

Daria-Ștefania Malița

ORCID: 0000-0003-1049-5775

Master's student, Faculty of Law

University of Oradea, Romania

Teleworking in the context of the COVID-19 pandemic¹

Telepraca w kontekście pandemii COVID-19

Abstract

The COVID-19 pandemic has brought with it a phenomenon that had not been experienced before, namely social distancing. With the restrictions imposed by the authorities regarding free movement, a large part of companies and public institutions have had to quickly rethink their operational models and turn to telework. Thus, teleworking has become widespread and has become a safeguard tool for both employees and employers. In this article, I aim to analyze a series of aspects regarding teleworking, its regulation, the differences between teleworking and working from home, the rights and obligations of the parties, the support measures for employees and employers, the advantages and disadvantages of remote work, but also the practical trends in other states about the application of telework.

Keywords: teleworking, employees, employers, COVID-19.

Streszczenie

Pandemia COVID-19 przyniosła ze sobą niespotykane wcześniej zjawisko, jakim jest dystans społeczny. Wobec ograniczeń nałożonych przez władze w zakresie swobodnego przemieszczania się, duża część firm i instytucji publicznych musiała szybko przemyśleć swoje modele działania i przejść do telepracy. W ten sposób telepraca stała się powszechna i stała się narzędziem ochronnym zarówno dla pracowników, jak i pracodawców. W tym artykule przeanalizowano szereg aspektów dotyczących telepracy, jej regulacji, różnic między telepracą a pracą w domu, praw i obowiązków stron, środków wsparcia dla pracowników i pracodawców, zalet i wad pracy zdalnej, ale także praktyczne trendy w innych państwach dotyczące stosowania telepracy.

Słowa kluczowe: telepraca, pracownicy, pracodawcy, COVID-19.

¹ An earlier version of this paper was presented at the *Conference of Students, Masters and Doctoral Students in Law*, Sibiu, Romania. The paper *Support measures for employees and employers regarding teleworking in the context of the COVID-19 pandemic* was published in the *Conference of Students, Masters and Doctoral Students in Law Journal* (ISBN: 978-606-39-0890-3), p. 256–263.

1. Introductory aspects

The COVID-19 pandemic began in December 2019 in the Chinese city of Wuhan, when a group of people with pneumonia of unknown cause appeared. From that date until now, there have been major changes in everyone's lives.

The COVID-19 pandemic has brought with it a phenomenon that had not been experienced before, namely social distancing. With the restrictions imposed by the authorities regarding free movement, a large part of companies and public institutions have had to quickly rethink their operational models and use telework in order to protect employees².

In this context, teleworking and working from home have ensured a balance between protecting health and reducing economic and social impact³.

Almost two years have passed since the first restrictions were imposed, and we observe that they are still needed to limit the spread of the virus. From this perspective, I believe that employers will continue to maintain, where possible, the teleworking. Moreover, given that employers and employees have become accustomed to this way of working, it is possible that, even after the end of the restrictions, the activity of employees will be carried out largely outside the employer's headquarters, as opposed to the period before the pandemic, when, at least in Romania, this way of working was not as familiar to us as it is today.

2. Teleworking

Telework has been promoted since the 1970s, by telephone and especially by fax, i.e. through the means of communication available to developed countries at the time. In 1972, the term “telework” first appeared in an article in the Washington Post. At the same time, Jack Nilles, considered the “father of telecommuting”, began his first work on what he called “telecommuting” in 1975⁴.

As economic globalization, controlled workflow, and the personal computer have developed, the latter has become one of the tools for outsourcing activities or outsourcing work for companies. This was inevitably followed by a reduction in costs and an increase in “mobility at work” as a new management and coordination practice.

² “People Services Newsletter”, <https://assets.kpmg/content/dam/kpmg/ro/pdf/2020/people-services-noiembrie-2020.pdf>.

³ E. Stănciulescu, *Telework and work from home in the current context*, “CECCAR Business Review”, No. 10, p. 52–60, DOI: 10.37945/cbr.2020.10.07.

⁴ E.M. Dobrescu, *Telework: Comparative study*, <https://corneliupivariu.com/telemunca-studiu-comparativ/>.

