

Implementing Telework Agreement in Slovakia¹

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Abstract

The Telework Agreement was signed by the European social partners (ETUC, UNICE/UEAPME and CEEP) on 16 July 2002 after eight months of negotiations. It is an autonomous framework agreement regulated through social dialogue, so it is a form of soft law. The Telework Agreement offers a range of implementation methods which have been used in the Member States. We have followed our national traditions by transposing the telework agreement into legislation. The submitted paper attempts to analyze the national regulatory framework of the status and working conditions of employees performing telework in the Slovak republic and examines how the Slovak legislator approaches the implementation of this phenomenon in the current world of work.

Keywords: Telework, employment relationship

Introduction

Advancement of any kind always permeates through the world of work and employment in various directions. Every industrial revolution in the past contributed to various social and technological changes influencing the nature of employment arrangements and the situation is no different even today. Steam, electricity and computers played crucial roles in the first through the third industrial revolutions. Some maintain that we are at the threshold of the fourth industrial revolution, which is connected with the term *Industry 4.0.* and the concept *Internet of Things* (Buhr, D., 2015). Expressions like digitalization, electronization, automatization, robotization, etc. can frequently be encountered here (Dau-Schmidt, K. G., 2015). Employers adapt to new trends and their investments into modern

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technologies yield new flexible models in the production processes. Computers and internet are routine operational tools; mobile phone is frequently taken as a material benefit for the employee, networks and their software programmes well-established equipment of every modern employer.

Increase in use of information and computer technologies at workplaces introduced innovative practices and challenges in the branch of labour law; the strict adherence to the regular eight-hour presence of the employee at the workplace was relaxed, but it also highlighted the necessity to regulate various legal, economic and social aspects of work at anytime and anywhere. These are the characteristic features that identify telework, i.e. dependent work performed by an employee using information-communication technologies at an alternative workplace other than the premises of the employer. The paper analyses the national regulatory framework of the status and working conditions of employees performing telework in the Slovak republic and investigates the approach of the Slovak legislator to implementation of this phenomenon in the current world of work.

European and national legal framework of telework

The status and working conditions of employees performing telework are stipulated in the Framework Agreement on telework, which was adopted by the European social partners (ETUC, UNICE/UEAPME and CEEP) on 16 July 2012 (hereinafter referred to as 'Telework Agreement'). Its specificity rests in the form of implementation which is not through the directives of the European Union, but it is transposed by autonomous methods, i.e. in compliance with the procedures and practices that are typical of social partners of each Member State. In principle, Telework Agreement offers three types of implementation tools. The application in a Member State is admissible *i*) by means of binding and enforceable legal regulations, *ii*) by means of collective agreements of social partners or *iii*) by means of good practice guides (voluntary measures, directions and codes issued by social partners or by the employers themselves). Slovakia has no established tradition of leaving labour market regulation onto the social partners, since our labour market regime is of etatistic nature, so the responsibility for the implementation of the Telework Agreement cannot be attributed to the social partners.

The Slovak legal order introduced the legal regulation of telework by the Act no. 348/2007 Coll. effective of 1 September 2007 amending the Act no. 311/2001 Coll. Labour Code as amended (hereinafter referred to as 'Labour Code'). The Slovak legislator opted for the first implementation method which can be evaluated positively. As a result of the selected

mechanism and general application of legal rules, the regulation of telework concerns all employment arrangements without any distinction. This eliminates the problem of low representation of social partners at certain workplaces and the limited territorial impact of the negotiated collective agreements.

