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On the border of the physical and the virtual workplace – Dogmatic issues of home office and telework in general and in Hungarian law

Summary

The recent pandemic forced companies to switch to working from home, which was necessary to maintain health and economic efficiency. The move from physical workplaces to virtual workplaces in the digital space, however, started earlier than the pandemic. The pandemic amplified this process. In parallel, we also see that companies have had positive experiences in the process of creating virtual workplaces. The virtual workplace has serious IT-issues, which we attempt to reflect on. Some of the employees have taken to this solution: a significant part of the companies has not even returned to the classical former working processes. We have to focus also on the issues of the virtual workplace. Due to its practical popularity, it was necessary to regulate home office at the legal level, as most experts also had the opposite opinion on its essential elements. In order to close this debate, the legislator has created a new regulation concerning teleworking, which amends the rules of the Hungarian Labour Code on teleworking with effect from the end of the emergency. The purpose of this paper is to present the new legislation, with particular attention to the points at issue and the basics of its application in practice.

Keywords: home office, flexibility, telework, virtual workplace, occupational safety and health

1. Introduction

The pandemic caused by COVID-19 has fundamentally changed our daily lives. This is true for our general relationships, but also for our relationship towards work. It is in the relation to work that there has been a realisation on all sides of the labour market that it is possible to do things differently. Digital technology, which was already part of everyday life for many people, came to the fore during the first closures and later because of social distance. A significant proportion of employers had to recognise the need to let go of face-to-face working, at least for a while¹. The use of previously cautious legal instruments, such as teleworking and the home office has come to the fore². Questions appeared such as what can be considered a workplace³. In addition to general questions, there has also been also a strong focus on specific issues. One such issue is the question of job security⁴.

The importance of the above-mentioned issues has also increased at an unusually fast pace, partly because of the pandemic, which has led to the rise of home office use in the last few years among people working from the office in traditional employment. The aim was to keep the distance in the face of the pandemic, and digitalisation has made this feasible, as it is now possible to work just as effectively from home due to the development of internet and computers.

In the light of today's challenges, the importance of effective protection against health and safety risks at work is becoming increasingly apparent in order to ensure sustainable and decent working conditions for workers. Ensuring the right to a healthy working environment⁵ is

¹ D.A. Máté: *Flexible working, flexible rules*. "Revue européenne du droit social" 2022, LVI. p. 86, DOI 10.53373/ REDS.2022.56.3.0078.

² K. Lipták: *Maradj otthon, dolgozz otthon! – A koronavírus-járvány hatása a távmunkára Észak-Magyarországon*. "Területi Statisztika" 2021, 61:2, pp. 153–169, Doi: 10.15196/TS610202. D.A Máté: *New Trends in Employment*. "Lex et Scientia" 2022, No. XXIX, Vol. 1, pp. 97–110.

³ B. Szekeres, G. Mélypataki: *The Flexible Home Office Regarding Its (New) Question in Hungary and the Issues of the Virtual Workplace*. "Revue européenne du droit social" 2022, LVI:3, pp. 63–69, DOI 10.53373/ REDS.2022.56.3.0075.

⁴ L. Berényi: *The Right to a Healthy Working Environment in the Light of Flexible Working Conditions*. "Revue européenne du droit social" 2022, LVI:3, p. 70–79, DOI 10.53373/ REDS.2022.56.3.0076.

⁵ The EU legal framework for the protection of workers' health and safety is laid down in the founding Treaties (hereinafter: the Treaties) and the Charter of Funda-

of paramount importance in all employment relationships. The guarantee of a safe working environment that does not endanger health is a fundamental requirement of the employment relationship, as it can determine how and for how long the relationship can properly fulfil its purpose. Ensuring adequate working conditions, irrespective of the place of work, is essential in order to enable workers to carry out their duties to the fullest extent possible, while preserving their health and contributing to the economic competitiveness and productivity of the employer's organisation⁶. Home office, teleworking and digital technologies offer new challenges and opportunities as well in terms of managing health and safety risks and achieving and maintaining work-life balance.

However, for practice, this has raised a number of unexpected questions. The critical points were basically how to determine the place of work, the extent of home working and the problem of the need for an agreement in the transition to home office, especially as each company had different practices. Some imposed home-working, some concluded agreements with employees (with varying content), while in others employees shaped the right to this type of work⁷. The fact that the Labour Code did not and does not explicitly provide for home office has made it difficult for employers.