Therefore, The European Framework Agreement on Telework S/2002/206.01.02 was concluded in Brussels in 2002 between the social partners. It defines telework in art. 2 para. (1) as “that form of organization and / or performance of work using information technology under a contract or employment relationship in which the work – which could also be performed on the employer's premises – is carried out outside them on a regular basis”. Further, in art. 2 para. (2) of the same agreement states that the party performing the work in such a contract shall be called a teleworker. This definition has been repeated by other countries such as: Belgium (in Article 2 of the National Collective Labor Agreement on Telework No 85 of 9 November 2005), France (in Article 1 of the National Interprofessional Agreement of 19 July 2005 on telework), Italy (in Article 1 of the Interconfederal Agreement for the Implementation of the European Framework Agreement on Telework, of 9 June 2004)⁵.

Telework was regulated in Romania by Law no. 81/2018 on the regulation of telework activity.

Initially, the law⁶ provided an express definition of telework in art. 2 lit. a), where it provided that telework is the form of work organization by which the employee, regularly and voluntarily, fulfills his duties specific to the position, occupation or trade he holds, in a place other than the work organized by the employer, at least one day a month, using information and communication technology. The employee who carries out the telework activity is called teleworker.

The definition of telework has undergone a slight change by GEO no. 36/2021⁷, in art. 2 para. (1), which regulates it as the form of work organization by which the employee, regularly and voluntarily, fulfills his duties specific to the position, occupation or trade he holds in a place other than the work organized by the employer, using information and communication technology. We notice that the legislator did not keep the existing conditioning in Law no. 81/2018, respectively for the employee to carry out his activity in telework regime at least one day a month.

The telework activity is based on the will agreement of the parties, stipulated in individual employment contract for the newly hired staff or in an additional act to the individual employment contract for the existing staff.

⁵ A.C. Ștefănescu, *Telework at international, European and Romanian level - regulation, definition, specific and legal nature*, https://www.avocatnet.ro/articol_16390/Telemunca-pe-plan-international-european-si-in-Romania-reglementare-definitie-specific-si-natura-juridica.html.

⁶ <http://legislatie.just.ro/Public/DetaliiDocument/199418>.

⁷ <http://legislatie.just.ro/Public/DetaliiDocument/242068>.

3. Telework versus work at home

Although they seem to overlap, there are some significant differences between teleworking and working from home.

Work at home is the performance of duties specific to a position at the employee's home or residence.

In the case of teleworking, the place where the work is carried out can be not only the domicile or residence, but also any other place chosen by the teleworker, apart from the workplace organized by the employer. On the other hand, work at home requires the employee to carry out his activity at his home or residence.

Telework is achieved through the use of information and communication technology, while working at home does not necessarily require access to these means of telecommunications.

The employee who performs the work at home organizes his own work schedule⁸, and the teleworker organizes his work schedule in agreement with the employer, in accordance with the provisions of the individual employment contract, the internal regulations and/or the applicable collective labor agreement.

If an employee works from home and uses information and communication technology equipment for this purpose, his work meets the characteristics of both types of work, without prevailing over each other, especially since there are no major differences in content between their regulations.

4. Rights and obligations of the parties

4.1. Rights and obligations of the teleworker

The rights and obligations of the teleworker are:

- they have the same rights and have the same obligations as the other employees of the employer;
- they are entitled to request full logistical support for the use of information technology in order to carry out the tasks deriving from the job description;
- they set their own work schedule;
- they have the opportunity to show up at the employer's headquarters at any time in order to collaborate or exchange information with hierarchical bosses or specialized colleagues⁹;

⁸ L. Onica-Chipea, *Labour law. University course*, Pro Universitaria Publishing, Bucharest, 2017, p. 92.

⁹ *Ibidem*, p. 93.

- they benefit from meal vouchers;
- they have the obligation to inform the employer about the work equipment used and the existing conditions at the places where the telework activity is carried out;
- they have the obligation to allow the employer access in order to establish and implement occupational safety and health measures.

