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Rules on Home Office Work and Telework in Romania and in Hungary

- **ABSTRACT:** *Pandemic crisis management requires new solutions that are not necessarily workable options in the traditional labour market. It is not about starting from scratch but about bringing to the fore legal institutions that have not been significant so far. This has had an unexpected effect on the labour law of Central European countries, as social partners fundamentally distrust atypical forms of work. This situation is also true for Romania and Hungary. In our study, we do not intend to present all forms, but only the two most important legal instruments in the labour market shaped by the pandemic; we analyse teleworking and home office work.*
- **KEYWORDS:** home office, teleworking, pandemic, #stayhome, labour market challenges.

1. Introduction

Teleworking and home office work are special forms of work. The concepts came to the fore as a result of the pandemic. The novel coronavirus attacks two main elements of the economy. One of these is the use of human labour. The motto for spring 2020 campaigns was ‘stay home if you can’. The pandemic also brought home the fact that a great many worked outside the workplace in the classical sense. If the virus stays with us for a while, depending on the level of infection, similar phases may reappear when the work needs to be moved to the employee’s home. At the time of writing, we are at the beginning of the second wave in both Hungary and Romania. However, the current number of cases has so far not triggered austerity similar to that of the spring, but the spring trend may reappear.

It can already be seen that some companies do not even want to go back to the classic workplace model. Teleworking and home office work are suitable for them. This

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phenomenon necessitates a reinterpretation of the concept of work, even in the short term. One of the first signs of this is that debate is already underway in Germany on an autumn bill that would enshrine the right to work from home into law. According to the draft, in the case of jobs that can also be performed from home, employees would have the right to choose whether they worked in the home office or in their regular workplace.³ Similar changes are conceivable in Hungary, but the details of the legislative act planned for autumn of 2020 are not known, only some of its keywords.

In Romania, two further factors influence the future use of the home office. On the one hand, it is difficult to see exactly how labour law will evolve and whether there will be changes as in Germany, since Romania's municipal elections took place on 27 September 2020, and parliamentary elections will take place at the end of the year. These elections strongly influence current priorities and make future actions more uncertain. On the other hand, although the state of emergency of 16 March is no longer in effect, it was replaced by the state of danger with Government Resolution no. 24 of 14 May 2020, by which countless previous labour law measures have been maintained.

When transitioning from the state of emergency to the state of danger, as recommendations and not as binding legislative acts, the government has determined those measures that it considered necessary to maintain and along with which it has planned to take further measures in the future.⁴ The third of the four main sets of proposals contains two points concerning the form of work. First, the government still justifies varied starting times for shifts for all companies with more than 50 employees, in order to avoid congestion in public transport and the workplace. However, importantly, for the subject of our study, it also proposes that all necessary measures be taken to ensure that at least some of the employees perform their work from their home offices in all private and public undertakings where possible.

Government communication still expresses this view and considers it necessary to maintain work from the home office. This position seems to be in line with predictions for the next autumn–winter period, when the pandemic can be predicted to worsen. At the same time, strong regulation and support for home office work is reflected in the case law that seems to be slowly crystallising, based on regulations made during the periods of state of emergency and of danger.⁵

3 Goldschmidt, 2020.; Heil plant bis Herbst Gesetz für Recht auf Homeoffice. See: <https://tinyurl.com/y35l4u2n> (03 May 2020).

4 See Măsuri de prevenire și control a răspândirii coronavirusului SARS-CoV-2, propuse pentru a intra în vigoare începând cu starea de alertă din 15 Mai 2020. See: https://www.mai.gov.ro/wp-content/uploads/2019/01/masuri-09_05-2.pdf.

5 Tribunalul Caraș-Severin, *Refuzul angajatorului de a permite salariatului să desfășoare munca la domiciliu sau telemunca pe perioada stării de urgență*, Pandectele Române nr. 3/2020. Tribunalul Caraș-Severin, secția I civilă, sentința civilă nr. 293 din 30 aprilie 2020, www.sintact.ro. In that case, the plaintiff sought a declaration from the Tribunal that he was entitled to work in the home office, which his employer did not approve, even though the nature of the work fully allowed him to continue working from home instead of at the employer's premises. The Tribunal upheld the applicant's request, stating in its reasoning that in the context of the appearance and spread of the new coronavirus in Romania, which necessitated social distancing, teleworking and working from home should be considered a real means of addressing the situation.