The provision of the section 52 subs 1 of the Labour Code defines telework as *work performed for the employer according to the terms and conditions agreed on in the Employment Contract either at home or at any other approved workplace using information technologies*. The scope of the cited provision, however, limits the provision of the section 52 subs 5 of the Labour Code pursuant to which *telework **cannot be considered** such work which the employee performs occasionally or under extraordinary circumstances with the consent of the employer or upon agreement either at home or at alternative location other than the usual workplace on condition that the type of work performed by the employee under the Employment Contract permits it*. Telework presupposes work being performed at an alternative workplace other than the premises of the employer, the work duties performed using information technologies² and stability and regularity of telework performance. Occasional, irregular performance of work at alternative location other than the premises of the employer is not deemed to be telework. Regularity, however, does not imply exclusivity. The performance of telework can be approved alternatively; part of the duties can be performed at the workplace and another part at the approved alternative location.

The definition of telework provided by the Slovak legislator fully corresponds to the concept enshrined in the Telework Agreement and to the attempt to subsume the various types of regular telework and a wide range of rapidly growing technological practices used for such type of work under one flexible definition.³

Telework (synonymously designated also as teleworking or telecommuting) refers to flexible arrangement of employment which emerged due to the development of information technologies and which uses electronic communication means as the basic operational tool. Telework together with home office and homeworking⁴ belongs to the category of so-

² It concerns various computer and communication equipment (desktop computers, notebooks, tablets, printers, mobile phones, smartphones, internet telephony, teleconferences, etc.)

³ Art. 2 Telework is a form of organising and/or performing work using information technology in the scope of the Employment contract/relationship, where work which can also be performed at the employers' premises, is carried out away from those premises on a regular basis.

⁴ Home office is occasional performance of work from home, homeworking designates regular or permanent work from home in which the approved place of work is the residence

called remote work which is characterized by the performance of work at an approved alternative location other than the office or premises of the employer for several working hours at least. The approved work is to be performed from the residence (home) of the employee or from alternative approved location,⁵ either permanently or temporarily – regularly on certain days of the week. Similar criteria for differentiating individual types of telework were applied in the research report of the Eurofund and the International Labour Office entitled *Working anytime, anywhere: The effects on the world of work.*⁶ The report classifies telework or ICT-mobile work employees in relation to their place of work (home, office or another location) and the intensity and frequency of their work using ICT outside the employer's premises. The following groups were identified:

- *home-based teleworkers* - employees working from home regularly, using ICT;
- *high mobile teleworkers* (or ICTM workers) - employees working in several places regularly, with a high level of mobility and using ICT;
- *occasional teleworkers* (or ICTM workers) – employees working in one or more places outside the employer's premises only occasionally and with a much lower degree of mobility than the high mobile group.

If we make a distinction between teleoffice and telework along the line of home office and homeworking, modifications of the employment relationship which the Slovak legislator introduced for telework in the provision of the section 52 subs 1 through 4 of the Labour Code, apply to telework exclusively, i.e. regular or permanent performance of telework. With respect to the types of telework introduced by the research report of Eurofund and the International labour organization, the provision of the section 52 of the Labour Code excludes occasional teleworkers from its application.

of the employee. Viz: SEEMANOVÁ, Jana. *Práce z domova z pohledu legislativy*. Available at: www.pracenaadalku.cz. The question is whether any work from home which does not require the use of information technologies exists.

⁵ Another alternative work location can be considered work at the premises of the client, in a car or in another means of transport, in public or at alternative location where the employee has access to information-communication technologies. The so-called 'remote office centres' have recently gained on popularity and are deemed to be rented professional premises other than the head office location usually near the place where the employee resides.

⁶ Eurofund and the International Labour Office: *Working anytime, anywhere: The effects on the world of work*, Publications Office of the European Union, Luxembourg, and the International Labour Office, Geneva, 2017, p. 7. ISBN: 978-92-897-1569-0.