How have labour lawyers tried to deal with the issue? Basically, most of them started from the concept of teleworking⁸, distinguishing it from home office. It should be noted that there was also uncertainty in this respect, as some literature did not consider it justified to sepa-

mental Rights of the European Union. Along these lines, the right to a healthy and safe workplace is enshrined in Principle 10 of the European Pillar of Social Rights and it has crucial importance to achieve the Sustainable Development Goals (hereinafter: SDGs) set by the United Nations (hereinafter: UN). In: EU strategic framework on health and safety at work 2021–2027. Occupational safety and health in a changing world of work, European Commission, Brussels, 28.6.2021 COM (2021) 323 final, 2., 1. (20.08.2022).

⁶ EU strategic framework on health and safety at work 2021–2027, Occupational safety and health in a changing world of work, European Commission, Brussels, 28.6.2021 COM (2021) 323 final, p. 2, 1–3. (20.08.2022).

⁷ B. Molnár: *Reflections on the home office in general and in times of virus*. "Hungarian Labour Law E-journal" 2021, Vol. 1, pp. 38–39.

⁸ Bankó agrees, when he notes that there is a consensus that home office is dogmatically distinct from atypical forms of work, especially teleworking. Z. Bankó: *The dilemmas of regulating telework*. In: *Ünnepi tanulmányok Lőrincz György 70. születésnapja tiszteletére*. Eds. Z. Bankó, Gy. Berke, L. Pál, Z. Petrovics. HVG Orac 2019, p. 27.

rate home office from telework, but suggested treating it as telework (Strihó, Herdon, Rab)⁹ or even saw home office as a sub-genre of telework (Venczel-Szakó, Balogh, Borgulya)¹⁰. Yet the overwhelming literature has been along the lines of distancing oneself from telework. Let us examine this problem from two perspectives: what the past and present is, and what the future is.

2. The transformation of workplaces

In the context of social innovation, a number of new forms of employment have recently developed. The emergence of new forms of employment is linked to digitalisation. Digitalisation has changed the relationship between employer and employee. This relationship extends to third parties not covered by the employment contract but involved in the legal relationship. The employee and the employer have a contractual relationship within the framework of the classical employment relationship¹¹.

The question of the content of contracts is a very important issue. It sets out the basic terms and conditions between the parties, such as the job title, basic salary and working hours. The strength of contracts is rooted in the parties' mutual consent and in the provisions of the Labour Code. It sets out the legal framework and paradigms for typical employment relationships on a classical basis. Classical labour relations are based on the institution of social security. The main characteristics of a typical employment relationship are dependency and personal relationships (positions based on trust). These interfaces provide the basis for a direct relationship between the parties. One of the most important elements of this relationship is the employer's right to

⁹ K. Strihó: *Labour law in the world of digitalisation*. "Erdélyi Jogélet" 2021, (4), p. 167, <https://doi.org/10.47745/ERJOG.2020.04.12>. In addition, Government Decree No. 47/2020 (18.III.) used the terms telework and home office in parallel. I. Herdon, H. Rab: *Megvalósítható-e jogszerűen a home office? A home office fogalmi ismérvei és munkajogi kérései*. "Pro Futuro" 2021, 3, p. 62.

¹⁰ T. Venczel-Szakó, G. Balogh, I. Borgulya: *Táv munka, home office: hogyan érinti a távolról dolgozás a szervezet intern kommunikációját? "Vezetéstudomány/Budapest Management Review"* 2021, 2, p. 75.

¹¹ P. Davies: *Efficiency Arguments for the Collective Representation of Workers: A Sketch*. In: *Autonomy of Labour Law*. Eds. Bogg et al. Hart Publishing, Oxford and Portland Oregon 2015, p. 367.

give instructions. The relationship between employer and employee is traditionally close in classical employment relationships. The relationship is active and, given the characteristics of the legal relationship, mostly direct and interactive within the framework provided by the social contract and the contracts. The direct and interactive relationship results from the fact that the employer and the employee are usually in the same place, at the workplace, during working hours. The geographical proximity between the parties is a very important element of the employment relationship, since the employer can exercise his powers as an employer to the fullest extent when the geographical distance between the parties is the smallest. Of course, the above statement is too simplistic in describing the legal relationship between the parties, but it is appropriate for the time being for the purposes of examining the workplace. To our starting point, it is necessary to add that the definition of employer in typical employment relationships is to some extent unlimited. This kind of certain limitation is strongly linked to the dependency relations that characterise the employment relationship.