Working from home is an interesting topic of research, since this form is a concept of relative long-standing in Central Europe, including in the Hungarian and Romanian regulations that we are examining. Teleworking has taken a regulated form as an atypical form of work in both countries as a result of accession to the European Union. In Hungary, Act I of 2012 on the Labour Code (hereinafter referred to as ‘the Hungarian LC’) regulates teleworking among atypical forms of work, while in Romania, a separate legal act was created for the legal instrument. Recently, the term ‘home office’ has started to appear in connection with teleworking. In Hungary, many people use the term ‘home office’ as a synonym for teleworking, not only in layman’s terms but also in professional language. However, these two legal concepts are not the same. The difference lies in their function. Teleworking is an atypical form of work that presupposes the active use of tools of information and communications technology (ICT).⁶ Teleworking is usually applied within a lasting legal relationship, and the employee typically – but not necessarily – works from home. Telework may also refer to an arrangement whereby the employee works from another location away from the usual workplace. Article 2 of the European Framework Agreement on Telework of 2002 stipulates not only the use of information technology as a requirement but also that it must be carried out away from the employer’s premises on a regular basis. Work is carried out typically – but not necessarily – at the employee’s home. Before we look at national rules and anomalies on teleworking, it is important to clarify the concepts.

Obviously, ‘home office’ means working from home. Sullivan (2003)⁷ and Hodder (2020)⁸ highlight the importance of distinguishing between teleworking and home working. An employee may use ICT tools while working from the home office, but that does not automatically make her/him a teleworker. All of these criteria must be placed in the conceptual framework of teleworking, homeworking, and outwork,⁹ as well as housework/domestic work. Both home office work and teleworking have to be analysed. Home office work may overlap with teleworking. In the case of a home office, employees work from home, but the tools used are not specified. Within the context of the home office, employees may perform work using ICT tools, but this is not a requirement. The essence of home office work is that it happens in the employee’s home but only on a temporary basis. In the case of teleworking and outwork, parties draw up a specific provision in the employment contract that the employee will perform his work by teleworking in whole or in part. However, in the case of the home office, we are not talking about a separate agreement. The employer can order home office work (working from home) within the available legal framework. Thus, work in the home office always

6 Sullivan, 2003, p. 159.; Bankó, 2018, p. 38.

7 Sullivan, 2003, p. 160.

8 Hodder, 2020.

9 According to Section 198 of the Hungarian LC, outworkers may be employed in jobs that can be performed independently, and remuneration is exclusively on the basis of the work done. The employment contract shall define the work performed by the employee, the place where the work is carried out, and the method and extent of covering expenses. The employee’s home or another place designated by the parties shall be construed as the place of work.

presupposes dependent work, which can be ordered unilaterally by the employer, but teleworking and outwork are always independent work, which is based on a telework contract.

In Hungarian regulation, teleworking, outwork, and home office work are recognised as separate categories: (a) teleworking (an atypical form of work according to Sections 196–197 of the Hungarian LC); (b) outwork (an atypical form of work according to Sections 198–200 of the Hungarian LC, whereby work is carried out offline); and (c) home office work (a method of organising working time not regulated separately). Housework/domestic work is a form of work defined in Act LXXV of 2010 on simplified employment, which exclusively covers the following activities designed to ensure the conditions necessary for the daily life of the natural person and persons living with her/him in the household as well as of her/his close relatives: cleaning, cooking, washing, ironing, childcare, home teaching, home care and nursing, housekeeping, and gardening.