The status and working conditions of teleworkers

The Slovak legislator decided to lay the performance of telework on formal foundations. The definition of telework pursuant to section 52 subs 1 of the Labour Code explicitly states that „... *it concerns work performed under the terms and conditions of the Employment contract...*“.⁷ We believe that telework can also be arranged for by a contract, either in the form of an agreement to work outside the scope of employment. The Labour Code permits dependent work, which undoubtedly includes telework despite the fact that some of its identification features are not manifested very intensively,⁸ be carried out based on employment relationship but also based on similar labour relationship or occasionally as different employment arrangement (section 1 subs 3 of the Labour Code). Different employment arrangements are relationships based on agreements to work outside the scope of employment. Where the subject-matter of any agreement to work outside the scope of employment is the performance of telework, *ad) 1* the application of section 52 of the Labour Code and of the working conditions under which telework is to be carried out must be explicitly stated in the agreement⁹ and *ad 2)* these working conditions cannot be in contradiction with an provision of the Part Nine of the Labour Code, i.e. the specific regulation of agreements to work outside the scope of employment and thus place the employee in a more favourable position compared to other employees.

Contractual arrangements concerning telework are connected with the voluntary nature of its performance. The employer cannot order the employee to perform telework or to force him to perform it. Similarly, the employer is under no obligation to accept the request of the employee to perform telework from home using information technologies. This form of performance of work is subject to the agreement between the Contractual parties.

The Employment contract concluded with the employee performing telework contains the same formalities as in case of typical employment relationship. The distinction concerns the place of work, since it is not the registered office of the employer, but, for example, the address of permanent or temporary residence of the employee (the most common form of telework

⁷ Telework is a form of organisation of work and not another form of work contract.

⁸ The management of the employee carrying out telework takes the form of assignment of tasks not giving orders. New technologies bring along a new form of subordination, where the employee is attached indirectly to the employer, it is called "parassubordinação" or "telesubordinação." IN: WINTER, Vera Regina Loureiro. Telecommuting: an alternative job. São Paulo: LTR, 2005.

⁹ Under section 223 subs 2 of the Labour Code, agreements shall in be regulated by the first part of the Act in full scope; from the systematic point of view section 52 of the Labour Code is included in the second part of the Act.

performance), or another location where the employee remains when carrying out his/her work duties. The Employment contract may not expressly provide for performance of telework, if it can be implied from other working conditions.

Working time of teleworkers and right to be disconnected

The biggest advantage of telework, which at the same time defines this type of atypical employment arrangement, is the autonomy of the teleworker in organizing his own working time. According to the Slovak legal regulation, the following provisions cannot be applied to the performance of telework: provisions that govern the organisation of weekly working time, i.e. rules of balanced and unbalanced organisation of working time (sections 86 and 87 of the Labour Code), rules determining the beginning and end of working time in work shifts (section 90 of the Labour Code) or the provisions governing breaks at work, uninterrupted daily rest and uninterrupted rest during the week (sections 91 through 93 of the Labour Code). According to us, the formulation of the Act is rather vague in wording and induces misunderstanding of certain social rights of teleworkers. Telework has impacts *ad 1)* on the duration of working hours and also *ad 2)* on the organization of working time. Teleworkers have time sovereignty which means that employees can manage and influence their work schedules to a certain degree. However, the maximum weekly working time¹⁰ or the minimum uninterrupted daily rest or uninterrupted weekly rest must be observed. The right to maximum admissible duration of working time and right to corresponding rest after work¹¹ are the basic constitutional rights which can be exercised by any employee, and despite the fact that they can be restricted by the law, no one can be deprived of them. A modern expression denoting the right of the teleworker to rest breaks at work, rest after work and the connected social rights to maintain work-life balance is the **right to be disconnected**, which can be implicitly inferred from the mentioned provision of the Constitution of the Slovak republic (Nascimento, C. B., 2010). The Slovak legal regulation of working conditions of teleworkers is in many respects of framework nature (see below), thus the employers themselves decide on the procedure to implement these rights. In line with various software programmes that allow remote access to computer through which the employee can monitor the employee, there also exist

¹⁰ Maximum weekly working time of an employee shall be 40 hours. The employee's average weekly working time including overtime may not exceed 48 hours.