However, this relationship is constantly changing, due to the introduction of forms of work that are strongly linked to digitalisation. The process of digitalisation has accelerated the transformation of the workplace. The process of transformation is increasingly moving in the direction of making some of the jobs that exist in physical space redundant. The role of the workplace needs to be rethought from a legal, economic and even architectural point of view¹². Some of these new living arrangements can be categorised within a legal framework defined by labour law or other private law rules as a named or unnamed legal relationship. Others, however, cannot be categorised because there is no previous history to which they can be compared, even by analogy. We will not analyse all the forms here, but we would like to highlight the one that has emerged as one of the most important during the pandemic. In the context of this study, as already indicated in the introduction, we will examine the relationship between home

¹² A. Migliore, I.M. Ceinar, C. Tagliaro: *Beyond Coworking: From Flexible to Hybrid Spaces*. In: *The Flexible Workplace*. Eds. M. Orel, O. Dvouletý, V. Ratten. Human Resource Management. Springer, Cham. https://doi.org/10.1007/978-3-030-62167-4_1.

office and teleworking. However, in order to examine the issue in a meaningful way, it is also worth looking at the reasons for and the process of workplace transformation.

The norm of social distancing during the pandemic has contributed significantly to the growing importance of home office and teleworking. This norm is that people should be located at certain distances from each other to reduce the spread of infection. But why is this rule important? It is because in a physical workplace, every useful floor space has a function, e.g. the position of the machines is defined, the protection distances are accurately calculated, there are important requirements for the construction of escape routes, there are precise rules on accessibility, etc. In most cases, it is very difficult or impossible to overcome social distance in these places. It was therefore significant that teleworking and home office were seen as a natural alternative in jobs where working from home was possible.

A change in the employer-employee relationship is inevitable in these changing circumstances. The question that needs to be considered here is what form could a trust-based relationship take when personalisation is reduced? One, but not the only result of the loss of personal character is that the employee has moved from a relationship of personal dependence to the one of economic dependence¹³. The degree of personal dependence was only marginally significant before the pandemic, as some atypical forms of employment have cancelled out this type of relationship. Teleworking, which we have studied, is the first atypical form of work that has increased the distance between people as well as the physical distance¹⁴. However, not only physical distance appeared in these relations, but also instances of a new type of contact represented by digital tools. The movement of work and worker is completely parallel in the sense that the worker can do

¹³ Examining the evolutionary development of labour law, it can be said that it was basically the constant changes in the social and economic environment that influenced the dominance of economic dependence or personal hierarchical dependence in certain periods. L. Berényi: *Gondolatok a munkajog dogmatikai fejlődéséről, különös tekintettel a munkáltatói koncepció alakulására*. "Polgári Szemle" 2021, 17:4–6, pp. 423–432, DOI: 10.24307/psz.2021.1231.

¹⁴ G. Mélypataki, D.A. Máté: *Necessity of Reconsideration of Labour Law Relations - Pandemic, Labour Market, Social Innovation*. "Z Problematyki Prawa Pracy i Polityki Socjalnej" 2021, 19:5. Paper: zpppips.2021.19.05.s.1.z.19., Doi: 10.31261/zpppips.2021.19.05.

his/her work from home. In this way, part of the production could be saved. For some companies, this solution has worked so well that they do not plan to return to previous working patterns, or do so only partially, after the major waves of the pandemic have passed.

The key question is: what is the motivation for employers to maintain at least part of the teleworking and home office options? Is it efficiency, low costs, or ease of organisation? One of the first issues when considering teleworking or home office is how efficient it is. Sceptics do not consider it equivalent to working in a physical workplace. However, there is no evidence that the quality of work has a significant impact on whether it is done from home or in an office. Both have their advantages and disadvantages. Some research highlights that jobs with measurable work performance are also suitable for teleworking. Such quantification provides concrete information on the performance of teleworkers, which can counteract managers' concerns about the lack of monitoring of telework¹⁵. This is supported by a Spanish model experiment called the Concilia Plan¹⁶. The performance of the home-working workers studied was not inferior to that of office workers. However, one thing to bear in mind when examining effectiveness is that the ability to work from home is linked to prestige and status, as senior and skilled workers are more likely than others to do the type of work that can be done remotely¹⁷. This has changed during the pandemic to the extent that coercion has brought about the democratisation of teleworking. By this we mean that many more people have access to this type of work than before. It remains to be seen exactly how much of the former somewhat elitist perception is returning and how much of the democratised perception is being retained?