The use of these work arrangements was quite low. According to data from the Hungarian Central Statistical Office, in the first quarter of 2018, 3.7% of employees teleworked. The data indicate that it is a form of work used mainly for people with higher education. The Central Statistical Office points out that 23% of teleworkers work this way at the request of their employer, while the majority (55%) have the opportunity to do so because they enjoy full job independence. The Office also compared this with age-group ratios, from which it concluded that employees need to gain some work experience in order for their supervisor to trust them and approve of them working from home, and to have the necessary knowledge to work independently, without any help. The vast majority of teleworkers (89%) work from home, and only 11% work in, for example, a telehouse, a remote office, a public place (cafe, business centre), or with customers directly.¹⁰ According to the methodology of the Central Statistical Office, work is carried out in the home office, when a person performs her/his work away from the employer's premises only temporarily. On this basis, in the first quarter of 2018, 96,000 employees performed their work this way. The ratios projected for 2019 will be proportional to the previous years, as can be predicted from Bankó (2016).¹¹ It can be seen that these ratios are not high. A common feature of Central European countries, as we will also see in the case of Romania, is that, in many respects, they have followed the same path of development in the field of labour law after the change of regime. This also means that the rate of atypical forms of work is not very high. Thus, both Hungary and Romania are at the tail end in this field, and this year's excessive proportions will not help too much either.

In Romania, the regulation of teleworking and home office work has developed in many respects along a path similar to the development of Hungarian law. Similarly, in connection with these two concepts, the use of the term 'home office' has appeared

¹⁰ Teleworking and home office. See: <https://www.ksh.hu/docs/hun/xftp/idoszaki/munkerohelyz/tavmunka/index.html> (20 August 2020).

¹¹ Bankó, 2016, p. 50.

somewhat in need of clarification in public discourse, in literature, and in regulation, clearly coming to the fore in the changed circumstances of the recent period because of the pandemic. The only atypical forms of work regulated by Act 53 of 2003 of the Labour Code (hereinafter referred to as ‘the Romanian LC’) are those types of work that can be carried out from home, which can basically be characterised as the equivalent of the Hungarian concept of ‘outwork’. The possibility of teleworking is relatively new in Romanian labour law: it was introduced in 2018 through Act 81 (hereinafter referred to as ‘the Teleworking Act’). As a consequence, it is not included within the Romanian LC but in the above-mentioned specific act.

Partly because of their low practical use, Romanian literature has dealt relatively little with the issue of teleworking and homeworking, much less with the possible meaning of the term ‘home office’. On the other hand, we can find important pieces of information for the interpretation of the examined concept under Romanian law in the regulations made during the period of the state of emergency and the state of danger as well as in the emerging case law. The first characteristic of the home office, as explained earlier, is its periodic nature. Without a change in the employee’s duties (i.e. the work she/he shall carry out) or any other element of the employment relationship, at the employer’s discretion (or even at the employee’s request, as is clear from Romanian case law), work is temporarily conducted at a place other than the employer’s premises, usually from home. Another important feature of working in a home office is that, depending on the situation, the employment relationship is covered by the rules of homeworking or teleworking. Referring to recent legislation, for example, the Court of Caraş Severin, in its earlier judgement, specifically emphasised that the employer was obliged to introduce working from home or teleworking during the period of emergency, if possible, and during that period, the employer was to apply the legal regulations related to the respective legal institution. These rules will be described later, but the following question arises: to what extent is it possible to comply with the regulation in its entirety in such an exceptional emergency situation, given, for example, the complexity of occupational safety obligations of employers? We believe that it is not possible to follow them according to the letter of the law in all cases, and in practice, this cannot and has not been realised.

Under Romanian labour law, home office work is therefore carried out on a temporary basis, as a general rule at the employer’s sole discretion, but it is also acceptable to order it at the request of the employee, especially if the employer is unable to provide safe conditions at the usual workplace, and – obviously – if the tasks of the given job can be performed in this way. If an employee performs her/his duties from the home office, the provisions on homeworking and teleworking will prevail, as can be found in Sections 108–110 of the Romanian LC and in the provisions of Act 81 of 2018.

The main motivation for the creation of the Teleworking Act was clearly to achieve growth in this atypical form of employment. The explanatory memorandum to the Act also includes the statement that teleworking as a form of work benefits employers because of its flexibility but also benefits employees, who can thus more

easily reconcile their private lives with their working hours.¹² Without analysing these reasons in depth here and now, we would like to emphasise that in 2019, the only year the Act applied, the number of home workers in Romania doubled, which is cited as a clear success in government communication. However, the whole picture can be seen as significantly different considering that Romania is still the penultimate country in the European Union in terms of figures, and doubling means that the share of teleworkers has risen from 0.4% to 0.8% in one year.¹³

In 2020, however, the above-mentioned trends will change because of the COVID-19 pandemic: teleworking and home office work have come to the fore, albeit temporarily.¹⁴ The mass application of legal institutions also brings to the fore issues that have been problematic points in the application of the law so far. In our study, we would like to draw attention to these problematic points by presenting the regulations of the two countries.