¹¹ Article 36 of the Constitution of the Slovak republic.

programmes which limit or suspend the operation of mail servers or other communication technologies used by the employee.¹²

In compliance with the Slovak legal regulation, teleworkers perform the assigned work duties during working time organized according to their preferences and they may decide whether they wish to work on Saturday, Sunday or during the public holiday or at other unsociable hours, for instance, at night. However, compared to an employee present at the premises of the employer, the teleworker is aware of the fact that pursuant to section 52 subs 1 par c), s/he may not be entitled to wage compensation for overtime work (section 121 of the Labour Code), wage compensation for work during the public holiday (section 122 of the Labour Code), wage compensation for night work (section 123 of the Labour Code) or wage compensation for work under difficult circumstances (section 124 of the Labour Code). Nevertheless, the employer and the employee can make an agreement on the mentioned wage compensation. This statutory provision contains certain discrepancies that may lead to problems in their interpretation. According to section 121 of the Labour Code, the „normal“ employee shall be entitled to wages earned and wage surcharge equal to at least 25% (35 % at risk work) of his/her average earnings for the performance of overtime work or to substitute time-off equal in length to the period of overtime work; in this case the employee shall not be entitled to a wage surcharge. The first possible interpretation implies that the under the law, the teleworker is entitled to wage compensation for overtime work, or alternatively, s/he is entitled to compensatory time-off for overtime work instead of wage compensation for overtime work. According to the second interpretation, which we are also inclined to favour, the application of the section 121 of the Labour Code is excluded as a whole and the teleworker is not entitled to wage compensation for overtime work, preferential wage rate for overtime work or compensatory time-off.

The Slovak legislator explicitly regulates other working conditions of teleworkers, such as impediments at work interfering with the working time of the employee and temporarily hindering the performance of work. In compliance with section 52 subs 1 par a) and b) of the Labour Code, the provisions of the Labour Code on downtime do not apply to telework and in case any important personal impediments at work occur, the teleworker is

¹² Several examples of good practice, such as how the employee's right to be disconnected can be exercised is provided in the research report of Eurofund and the International Labour Office: *Working anytime, anywhere: The effects on the world of work*, Publications Office of the European Union, Luxembourg, and the International Labour Office, Geneva, 2017, p. 51-53. ISBN: 978-92-897-1569-0.

not entitled to wage compensation from the employer.¹³ In our view the cited provision does not correspond to the rule that the working conditions of the employee at telework cannot place the employee into a less favourable position in comparison with the similar employee in working at the premises of the employer. Downtime, i.e. temporary interruption caused by technical failure, non-availability of materials or power, erroneous work documentation or other similar operational defaults may hinder the performance of work by the employee at the workplace; dysfunction in information technologies used by the teleworker is of the same nature. Different treatment in the event of personal impediment on the part of the employee also lacks deeper meaning, such as the wedding of the employee. The „classic“ employee, and the teleworker as well, shall be excused from work when their wedding day falls on a working day, however, it is the „classic“ employee only who is entitled to wage compensation for this excused absence.

Other working conditions of teleworkers

The regulation of other working conditions of teleworkers in the Slovak republic is of framework character, and is considered to be the transcription of the provisions of the Telework Agreement. For this reason, it is subject to the agreement between the employer and the employee to negotiate their mutual ideas and duties specifically connected to the performance of telework. As a general rule, the employer shall take appropriate measures to carry out telework (section 52 subs 2 par a) through c) of the Labour Code), especially:

- a) he/she shall provide, install and perform regular maintenance of hardware and software necessary for the performance of telework, except in cases where an employee performing telework uses his/her own equipment,*
- b) he/she shall ensure, especially with regard to software, protection for data processed and used in telework,*
- c) he/she shall inform the employee of all restrictions on the use of hardware and software and also of the penalties for any breach of these restrictions.*

Before starting telework, the employer is obliged to state whether the employee is to use his/her own technical and software equipment for telework or whether the equipment is to be provided and installed by the employer. The person who provides the equipment shall be responsible for its regular maintenance. The employer shall provide the employee with compensation in accordance with the terms and conditions stipulated in the

¹³ Except for the death of a family member pursuant to section 141 subs 2 par d) of the Labour Code, when the entitlement to leave is in the duration of one to three working days with wage compensation and the duration depends on who died and whether the employee makes the funeral arrangements.