¹⁵ T.D. Allen, T.D. Golden, K.M Shockley: *Assessing the Status of Our Scientific Findings*. "Psychological Science in the Public Interest" 2015, 16 (2), pp. 40–68, <https://doi.org/10.1177/1529100615593273>.

¹⁶ J.M. Ortiz-Lozano, P.C. Martínez-Morán, V.L. de Nicolás: *Teleworking in the Public Administration: An Analysis Based on Spanish Civil Servants' Perspectives During the Pandemic*. "SAGE Open" 2022, <https://doi.org/10.1177/21582440221079843>; ajk Farkas, "Telework Pilot Projects in Spain", In: *Pilot Projects in Public Administration Management: – Summary of a Research at Pázmány Péter Catholic University Faculty of Law and Political Sciences*. Ed. B.Sz. Gerencsér, Vol. II, Pázmány Péter Katolikus Egyetem, Budapest 2013, p. 15.

¹⁷ M.C. Noonan, J.L. Glass: *The hard truth about telecommuting*. "Monthly Labor Review" 2012, 135, pp. 38–45.

In addition to efficiency, we should of course point out that employers who employ at least part-time teleworkers and home office gardeners can also save money. After all, not having to maintain costly infrastructure can result in savings. Physical workplaces that are designed with health and safety, occupational health and ergonomics in mind are expensive to maintain and especially to keep up to date. This is compounded by the fact that the occupational safety and health (hereinafter: OSH) authority also has the power to impose fines for inadequate workplaces. The health and safety framework also applies to teleworking, which makes the employer liable, but it is still cheaper to operate and maintain. The savings can be used to finance a system that connects the employer with the employee and, in many cases, with the customer in the digital space. Given the specific nature of teleworking, special rules on OSH have been included in the provisions of Act XCIII of 1993 on Occupational Safety and Health (hereinafter: the OSH Act). It should also be noted that there can be considerable irregularities in the timing and location of work, which is one of the reasons why it is important to have effective solutions to any difficulties, in addition to the potential of innovative technologies¹⁸. Against this background, the specific rules on OSH in the OSH Act have also been changed due to the amendment of the rules on teleworking in the OSH Act. In a later chapter of this study, we will also describe in detail the amended rules of the Labour Code and the OSH Act in relation to teleworking.

In the case of teleworking, the use of equipment is a major issue. The devices used by the employee and the employer form a transfer zone where information can flow freely between the parties. By information, we mean the transmission of the results of the work to the employer. This approach is based on the conceptual approach of the Framework Directive on telework. This is important to highlight because we will see that not all interpretations give it such prominence. But at the same time it is important to underline the need for a transfer zone. As already pointed out by Garry and Hodson in a study as early as 1993, the transfer of information through networked communications and information technology to people sitting comfortably at home rather than in rush

¹⁸ EU strategic framework on health and safety at work 2021–2027, Occupational safety and health in a changing world of work, European Commission, Brussels, 28.6.2021 COM (2021) 323 final, 2, 7.

hour traffic seems to be a concept that is consistent with the information society and the information economy. Work will go to people, not people going to work¹⁹. Along with this, a new form of mobility has been brought about by telecommuting. People save time by spending time at home rather than travelling, which can lead us back to efficiency, as being able to start work at once implies being able to work more efficiently. The trio of Cano, Hataro and Zapatero reinforce this line of thinking by explaining that today's centralised workplace was a relatively recent phenomenon even in 1993, as before the industrial revolution most people worked at home or close to home²⁰. This can be seen as a return to the roots of teleworking and home office, a return that preserves the traditions of the past, but implies a completely new methodology and use of tools. This is signalled by the duplication of the workplace. There will be a physical workplace from which instructions will come. This does not exclude the possibility that, for the employer, the physical and digital workplace may coincide. The employee's home also becomes a digital workspace through the device on which they work. Physically, s/he is sitting in their own home, but the actual work is done on the IT device. Thus, in our view, the digital workplace and the physical workplace are largely split for the employee.

The question is, however, how far can legislative and academic conceptualisation follow the motivations and established practices of the parties? To what extent does regulation itself shape practice? In what follows, we will look at this in the light of the history of telework and home office regulation and its actual application in practice.