2. Rules on teleworking

Rules on teleworking constitute one paragraph in the Hungarian regulation. As mentioned above, this means a form of work whereby activities are performed on a regular basis at a place other than the employer's facilities, using computers, in which the end product is delivered electronically. The work is typically carried out at an employee's home.¹⁵ In the case of teleworking, it is important to emphasise that the task to be performed by the employee falls within the scope of the employer's operations. It is of paramount importance because it makes the employee an integral part of the employer's organisation despite not being physically at the employer's premises. In this context, the regularity of the activity should also be mentioned. On this basis, it can be said that we are talking about two similar labour law instruments, those of Hungary and of Romania. After all, while in the Romanian regulation, working from home is the counterpart of teleworking, in the Hungarian regulation, it is the counterpart of outwork. Outwork is essentially any work at home that is not teleworking. The main difference lies in the technology used. If someone makes sweaters at home for their employer, they make them within an outwork agreement. However, if someone performs accounting tasks on their laptop under an agreement, the result of which work is required to be sent digitally to the employer, it is likely to be carried out within the framework of teleworking. The main difference between the Hungarian and Romanian regulations is that both telework and outwork are atypical forms of work covered by the

12 See also Georgescu, 2019.

13 See: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20180620-1> (2020.08.20). At the same time, the average value of EU countries in terms of the proportion of teleworkers working from home was 5.3%.

14 Lipták, 2020, manuscript.

15 Bankó, Berke, and Kiss, 2017, p. 592.

Hungarian LC. In the Romanian LC, only home working is specified, and telework is a legal instrument regulated outside the Romanian LC in a separate act.

Telework is based on a separate agreement, similar to Romanian rules. If parties want the employment relationship to take place in the context of teleworking, this must be specifically mentioned in the contract. The pandemic changed this situation to the extent that the employer could unilaterally order telework after the declaration of the state of danger.¹⁶ Once the state of danger is over, the original concept will prevail, but the legislator is already considering some changes to the regulation.

Compared to Romania, Hungarian regulation perhaps deals more with the formal conditions of employment, especially the rules that emphasise the use of tools. An important element of the current regulations is the use of tools. The basic question raised is who provides work equipment. Rights and obligations change when work is carried out with the employer's equipment, compared to when the employee uses his or her own equipment. In the case of previous regulations, in connection with the use of devices provided by the employer, the employer could determine their method of use. Employers' right of inspection could only extend to checking data related to work. From 2019, the rule regarding the computer equipment provided by the employer has been amended to the extent that instead of excluding the control of private life, the emphasis is on the fact that employees are allowed to use computers provided by the employer for the performance of work solely for reasons within the framework of the employment relationship. The prohibition on employer control of private life can be deduced from the Fundamental Law of Hungary and the Act on Civil Code. Pursuant to Section 11/A, subsection (4) of the Hungarian LC, employers may inspect the data stored on the transferred computer device during the inspection until they are able to decide whether the data are private. The new inspection rules are related to the GDPR.

General rules also apply in full to the relations of the parties, supplemented by a specific obligation to provide information. This ensures the relationship between the parties. As one element of this, the employer informs teleworkers about interoperability. This means that if there is a vacancy at the firm in a position that is not based on teleworking, the employee will be informed.

In Hungary, the rules on teleworking form a single paragraph in the Hungarian LC; in Romania, as we have seen, the legislator has dedicated a separate act to settle the rules on teleworking. In contrast, in the case of working from home, the Romanian LC is also limited to only three paragraphs. In order to properly interpret the rules applicable to working from home in the state of emergency and the state of danger, we need to know the main provisions for teleworking and working from home, as well as the problems they raise.

According to the definition in Article 2 of the Teleworking Act, telework is a form of work organisation in which the employee performs, on a voluntary and regular basis, the typical tasks of his position, occupation, or profession at least one day away

16 Gyulavári, 2020, pp. 1-3.

from the employer's premises using computing and communication equipment. This definition clarifies the most important features of telework according to the Romanian legislator's concept: (a) volunteering, which means that an employee cannot be placed in telework on the basis of a unilateral decision by the employer;¹⁷ (b) regularity; and (c) the fact of working outside the employer's premises using computer tools.

