colleagues, the absence of 'living space' or isolation etc.

The *impact on employment* may include:

- excessive absenteeism vs presenteeism;
- high turnover;
- costs of replacing and training new staff;
- burn-out;
- disciplinary problems;
- errors and accidents;
- reduced productivity and/or reduced quality;
- high medical expenses;
- inadequate Decision-making;
- damage to company image.

The *health consequences* may include:

- Cognitive dysfunction: poor concentration, difficulty in storing information, difficulty in learning new things, forgetfulness, a sense of confusion, uncertainty, decision-making, ideational polarization, passage of negative emotional residue from the work to the workers' private lives. These dysfunctions lead to an increase of injuries and decreased performance.
- Dysfunctional behaviors: alcohol abuse, smoking, substance abuse tranquilizers, stimulants-drugs, social isolation, aggressive reactions bad driving, disorders of eating behavior.
- Symptomatic behaviors: attitudes to escape from work, decrease in performance, difficulties in interpersonal relationships, anti-social behavior.
- Physical Manifestations: sleep disorders, heart rhythm disturbances and hypertension, dyspnea, headache, increased blood sugar, paresthesia, twitching, tremors.
- Development of diseases: gastrointestinal disorders, cardiovascular problems, depressive disorders, anxiety disorders, (DAP, phobias), adjustment disorders, immunological disorders.

What interventions are possible at the individual level?

A mode of action involves two coping strategies: a focus on the problem and focusing on emotions.

The first strategy aims to control the problems that cause stress. Usually we resort to these strategies when difficult situations can be changed and the process of coping is aimed at influencing the event itself, to solve

the specific problem. For example, faced with a request for work, trying to organize or structure the task to overcome the difficulties it entails.

The focus on the emotions responsible for the problem is used when situations are difficult to modify. The person tends to deal with the emotional impact of the event based on the reevaluation of cognition and on the shift of attention.

This intervention involves a phase of emotional knowledge (sequence type: event (horn) – representation (honks) - meaning (attacking me) - mood (anger) - behavior (the "dismount the machine")).

As regards prevention, in 2000 the European Guide has been prepared on occupational stress that not only addresses the problem in terms of the analysis of the causes, but also provides guidance on possible remedies. In essence there are elements in balance between them. You get into the situation of occupational stress when this balance goes haywire. The elements are:

- Requests (understood as the level of performance required);
- Control (understood as the possibility of those working to manage the workload for example in relation to time and to the possibility of reducing the aspects of mere enforceability);
- Reward (understood as 'gratification', recognition not only of an economic nature).

According to the indications coming from the EU one cannot fail to mention the Luxembourg Declaration that stresses the importance of the motivational aspects as a prerequisite for a complete state of health and safety in the workplace.

Finally, it seems necessary to adequately assess the subtle difference between occupational stress objectified and subjective (work stress = the occupational stress more objectively measurable, eg. bearable and the extraordinary level of work and work pain that is the particular effect on the emotional and mental state of the same condition or activity of different people, for example the effects of the demotion of a single person in relation to its actual potential professional or its culture).

If prevention is better than cure, the efforts of organizations need to focus on programs to provide adequate staff training, work design that makes the need to co-exist with the welfare of the worker productivity, monitoring of the first signs of stress with individual programs, change management, leadership, performance evaluation and feedback, training and support to the provision of organizational management groups and management of climate and culture. Achieving prevention means then planning and organizing the working process so that operators are working in the best possible conditions, taking in to account what has been learnt by the progress of science.

PART II - Comparative Legislative Notes

The original protection against damage from stress

Describing stress and analyzing the points of contact between some European legislation implies some brief remarks, which will serve to narrow, given the short space available, the field of research.

In the first place, to speak of stress is to speak of a psychosocial risk, which consists in a reaction to multifactorial stimuli from the outer sphere in the individual resulting from an exposure to stressors of not mild intensity and short duration. Stress is not a disease, and consists in an adaptation of the subject to uncomfortable situations, but it can become evident and degenerate into pathological conditions such as depression. Stress, however, can not be defined as a state of "health", since health has been defined by the World Health Organization as "a state of complete physical, mental and social, not just the absence of disease or infirmity" (see also art. 2, paragraph 2, letter. o)), Italian Decreto legislativo April 9, 2008, n. 81, T.U. Salute e Sicurezza su l' Lavoro; and CJEU 1996).

