

Tele-Working in European Legislation and the Romanian Law System

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ABSTRACT: At the present, labor legislation is at a crossroads, the changes at both national and European level have shown that a radical change of vision on working relations is necessary. One of the most recent legislative changes is the regulation of a new type of special contract – tele-working. In support of the flexibility of the labor relations and their modernization. Romanian legislation has adapted to these requirements, by adopting the Law no. 81/2018 on regulation of teleworking activity, in force since April 5, 2018. The scope of the Law is undefined, while the text of Art. 1 par. (2) regulates that “This law shall apply in the fields of activity where it is possible to carry out tele-work activity”. In other words, without specifying who is the addressees of the law, it concerns a category of employees who are connected to the realities of communication technology in a broad sense, to the latest news of the field in which they work and, in general, to the daily universe through the Internet, social networking and mobile applications. In other words, the recipients are the workers involved in the information society through its use and development, and not every worker holding a terminal that can connect to information and communication technology, since it is a “tele-employee” only the one who is willing to use the equipment needed to deliver the result of his work in an employment relationship, of course in agreement with the employer.

KEYWORDS: labor legislation, labor relations, tele-work, tele-employees

Introduction

*“The pleasure of work brings its perfection”
Aristotle*

Starting from the assertion that Aristotle made about 2300 years ago, we proposed that in this study we demonstrate both the advantages and disadvantages of regulating a special type of work contract - teleworking. Of course, the hypotheses we will set out will relate to the numerous specialized studies in the field, conducted both internally and externally, and we will try to provide a clearer vision of the concept of telework, a concept first used during the oil crisis of the “70s by Jack Nilles, later referred to as the parent of this concept. Broadly speaking, he believes that ‘information technology has the capacity to replace physical movement through electronic communications and so work can be done at a distance’” (Ștefănescu 2009). Thus, through a comparative analysis and, at the same time, through an empirical research, we will try to draw some conclusions, one year after the internal regulation of Law 81/2018 of March 30, 2018 regarding the regulation of the teleworking activity published in the Official Monitor no. 296 of April 2, 2018.

Comparative aspects regarding the concept of telework

Although semantically we are talking about the same thing, the term telework is found in the specialized doctrine in various forms (telework, "telecommuting, virtual organization" etc. (Madsen 2003)), forms that are constantly growing. However, we cannot overlook the distinction that Jack Nille makes in terms of telework / teleworking (favored by Europeans) and telecommuting (mostly used in the US), in the sense that the latter is a form of teleworking, in the idea that it can only cover the problem of distance from the workplace and is by no means a particular form of organization of work, such as teleworking. In practice, both doctrinally and through legal regulations, various definitions are becoming increasingly broad (Ștefănescu 2009).