Teleworking can therefore only take place with the consent of the parties, and an agreement to this effect is to be laid down in the individual employment contract. In order for the employer not to be able to put pressure on employees in this regard, the Act also specifically states that refusal to carry out work within the framework of telework cannot be considered a disciplinary offence and cannot be sanctioned by the employer. Other mandatory elements of the employment contract, as listed in Article 5 of the Act, are as follows: the determination of the place of work and the precise indication of how much time the employee spends at the employer's premises, the method of recording working time, the employer's powers of control, other obligations in connection with occupational health and safety, the distribution of costs incurred, the employer's obligation to provide information and to transport materials to the place of work, as well as the measures to facilitate the teleworker's integration into the work community.¹⁸

As a general rule, it is the employer's obligation to provide the necessary tools for teleworking. Similarly, their installation, inspection, and maintenance are the responsibility of employers. Employers are also responsible for providing information, training, and education related to occupational safety and health. With regard to the characteristics and circumstances of the workplace, employers must check the place of teleworking, keeping in mind the issues of occupational safety and health.

Although the Romanian regulation is much more detailed than the Hungarian, numerous questions remain that could not be answered so far in practice and that may be interesting in the context of the change of direction because of the pandemic. The first and perhaps most important question concerns the basic feature of teleworking: regularity. Based on the above definition, the question arises as to whether a form of work that is performed only one day a month at a place other than the employer's premises can be considered regular, considering that employees work at the employer's premises on all the other days of the month. In our opinion, it is doubtful whether the period prescribed by law is sufficient for us to really speak of teleworking. At the same time, it is necessary to point out here that the transition to a home office system ordered during the state of emergency means real telework, in the sense that the employee actually spends most of her/his working time – sometimes her/his entire working time – working from home. In this sense, teleworking as a result of coercive circumstances is closer to the real essence of the institution than its form as defined by law.

Another significant problem in the Romanian regulation is the legal determination of the place of work, as the often-stated flexibility of teleworking can be found in

17 Popescu, 2018.

18 Georgescu, 2018.

this very feature, in addition to the working time schedule. The Teleworking Act does not contain any specific provision as to what the place of work may be in such a case; it only states that it is necessary to specify it precisely in the individual employment contract. However, if we look at the additional provisions, we can clearly conclude that, in the case of teleworking, the work is essentially done at the employee's home. Thus, teleworking is not characterised by flexibility in this sense. The parties have a duty to determine the place of work in advance, disregarding any possible spontaneity that might otherwise arise from the use of computer technology, which would allow the employee to decide completely, even on the day of work, where to perform his duties that day. Furthermore, employers are responsible for ensuring that the place of work complies with occupational safety and health regulations, and employees are responsible for not changing the conditions approved by employers.¹⁹ However, if we re-examine the rules of teleworking in the context of the transition to the home office system during the state of emergency, it is even clearer that the worker's home has become a possible place of work, especially during periods of temporarily ordered curfews.

In the case of working from home, the Romanian LC does not define the concept of work, but it does give a definition of the employee who works from home. Under Article 108, an employee who works from home is a person who performs the typical tasks corresponding to their job in their own home. In this case, as opposed to teleworking, the place of work is clearly determined. Under the conditions specified by the Romanian LC, the most significant difference between teleworking and working from home is regularity: within the framework of the latter, one activity takes place in its entirety and at all times in the employee's home. Additionally, an important distinguishing aspect is the nature of work, as working from home does not typically mean working with the help of computer technology but rather some kind of physical, manual work. This becomes clear from Article 109(c), which requires the employer to transport the raw materials to the employee's place of residence needed to carry out the activity and to bring away the finished product from there.