3. The past and present of teleworking

The key features of teleworking are the use of a computer, electronic transmission of work results, regularity and a place of work that is separate from the employer's premises²¹. This location can be the

¹⁹ M. Gray, N. Hodson, G. Gordon (eds.): *Teleworking Explained*. John Wiley & Sons, England 1993.

²⁰ V. Cano, C. Hatar, A. Zapatero: *Teleworking: conceptual and implementation problems*. "Vine" 1997, Vol. 27, No. 5, pp. 27–34, <https://doi.org/10.1108/eb040663>.

²¹ I. Herdon: *A munkavégzés helyének megváltoztatása – távmunka, "home office"*. In: *Országos Bírósági Hivatal Mailáth György Tudományos Pályázat 2020: Díjazott Dolgozatok*. Ed. Országos Bírósági Hivatal. Országos Bírósági Hivatal, Budapest 2021, p. 660.

employee’s home, but it is not the only place where teleworking can take place. It may also be carried out at other locations determined by the employer (see for example teleworking in so-called “telecentres”) or the employee may choose to work at another location²². In addition, the employee may be present, not regularly, and may exceptionally work on the employer’s premises for a limited period of time, as the employer must provide the opportunity to do under the Labour Code. Such work may include attending meetings, reporting to supervisors, etc. In comparison, different authors have associated different qualifiers with the home office.

Figure 3: Comparison of home office concepts²³

<i>Teleworking before the new rules</i>	regular work: work at a place designated in the contract which is not the employer’s registered office or place of business, nor exclusively the employee’s home	exceptionally: at the employer’s head office or place of business
<i>Home office (KÁRTYÁS-PETROVICS-TAKÁCS²⁴, BANKÓ-BERKE-SZÓKE-KISS)²⁵</i>	regular work: traditional employment at the employer’s head office or place of business	work on an exceptional basis: in the home of the worker
<i>Home office (BANKÓ)²⁶</i>	regular work: traditional employment at the employer’s head office or place of business	exceptional work: work at a place other than your permanent place of work (at home or elsewhere)

²² Commentary on Articles 196–197 of the Labour Code. Z. Bankó, Gy. Berke, Gy. Kiss, G.L. Szóke: *Nagykommentár a munka törvénykönyvéről szóló 2012. évi I. törvényhez*. Wolters Kluwer Hungary Kft., Budapest 2021.

²³ Self-made illustration.

²⁴ Commentary on Article 196 of the Labour Code. G. Kártyás, Z. Petrovics, G. Takács: *Kommentár a munka törvénykönyvéről szóló 2012. évi I. törvényhez*. Wolters Kluwer Hungary Kft., Budapest 2020.

²⁵ Commentary on Articles 196–197 of the Labour Code. Z. Bankó, Gy. Berke, Gy. Kiss, G.L. Szóke: op. cit.

²⁶ Quoting Banko, see I. Herdon, H. Rab: op. cit. p. 65.

<i>Home office</i> (SZEKERES)	regular work: traditional employment at the employer's head office or place of business	regular or exceptional work: in the home of the worker
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The two commentaries referred to the home office seen an opportunity to work from home as an exception to regular office work. Bankó, an expert on teleworking, accepted the term *home office* to include a location different from home in the context of exceptional work in an exceptional location. Responding to the needs of the practice, we saw that home office could only refer to work at home, but it could be not only exceptional but also regular, for example two days a week or two weeks out of four weeks. The views of the other authors can be supported as well, from which we can see that even the literature has only tasted the institution of home office, which employers have had to be able to grasp in practice.

Let us now put aside the emergency regulations, which allowed for exceptional derogations, but only on a temporary basis. First of all, we have to see that the place of work is essentially a matter of agreement, which can only be defined in the employment contract or in its amendment, and therefore requires consensus.

Article 53 of the Labour Code allows, within narrow limits, for work outside the employment contract in exceptional cases, but the maximum time limit is forty-four scheduled working days or three hundred and fifty-two hours per calendar year. This could be considered as home office outside the framework of the employment contract, but it could not allow the parties to switch completely, as it has a statutory time limit.

A better solution was and could be home office within the framework of the employment contract, where the parties designate both the employee's home and the employer's premises as the place of work – the employer's instructions will then determine where the employee will work. A version of this, if possible, is to designate a municipality as the place of work, which is the place of the employer's establishment and, as is necessary for the present solution, the place of residence of the employee²⁷.

²⁷ I. Herdon, H. Rab: op. cit. p. 71.