Collective agreement or in the Employment contract (section 145 subs 2 of the Labour Code) for using his/her own equipment (tools, furniture and objects required for the performance of work). Costs connected with the performance of telework such as internet, telephone or electricity are also included therewith. The Telework Agreement emphasises that irrespective of the owner of the equipment, the employer is obliged to provide the teleworker with an appropriate technical support facility.¹⁴

The ownership of the equipment for telework shall determine the important scope of authorization of monitoring of the employee, the security of protection of personal data which are processed and used at telework as well as the scope of restrictions on the use of such equipment. Under the Telework Agreement, such sanctions shall be defined in accordance with the national legal framework.

The duty of the employer to ensure healthy and safe working conditions for the teleworkers and to bear the expenses connected with the protection of health and safety at work, despite the fact that it concerns the residence of the employee, seems to be rather problematic. The teleworker performs his work duties in the domestic environment, where, in respect of protection of health and safety of the employee, the employee may encounter completely different events compared to employees working in the premises of the employer. In this connection, in the event any industrial accident occurs, it would be problematic to settle the issue whether the accident happened during the working time and in connection with the performance of work, since the teleworker organizes his/her working time alone. For the above given reasons, the employer cannot be equally responsible for the safety of the employee who can perform telework along with other „activities at home“. However, the employer cannot be completely released from this duty, since the employee is still at the workplace, even though the teleworker carries the work away from the employer's premises. The Slovak legislator does not define the protection of safety and health of the teleworker in special provisions, thus it is at the discretion of the employer to take concern in the workplace of the employee taking into consideration his duty to protect the health and safety at the workplace and liability for industrial accidents. Slovak employers should have this in contemplation when concluding employment contracts to carry out telework and request the consent of the teleworker with the inspection of his/her performance of telework in his/her household.

¹⁴ Art. 7 Framework agreement on telework: The employer provides the teleworker with an appropriate technical support facility.

Conclusion

In connection with the development of information technologies, another atypical (flexible) employment arrangement was created – telework. As the case may be, not all working conditions applicable to typical employees are also compatible with the performance of work in these atypical forms. Telework is no exception to this, it is appropriate for all works which do not strictly require the presence of the employee at the workplace (accountants, programmers, employees of e-shops, etc.). The Framework Agreement on telework pinpointed the „weaknesses“ in the employment status of teleworkers to the Member States and delimited the areas in which detailed statement of their specific working conditions is required. The Slovak republic implemented the Telework Agreement through national legislation. The Slovak legislator concentrated especially on the aspects of working time of teleworkers and due to imprecise linguistic formulation, it failed to admit the right of teleworkers to be disconnected (right to uninterrupted daily rest and uninterrupted weekly rest), it omitted the fact that the issue of downtime may also affect teleworkers, especially, when the default is in the technical equipment in the ownership of the employer, and it failed to give wage compensation in cases of important impediments at work and thus placed the teleworker in a less favourable position in comparison with the „classic“ employee (working at the employers' premises). On the other hand, the specific issues of protection of health and safety of teleworkers at work, the possibility to inspect the employee at home, the liability of the employer for industrial accidents, the protection of personal data have been fully neglected or received very limited attention. Framework legal regulation serves as a very good basis for collective bargaining, however, at workplaces where no trade unions operate, such general regulation appears to be deterring for the employers. Moreover, as no tradition of good practice guides and codes exists, the employers are very reluctant and hesitant to determine working conditions of telework and opt for more traditional forms of employment.

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