3. Home office

According to Government Decree no. 47/2020 on immediate measures needed to mitigate the impact of the coronavirus pandemic on the national economy (hereinafter referred to as 'Government Decree'), the Hungarian LC applied until 30 days after the end of the state of danger, with the exception that the employer could unilaterally order the employee to work from home and do telework. On the employer side, it simplified the application of legal instruments from a work organisation point of view. This was also remarkable because teleworking could always take place with an employment

¹⁹ Teleoaca, 2018.

contract that included a specific provision on teleworking. However, the home office clause could also be included as a clause in the normal employment contract, which created the legal basis for decisions made unilaterally by the employer even before the pandemic. Its limit was 44 working days, as indicated in Section 53 of the Hungarian LC, which is the annual maximum deviation from the employment contract.

As mentioned, similar to Romanian rules, there are no explicit labour law provisions about home offices in Hungarian labour law. Therefore, case law has developed relevant rules in this regard, primarily by determining the extent to which working from home differs from the legal instrument of telework specified in the Hungarian LC. According to the doctrine of Hungarian labour law, essential differences between the two legal institutions are as follows. (1) Teleworking is an atypical form of work specified in an employment contract. It is a special employment relationship based on the principle of flexicurity borrowed from European labour law.²⁰ In contrast, working from home may not necessarily be based solely on the agreement of the parties; that is, employers may unilaterally oblige employees to work from home. (2) In a specific telework contract, parties determine the place of work, while in the case of a home office, the employee is (usually) entitled to determine the place of work for herself/himself. The home office is less bound in this respect. It should be mentioned that this is possible because the place of work is not necessarily the same as the place of performance. (3) Teleworking takes place regularly, not at the employer's headquarters or premises. However, home office work typically involves just part of the working time. In the current situation, it should be noted that the order to work from home may be for a longer period, but it does not become final (it does not become an element of the employment contract), as opposed to teleworking. This also means that in the case of the home office, it is possible for the employer to treat the issue mainly as a factor of organising the working time, for example, by allowing the employee to work from home one day a week. However, in the absence of a contractual clause, this is not a final state, and the relationship does not become a self-contained atypical employment relationship.

It follows from the above that the employer may order working from home unilaterally, and within the meaning of Section 6(2)(b) of the Government Decree (since it does not contain a relevant condition), not only for a specified and limited period. This is based on the fact that this unilateral option by the employer does not arise from Section 53 of the Hungarian LC but from this rule of the Government Decree. It is also clear that the order to work from home is not necessarily aimed at having employees continuously work at home, but it can be for a fixed period of time, for example, by working at home for a week and at the employer's premises for the next week. This solution is suitable for reducing the risk of infection in the workplace. Of course, the home office work can also be based on an agreement between the parties. There is no specific rule as to whether the employer or the employee shall provide the necessary

20 Tóth, 2017, pp. 620–630.

work equipment for working from home; unless otherwise agreed, that obligation shall be incumbent on the employer. However, the agreement of the parties is not implemented in a separate contract for atypical work but in a normal employment contract. The agreement of the parties or the order of the employer is also relevant in terms of working time. Unless otherwise provided or agreed, working from home should also be performed in accordance with the working hours in the workplace. The employer may also allow an unbound work schedule for the duration of home office work or, at least, for a part of it, if the conditions for the independent organisation of work are met.

When ordering home office work based on an agreement or a unilateral decision of the employer, it is appropriate to lay down provisions that guarantee data security and the protection of business secrets. Opinion 2/2017 of the Data Protection Working Party on data processing at work is relevant for working from home pursuant to the Government Decree. According to the opinion, employers should also implement methods by which their own data on the device are securely transferred between that device and their network. In the case of working from home, data-processing rules of the Hungarian LC also apply: (a) employees shall be allowed to use computers provided by the employer to perform work solely for reasons within the framework of the employment relationship, unless there is an agreement to the contrary; (b) in conducting an inspection, the employer shall be entitled to inspect any information stored on the computer used for the performance of work that is related to the employment relationship; (c) for the purposes of the right of inspection provided for in the previous sentence, the data necessary for control of the prohibition or restriction should be considered to be related to the employment relationship; and (d) rules on the right of inspection of the employer shall also be applied if, by agreement between the parties, the employee uses his or her own computer to perform work under the employment relationship. The latter rule regulates a less strict right of control on the employer's side. In the case of teleworking, the inspection ends with the determination of the type of data; in the case of home office work, the scope of examination is wider. For the duration of the home office work, the employee is entitled to remuneration for working at the employer's premises under the employment contract.