4.2. Rights and obligations of the employer

The rights and obligations of the employer are:

- he must ensure the supply, installation and maintenance of the technical equipment necessary for the performance of the service by the teleworker;
- if the employee uses his own technical means, it is useful to specify in the contract what payments the employer undertakes to cover the expenses regarding consumables, energy, purchase of means of protection, wear and tear of the equipment etc.¹⁰;
- he is responsible for taking action and complying with occupational health and safety regulations¹¹;
- is entitled to check the activity at home, under the conditions established by the individual employment contract.

5. Support measures for employees and employers regarding teleworking in the context of the COVID-19 pandemic in Romania

5.1. Financial support granted to employers

GEO no. 132/2020¹² stipulates that, in order to carry out the activity in telework regimen, a single date is granted to the employers, for each teleworker who worked in telework regimen during the state of emergency for at least 15 working days, a financial support of 2,500 RON (approximately 505 EURO) in order to purchase packages of technological goods and services necessary to carry out the activity in this regimen.

Thus, among the goods that can be purchased are the following: laptop / notebook computers, tablets, smartphones, peripheral input and output equipment related to the aforementioned goods, equipment necessary for connecting to the Internet of the aforementioned goods, licenses for operating systems and software applications related to the aforesaid goods.

¹⁰ *Ibidem.*

¹¹ *Ibidem.*

¹² <http://legislatie.just.ro/Public/DetaliiDocument/229026>.

5.2. Settlement by the company of expenses incurred by teleworkers

Law no. 296/2020 for the amendment and completion of Law no. 227/2015 on the Fiscal Code brought numerous amendments, including the tax facilities for the amounts granted by the employer to employees who work in telework to support expenses with utilities at the place where employees work.

The amounts are non-taxable and exempt from the payment of compulsory social contributions for pension and health, up to a monthly ceiling of 400 RON (approximately 80 EURO) corresponding to the number of days in the month in which the employee is working in telework regimen. They are also granted without the need to present supporting documents¹³.

It is important to note that the provision has been applied since January 2021, with the changes not being applied retroactively.

The law provides for the need to establish the limits of these amounts in the employment contract or in the internal regulations. Therefore, the ceiling of these amounts must be included either in the individual employment contract (by additional act) or in the collective labor agreement or in the internal regulations in order for them to be non-taxable and exempt from social security contributions¹⁴.

The employer can grant amounts higher than 400 RON, but the difference between the amount provided and the legal ceiling will be subject to tax and social contributions for pension and health.

Also, the ceiling of 400 RON is not fixed, but is granted depending on the number of days actually worked in telework regimen. For example, if the employee worked only in telework regimen for a month that has 20 working days, the legal ceiling is 400 RON. If the employee worked only 10 days in telework regimen, the legal ceiling will be 200 RON.

6. Advantages and disadvantages of remote work

As previously mentioned, the legislator regulated two variants of the individual employment contract for the situations in which the activities specific to the position or profession can be performed remotely, in the form of work at home and telework.

¹³ *Employers can offer teleworkers non-taxable amounts and exempt from social contributions of up to 400 RON*, <https://www.calculatorvenituri.ro/angajatorii-le-pot-oferi-telesalariatilor-sume-neimpozabile-si-scutite-de-contributii-sociale-de-pa>.

¹⁴ *Ibidem*.

Initially, distance employment contracts focused primarily on the fields of IT, call-center, telemarketing and accounting, but in the current context more and more fields have adapted and have moved to these types of professional activity.

The advantages of the distance employment contract include:

- employee flexibility;
- increased individual concentration and productivity;
- saving the time spent on the road to the employer's headquarters;
- the elimination of expenses incurred by employers with the transport of employees to and from work;
- the reduction of expenses with utilities or rent borne by the employer;
- sick employees can work from home to avoid spreading the disease or the virus to other colleagues;
- the opportunity to bring in the company specialists from other cities or countries, who otherwise would not have accepted a relocation;
- more free time, a better balance between work and daily life;
- environmental benefits, such as reducing CO₂ emissions and fine dust caused by vehicles needed to get employees to work, and also by office air conditioning systems.