The attention of European law and, above all, of the Italian law to the phenomenon of stress was, therefore, justified by the need not only to guarantee every citizen the right to health (art. 32, no. 1 Costituzione Italiana 1947 -hereinafter, also Cost. it. -: "The Republic safeguards health as a fundamental right of the individual and collective interest, and guarantees free medical care to the indigent"), but also to allow the full development of personality and active participation in the economic, political and social organization of the country (art. 3, no. 2 Cost. it.) in a perspective of protection of not only individual, but also collective.

The legal protection of the first good, however, did not automatically lead to the latter. Until recently, in fact, the protection given by Italy against stress phenomena occurred only *ex post*, through a construction of civil damages for the damage from stress throughout case law, which has been and still is a real "living law", very similar to the Anglo-Saxon *stare decisis*.

Article 2087 Codice Civile italiano 1942 (hereinafter, also cod. civ.) ("The employer is required to take in the performance of measures which, according to the particularity of the work, experience and technology, are necessary to protect the physical integrity and the moral personality of workers"), which in conjunction with art. 2043 cod. civ. ("Any malicious or negligent, which causes unjust damage to others, obliges the one who committed the act to compensate the damage") allowed the use of the instrument of the damage, but this reveals, however, all its limits as soon as the focus shifts to the second source of constitutional law. It is known, in fact, that the compensation of damage, in its ontological function, restores, but does not prevent.

From private law to the strengthening of the role of prevention of the phenomenon. The European stimulus and the Italian answer

In this context, the legislators' attention to the phenomenon of stress has turned towards a strengthening of the role of prevention and promotion of mental health of citizens, especially through the enhancement of the protection in the workplace, according to what is already provided by the ILO, art. 3, letter. e) Conv. n. 155, June 22, 1981 ("The term health, in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work"), and Racc. n. 164, June 22, 1981.

The need to curb a harmful phenomenon to the individual "stressed out" and dangerous for businesses and the community was, in fact, increasingly felt, on the basis of the teachings of medical science and the experience of some countries (consider, for example, the case of the Northern European countries, that even before the enactment by the EEC Directive 89/391/EEC, had introduced legal instruments for the protection of the mental health of workers. In particular, are worth noting the Norwegian law of February 4th 1977 and the Swedish Work Environmental Act of 1978).

Stress, in fact, results in high costs at company level (due, for example, the need to replace staff absences), as well as at the social level, implying both expenditure of a family (for example, expensive medicines) and welfare (consider, again, the health care costs and the costs that it implies for the community). In addition, at the corporate level, it leads to alienation from work and, therefore, it leads to absenteeism, complaints, phenomena of discomfort to colleagues, inattention and decreased concentration (European Agency 2009).

It is not until 2004 that a first European first impulse occurs, and this happens on October 8, 2004 with the signing by the European social partners (ETUC, UNICE, UEAPME, SMEs, CEEP), which took place in Brussels, of the European Framework Agreement on stress at Work, and in Italy, even up to 2008, where we recognize the importance of the role of prevention of work related stress.

Stress, in fact, may relate to any workplace and any worker, regardless of company size, sector of activity or the type of contract or employment relationship (art. 1).

Moreover, even if not all the manifestations of stress may depend on their work, it imposes a general obligation to protect the mental health of employees, in order to avoid the risk that, the work organization is a factor in interpersonal conflicts, complaints and a high rate of absenteeism.

The obligation, however, is not one-sided, but it develops in two related directions: on the one hand, the employer must take all appropriate measures to eliminate or at least reduce the stressors; on the other hand,

workers have a general duty to respect the protective measures taken by the employer, becoming active participants in health protection at work.

The Italian legislator, following a conviction by the European Court of Justice (CJEU 2001), has welcomed the European cues with the Decreto Legislativo April 9 2008, n. 81, adding to the original obligation of protection provided in chief to employers by art. 2087 cod. civ., the obligation for employers to evaluate themselves "all risks to the safety and health of workers, including those for groups of workers exposed to particular risks, including those related to work-related stress, according to the contents of the European Agreement of October 8 2004" (art. 28) (Calafà 2012, Peruzzi 2011).

Because of the difficulty for individual companies to operationalize this provision, because of the difficulties arising from difficult risk assessments, the Italian legislature then delegated to the Standing Consultative Commission for the health and safety at work ex art. 6, paragraph 8, letter. m-quarter) of Decreto Legislativo April 9, 2008, n. 81 the preparation of measures allowing those responsible to identify, prevent and manage problems of work-related stress.