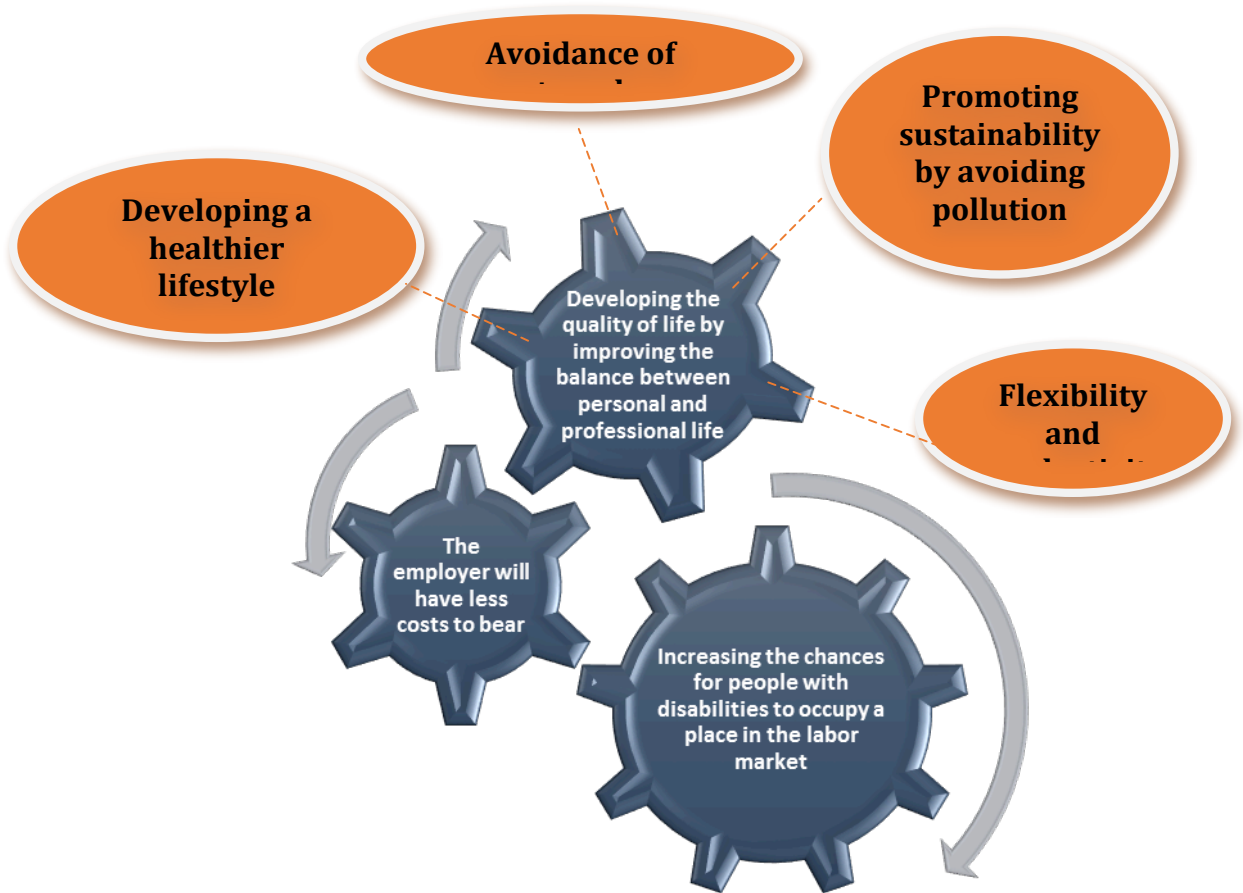
At a meeting of the Lisbon European Council, a meeting that took place in 2000, the foundations of a strategic objective for the states of the European Union were laid in the idea of modernizing labor relations and increasing productivity. Thus, it was the European Commission that invited the social partners to join and collaborate to the negotiations regarding the telework.

This process started on September 20, 2001 and ended on July 16, 2002 when the Framework Agreement on Teleworking was signed (Varachiu 2017). Thus, at European level, this special type of employment contract becomes regulated only in 2002 as a result of an European framework agreement aimed at improving work organization and career prospects. Of course, these have been transposed in accordance with its own procedures of each state, gradually. Moreover, we mention that this process can be constantly followed, as there are a lot of teleworking researches, ongoing researches, as Eurofound and Eurostat periodically compile statistics on the impact of teleworking in EU member states. Thus, in the present 17% of the employees in the European Union have opted for mobile work or work in the teleworking regime, our country having a limited number of teleworkers (What Europe Does For Me 2019). Moreover, taking into account the real competition between Europe, the USA and the countries of East Asia, the European Commission's efforts are directed, in particular towards stimulating teleworking. Thus, the 2002 European Teleworking Framework Agreement is inspired by the documents called the White Paper and the Europe Report and the Global Information Society, also known as the Bangemann Report. Of course, the Framework Agreement is not a directive, but it is applied by the social partners, independently of the Commission (Ștefănescu 2009).

“The agreement - the European framework for telework that was concluded in Brussels in 2002 defines, according to art. 2 paragraph (1), telework as that form of organization and / or accomplishment of work using information technologies in the framework of a contract or employment relationship, in which the work - which could equally be performed in the employer's premises - is performed outside them, on a regular basis. Moreover, paragraph (2) of the same article stipulates that the party who performs the work in such a contract bears the name of tele-employee” (Ștefănescu 2009). It is noteworthy that the definition of the agreement has also been implemented in other countries, including: Belgium (art. 2 of the National collective agreement on teleworking no. 85 of November 9, 2005), France (art. 1 of the National interprofessional agreement of 19 July 2005 on teleworking), Italy (art. 1 of the Inter-federal agreement for the implementation of the European framework agreement on teleworking, of June 9, 2004) and even in Romania (Ștefănescu 2009).