The disadvantages of this contract include:

- the tendency of employees to have other activities during the day or to be disorganized;
- employers do not have the opportunity to carry out a rigorous control over working time or over employees;
- it is amplified the feeling of isolation and anxiety;
- they have no one to consult with about any problems encountered in their work.

7. Practical trends in other states about the application of telework

Until 2020, Romania was part of the category of countries where teleworking or working from home were almost non-existent in practice. The evolution of telework was insignificant in this state in the period 2010–2019, Romania occupying every year the last position of the EU ranking of telework, a form of work that rose from 0.1% of employees who worked at home time to time in 2010, to only 0.6% of total employees in 2019. In 2020, however, Romanian employers had to adapt to the new restrictions, and the share of employees who

worked exclusively from home rose to 24% of total employees, according to a Eurofound¹⁵ report published in early November 2020.

On the other hand, in 2019 Sweden had the largest share in the EU of employees who sometimes worked from home, respectively 31% of the employed. As a result, the changes caused by the COVID-19 pandemic came easier in this country, with a report by Eurofound¹⁶ showing that 40% of the hours paid and worked by Swedish employees were made in July 2020 at home.

In Belgium, the Collective Labor Agreement no. 85, signed on 9 November 2005, established the conditions for teleworking from home and in telecentres: the generally accepted principle was the fair treatment of all teleworkers, and the Belgian tax authorities clarified the tax treatment applied to teleworking on 16 January 2014. The provision by an employer to an employee of an internet connection, a subscription and a computer is considered a tax benefit of any kind, up to the amount of 40 euros per month¹⁷. As a result, during the pandemic period, respectively in July 2020, more than half of Belgian employees, respectively 52%, stated that they work exclusively from home.

In France, the situation changed radically during the pandemic. Thus, if in 2019, according to the National Institute of Statistics and Economic Studies, in the whole country only 17% of employees were in telework, at the end of September 2020, the share of employees in telework reached 70% of total employees, according to the Department of Statistics of the Ministry of Labor of this country¹⁸. The distribution of the percentage of employees in teleworking varied according to the size of the companies.

Crossing the ocean, the USA has also adapted very well to the new pandemic realities. If in 2019 5.7 million employees (4.1%) of the employed workforce worked in telework, at the peak of the pandemic there was a percentage of 69% of employees who worked remotely¹⁹.

In 2020, Facebook announced that it wants to become the fastest telecommunications company. This decision was made in the view of the impossibility of returning to normal working conditions for the 45,000 Facebook employees worldwide. Thus, 95% of them practiced teleworking in 2020, and 40% of them announced that they want to opt for telework permanently²⁰.

¹⁵ Eurofound: *Telework – the silent revolution taking place in the EU. Spectacular growth in Romania as well*, <https://cursdeguvernare.ro/eurofound-telemunca-revolutia-tacuta-ce-se-desfasoara-in-ue-crestere-spectaculoasa-si-in-romania.html>.

¹⁶ *Ibidem*.

¹⁷ E.M. Dobrescu, *Telework: Comparative study...*, *op.cit.*

¹⁸ *Ibidem*.

¹⁹ <https://globalworkplaceanalytics.com/telecommuting-statistics>.

²⁰ E.M. Dobrescu, *Telework: Comparative study...*, *op.cit.*

The change in work organization, activated through telework, could extend beyond the pandemic period. Employees will be able to permanently opt for telework if they wish. According to Cristophe Bys, 34% of employees could work in the USA in telework regimen²¹.

Moreover, in the analysis of how the concept of telework or remote work is applied in other states, in the United States, even one city named Tulsa has developed – the state of Oklahoma, through a company – Tulsa Remote, which offers \$ 10,000 to an employee to move to Tulsa, and through 36 Degrees North, offers a dynamic coworking space in downtown Tulsa²².

In Europe, an example is Croatia, which, according to a recent article²³ entitled “How Croatia Wants to Attract Digital Nomads from All Countries / The Solution to Combine Telework and Save the Tourism Industry” reads as follows: “Croatia has amended the Law of foreigners to allow non-EU nomads to obtain one-year residence visas and be exempt from income taxes. Applicants must prove that they work remotely, that they have housing, health insurance and an income of more than 2,200 euros per month”²⁴.