In Romania, in order to prevent the further spread of the new type of coronavirus, a state of emergency was proclaimed by Presidential Decree No. 195 of 16 March 2020. After the first 30 days, this state was extended for another 30 days on April 15, and then it was replaced by the state of danger beginning on 18 May, pursuant to Government Resolution No. 394, which is still in effect at the time of writing. The plan to extend the period of the state of danger beyond 15 September has already been announced. The recent period has been extremely active from a legislative point of view, and although the coherence of the provisions may be questioned, a number of legal provisions were adopted whose labour law implications are worth researching and analysing.²¹ If we focus solely on the spread of home office work, as we do in our present study, we can

21 Top, 2020.

still draw forward-looking conclusions about flexible employment and flexible labour markets that have been emphasised in labour law in recent years.

Decree No. 195 of 2020 on the introduction of the state of emergency regulates the different areas of life in different chapters. Chapter IV deals with labour and social law measures. The home office was introduced by most companies based on Article 33. This provision was fully in line with the subsequently adopted rules on curfew. The transition to home office work was considered desirable by the legislation in all segments of the economy as far as possible. This general need is clearly reflected in the wording of Article 33: local and central public institutions and agencies, local authorities, state-owned enterprises, and all those in which the state or a territorial unit has a majority or is a sole shareholder, as well as cases in which private companies switch to working from home or teleworking based on the unilateral decision of the employer in the state of emergency, where it is possible.

In Act 55 of 2020 on measures to prevent and deal with the effects of the COVID-19 pandemic, a similar wording for the transition to home office work after the end of the state of emergency can be found, which, however, contains a significant difference from the previous ones. Article 17 of the Act provides that, during the state of danger, the employer, with the consent of the employee, may decide to continue the activity within the framework of teleworking or working from home, as well as to change the place of work or the employee's duties.

Several important conclusions can be drawn from the two above-mentioned normative texts as to how the Romanian legislator envisions the system of home office work. On the one hand, we must see that although Article 41(1) of the Romanian LC allows the employment contract to be amended in principle only by agreement of the parties, Article 48 allows the temporary change of the place of work by unilateral decision of the employer in case of *force majeure*, as a sanction, or if the measure is taken for the protection of the employer. The transition to home office work ordered unilaterally during the state of emergency does fit into the above-mentioned exception, since it is clearly ordered for the protection of the employee. As a result of the transition from the state of emergency to the state of danger, the main rule laid down in the Romanian LC, instead of the exception, shall be applied; that is, working from home can be ordered only where agreed upon.

Another important observation based on the quoted normative texts is that the legislator does not use the term 'home office' anywhere or any other general wording but refers specifically to the two options – teleworking and working from home – regulated in the Romanian LC and the Teleworking Act. The fundamental consequence of this, as case law emphasises, is that the rules applicable to the respective instrument shall be applied, as required by law. However, the question arises as to how this can be done in such a special situation, especially in the first phase during the state of emergency. It is enough to think of occupational safety and health measures, when the employer would be obliged to approve the place of teleworking from an occupational safety point

of view, since the employer is responsible for this. In all other areas, however, we must consider the provisions of the Romanian LC and the Teleworking Act to be valid.

4. Summary

It is also clear from the above that the COVID-19 pandemic poses new types of challenges to the labour market. The widespread use of teleworking and home office work has raised a number of hitherto unresolved issues that need to be addressed by the legislator. In both Romania and Hungary, there will be significant work for legislators and law enforcement. Rules are not detailed in either country. There are too many open questions. This is not related to the level of regulation but to the past and the social perception that approached these legal institutions with distrust. This is why these legal institutions do not have an elaborate practice. It is interesting that this is also true for teleworking that has been a part of Hungarian law for more than a decade and of Romanian law for a few years.

The current pandemic has also shown that these forms are new dimensions of employment and are much more than forms of mandatory legislative homework ticked off upon accession to the European Union. As we wrote, the virus stayed with us for a while. The impact on the labour market will be felt, and this will also benefit digital work, two forms of which are teleworking and home office work. It is up to the legislation of both countries to strengthen the rights of employees in the short term and, in fact, develop the rules in the spirit of flexicurity.

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