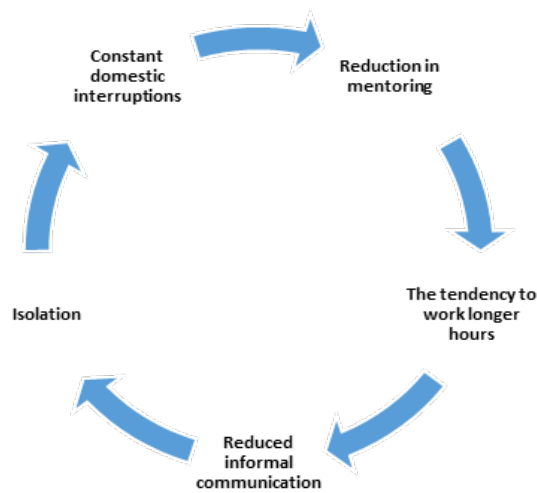
Stricto sensu, at national level, the telework, known as a “form of work organization by which the employee, on a regular and voluntary basis, performs the specific duties of his / her job, occupation or profession, in a place other than the place of work organized by the employer, at least one day a month, using information and communication technology” (Law no 81/2018 of March 30, 2018 regarding the regulation of the teleworking activity published in the Official Gazette no. 296 of April 2, 2018) was recently introduced in our legislation, although it was used for the first time 15 years ago. In this regard, we note the presence of a Decision of the Council of Ministers no 1956/1970 which aimed at carrying out the work at home for the execution of handicraft articles, as well as other products and works. Of course, this act was only valid until 1980 (Zanfir 2018), but we cannot challenge his fingerprint in forming a custom of working at the employee's home. Thus, we can say that working at home (Legally recognized under the term of teleworking) has its roots in the territory of our state well before the present regulation and, more than that, even the regulation at European level. However, as we have stated before, in Romania this type of special contract has not been developed very much, and this fact is largely due to the short time that has elapsed since the date of the regulation 81/2018.

What is the telework? We will try in the following lines to show some advantages and disadvantages.



Scheme I (above). The benefits of telework regulation

(Colorful.hr. 2019)



Scheme II (above). Disadvantages of telework regulation

As stated in the specialized doctrine (Fuerea 2016, 247), "decisions and agreements are adopted as institutional acts" and do not have the legal nature of secondary legislation at EU level, such as the case of the Regulation or the Directive, but they must be implemented by the social partners in the member states, in accordance with the Treaty on the Functioning of the European Union (PeliFilip 2019).

Thus, a first noteworthy element for us is that if in countries such as France, Austria, Germany and so on, this Agreement was implemented through Collective Contracts (as is the case of Denmark, France, Greece, Italy, Luxembourg, Sweden, Belgium), guides (as in the case of the United Kingdom of Great Britain), recommendations or codes (as well as the British and Irish conduct lines), in other states it was decided to implement it through normative acts (Italy, Portugal, Hungary, Czech Republic). In the latter case, we can include states such as Czech Republic, Slovakia and even Romania. Basically, a first element of differentiation between our state and other EU states, is the type of adoption of the agreement (Ștefănescu 2009).

Given that our state has regulated this type of contract to a difference of 16 years from the first states, this can be seen from the gaps present in our law. Of course, this will improve over time, as it has happened in several states that have accumulated a lot of experience in this time.

An edifying example in the awareness of the discrepancies may also be the problem of work accidents that are not clearly stipulated in law 81/2018, and this continues in practice to become an increasingly acute problem. Thus, we can say that a revision of it is needed as soon as possible.

Conclusions

If at European level we can say that there is a solid basis for the legal implementation and regulation of telework, considering that most states have 15-16 years of experience from implementation, for us there is still an intervention in a rudimentary form. However, if more and more companies in Romania choose to alternate their working schedule, so that at least one day a week their employees can work from home. Of course, we do not deny the fact that, despite the lack of regulation in this regard, for a long time, the parties did not hesitate to agree by mutual agreement to draw up their own rules regarding the place and manner of the work performance. In addition, more and more young people are choosing to become freelancers, as there are numerous benefits that bring to the pack the idea of freedom and autonomy. Thus, we are talking about a gain for both the employer, which reduces costs and for the employee, which saves the time spent in traffic. In addition, such regulation also supports the protection of the environment and the encouragement of sustainable living, by reducing the number of cars in traffic. Also, this plan could help the population from rural areas to stay in the native place with their family, working from home and helping to develop the extra-urban space that is in a real crisis of resources.

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