These measures were announced by the Circular of the Ministry of Labour, November 18, 2010, prot. n.23692, which provided for the exercise of biphasic judgment, consisting of an necessary preliminary evaluation and, if any, another to be activated only in the event that the protective measures taken by the employer will be ineffective.

The space limitation, unfortunately, do not allow us to further deepen the discourse (see Pasquarella 2012). I will, however, report that the European appeal about the need to ensure workers against the risks from stress was also accepted by the most representative Italian trade unions, which have transposed the provisions of the European Framework, through the stipulation of the *Accordo interconfederale* of 9 June 2008, agreement which, moreover, is a more reproduction of the European Agreement.

Short compared profiles

The European commitment in the fight against stress and the "promotion of mental health in the workplace" (Commission Of The European Communities, 2007; note that, at present, even if it is not yet been made known the Community Strategy for the years 2013-2020, on 23 May 2013, the European Agency For Safety And Health At Work announced the relationship Different cultures at work: Ensuring safety and health through leadership and participation, containing several surveys about the negative role played by stress in workplaces) is generally shared by most of the EU countries.

Recently, for example, in Belgium, the *arrêté royal* of 17 May 2007, in modifying the Code sur le bien-être au travail of 1996 (transposing Directive 89/391/EEC of 4 August 1996) has implemented preventive measures against the cd. charge psychosocial (art. 3-8), which is defined, through a particularly elastic concept, such as "toute charge, de nature psychosociale (tautological definition), qui trouve son origine dans l'exécution du travail ou qui survient à l'occasion de l'exécution du travail, qui a des conséquences dommageables sur la santé physique ou mentale de la personne (teleological definition)". There will also be signaling roles and cooperation on the part of workers, as well as the presence of *conseillers en prévention*, operating with full autonomy and independence, and assist the company in identifying and managing risks (Van der Plancke 2012).

Different tools are used in the UK, which, generally acts through soft law not binding instruments.

In particular, the setting of standards of protection are remitted to the HSE (Health and Safety Executive), who, working in close contact with the social partners, in 2004 has prepared some guidelines for the recognition and prevention of risks from stress, addressed in general to employers and from these to suit individual contexts of production, through the analysis of six risk factors, which are progressively monitored. The dissemination of knowledge of the phenomenon is also managed through the drafting of codes of good practices, as well as communication via the web.

One should also mention Work-related stress: a Guide - Implementing a European Social Partner Agreement, which implemented the European Agreement of 2004, through a concerted dialogue, which involved, in addition to trade unions CBI, TUC, CEEP UK, FPB, including the Ministry of Commerce and Industry (European Commission 2011).

The pursuit of happiness in the workplace

The United States Declaration of Independence, signed in Philadelphia July 4, 1776, states that every man is endowed with inalienable rights, among which is "the pursuit of Happiness."

At least partially, this right seems to have also entered into the European legal systems, although lawmakers contemporaries, with the exception of Belgium (see Code sur le bien-être au travail), have informed the respective regulations of this right in a totally incidental way.

As one can see, in fact, happiness and well-being are not only the main remedies against the discursive effects of stress, as it emerges from a recent survey from ILO (ILO 2012), but also the assumptions on which pivot the protection of health at work. Stress, prevention and wellness are inserted, in fact, in a continuous virtuous circle and they influence each other, so where there is

the second is also the protection according to the last, whereas it lacks the last there will also be a lack of protection against the first.

On the other hand, the right to welfare was already recognized by the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on December 10, 1948, that at the art. 25 prescribes the right of everyone "a standard of living adequate for the health and well-being of himself and of his family" and today the European Courts make it express recognition, often accompanying her to good health (CEDU 2012, CEDU 2010).

Moreover, even if in the Italian Constitution - which, however slightly, precedes the Universal Declaration - there is no express mention of well-being, it is not impossible to trace the foundation of it in the art. 4, where it recognizes that the citizens have the "right to work", which is the main mode of manifestation of the individual's personality (art. 3), meaning, according to the illustrious interpretation of Mengoni on the article 1, "the word "work" as a synecdoche (...), that is, as an expression of the human person, the bearer of the values recognized by art. 2" (Mengoni 1998). It follows the right of every citizen is not only to work, but also to have quality work, in which each individual can realize their potential in an attempt to "contribute to the material or spiritual progress of society", living in welfare work and happiness.

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