8. Conclusions

The spread of the new coronavirus (COVID-19) and the necessary measures to prevent the widespread spread of the virus (such as quarantine, isolation, ban on certain events, etc.) have rapidly affected the economies of states around the world and, implicitly, the participants at these economies, including employees and employers. Most public institutions and economic operators have taken significant steps to ensure social distancing and the pursuit of distance professional activities.

In my opinion, teleworking has managed to strike a balance between reducing the economic and social impact of COVID-19 and protecting the health of employees and employers.

²¹ *Ibidem*.

²² C. Ticu Jianu, D. Gaitan, *Work from anywhere – work from anywhere (WFA) – in the IT industry*, https://www.juridice.ro/738191/munca-de-oriunde-work-from-anywhere-wfa-in-industria-de-it.html#_ftn16.

²³ *How Croatia wants to attract digital nomads from all countries / The solution to combine telework and save the tourism industry*, <https://www.hotnews.ro/stiri-coronavirus-24828836-cum-vrea-croatia-atraga-nomazi-digitali-din-toate-tarile-solutia-pentru-imbina-telemunca-salvarea-industriei-turistice.htm>.

²⁴ C. Ticu Jianu, D. Gaitan, *Work from anywhere...*, *op.cit*.

Remote work is still present in the lives of many employees and will certainly be a constant in the economy even after we get over the pandemic, because teleworking has many benefits, and once employees and employers have accommodated with this type of work, I believe that it will be maintained, where possible, for at least a certain number of working days in a month.

Bibliography

- “People Services Newsletter”, <https://assets.kpmg/content/dam/kpmg/ro/pdf/2020/people-services-noiembrie-2020.pdf>.
- Dobrescu E.M., *Telework: Comparative study*, [https://corneliupivariu.com/telemunca-studiu-comparativ/Employers can offer teleworkers non-taxable amounts and exempt from social contributions of up to 400 RON](https://corneliupivariu.com/telemunca-studiu-comparativ/Employers%20can%20offer%20teleworkers%20non-taxable%20amounts%20and%20exempt%20from%20social%20contributions%20of%20up%20to%20400%20RON), <https://www.calculatorvenituri.ro/angajatorii-le-pot-oferi-telesalariatiilor-sume-neimpozabile-si-scutite-de-contributii-sociale-de-pa>.
- Eurofound: Telework – the silent revolution taking place in the EU. Spectacular growth in Romania as well*, <https://cursdeguvernare.ro/eurofound-telemunca-revolutia-tacuta-ce-se-desfasoara-in-ue-crestere-spectaculoasa-si-in-romania.html>.
- How Croatia wants to attract digital nomads from all countries / The solution to combine telework and save the tourism industry*, <https://www.hotnews.ro/stiri-coronavirus-24828836-cum-vrea-croatia-atraga-nomazi-digitali-din-toate-tarile-solutia-pentru-imbina-telemunca-salvarea-industriei-turistice.htm>.
- <http://legislatie.just.ro/Public/DetaliuDocument/199418>.
- <http://legislatie.just.ro/Public/DetaliuDocument/229026>.
- <http://legislatie.just.ro/Public/DetaliuDocument/242068>.
- <https://globalworkplaceanalytics.com/telecommuting-statistics>.
- Onica-Chipea L., *Labour law. University course*, Pro Universitaria Publishing, Bucharest 2017.
- Stănculescu E., *Telework and work from home in the current context*, “CECCAR Business Review”, No. 10. DOI: 10.37945/cbr.2020.10.07.
- Ștefănescu A.C., *Telework at international, European and Romanian level – regulation, definition, specific and legal nature*, https://www.avocatnet.ro/articol_16390/Telemunca-pe-plan-international-european-si-in-Romania-reglementare-definitie-specific-si-natura-juridica.html.
- Ticu Jianu C., Gaitan D., *Work from anywhere – work from anywhere (WFA) – in the IT industry*, https://www.juridice.ro/738191/munca-de-oriunde-work-from-anywhere-wfa-in-industria-de-it.html#_ftn16.