We may think that we have come to the end of the circle and everything is in order, but the practice has of course produced further problems. There was the question of the application of legal consequences, i.e. if the employee works at home in a home office, are the general rules (such as those concerning instructions or occupational health and safety) applicable to the employer or are they different from those applicable to teleworking. There was no uniform employer practice on this either.

4. Future

In December 2021, Act CXXX of 2021 on Certain Regulatory Issues Related to Emergency Situations (hereinafter: Act on Amendments) was adopted to settle this, amending the rules of the Labour Code on telework with effect from the end of the emergency situation. The home office has still not been defined as a separate legal term, so it has not become a *sui generis* legal instrument. Under the new rules, *in the case of teleworking, the employee works part or all of the working time at a place separate from the employer's premises.*

We can notice that the legislator has broadened the category of teleworking to include home office legitimised within the employment contract: in addition to the previously mainly, regularly remote work, teleworking also includes the case where the employee spends only part of the working time away from the employer's premises. A teleworker may work part of his/her working time (even regularly) at the employer's premises. In our view, this has changed the essence of teleworking, which was previously a separate atypical employment relationship category, but this amendment has brought hybrid work within the atypical employment relationship construction of teleworking. It should be pointed out that the regulation does not specify a mandatory ratio between work performed on the premises and work performed remotely (at home or elsewhere) in order for the relationship to be considered telework, but merely provides a background rule that can be circumvented by consensus of the parties. It stipulates that, *unless otherwise agreed, teleworking shall not involve the employee working at the employer's premises for more than one third of the working days in the reference year.*

This freedom would allow for both predominantly office-based and even infrequent remote working within the framework of atypical employment relationships that were originally based on teleworking²⁸. In our view, however, this would disrupt the stability of the hitherto autonomous atypical legal institution, since it would also bring hybrid work within its framework, which is problematic because the legal consequences of teleworking are specifically suited to a situation in which there is no place for regular office work. In practice, for example, it can also lead to tensions between employees if the employer can exercise close control, supervision and instruction with different degrees of intensity over employees who are working in the office, even in the same job. Among the many other issues, the background norm that, the working schedules of teleworkers are flexible, unless otherwise agreed by the parties, is removed. A flexible working schedule for teleworking is entirely appropriate and follows the essential characteristics of teleworking. However, under the Act on Amendments, if the parties fail to agree on this matter, the flexible working schedule does not apply. This can lead to particularly sharp tensions in the remuneration of extraordinary work that may arise during teleworking, even at home.

4.1 Occupational safety and health – a cornerstone of practical implementation

In the light of our analysis so far, it is clear that teleworking and home office employment can provide an appropriate solution to many of today's challenges, but it also raises a number of new questions that need to be answered. In addition to broadening the definition of teleworking, the legislator has also made it essential to address the labour protection issues that arise in order to ensure sustainability.

As mentioned earlier, the legislator, in addition to the amendment of the Labour Code, has also amended the special provisions of the Labour Code on the protection of workers in connection with telework-

²⁸ Article 2 of the 2002 European Framework Agreement also requires that work must be regularly carried out away from the employer's premises. See: M. Vallasek, G. Mélypataki: *Rules on Home Office Work and Telework in Romania and in Hungary*. "Central European Journal of Comparative Law" 2020, 1:2, p. 179.

ing. It is worth highlighting, first of all, that due to the amendment, employees *may also work with their own work equipment* in the context of teleworking if they have made a separate agreement with the employer. It is important to underline that, under the rules, the work equipment in question does not necessarily have to be a computer device. Risk assessment is of particular importance in this case, and the employer has an obligation to ensure that the work equipment is safe and not hazardous to health. After that, however, it will be the worker's responsibility to ensure that the work equipment is maintained in good condition for further use²⁹. In other words, the legislator clearly distinguishes between two categories of teleworking: teleworking with the use of computer equipment and teleworking without the use of computer equipment.

Knowledge of and compliance with the basic OSH rules will also be key in the case of teleworking, i.e. it is important to establish that the employer is responsible for creating safe working conditions that do not pose a risk to health³⁰ and that this is not affected by the workers' OSH obligations. It is also important to note that risk assessment will be key to the development of an effective and operational system, as highlighted above. This applies to both computing and non-computing equipment. An assessment of the condition of the work equipment, including the existence of OHS documentation, declarations of conformity, certificates and operational documentation, and their technical content, can be undertaken with a good understanding of OHS requirements. The OSH Act provides that

the employer will be obliged to carry out a qualitative and, if necessary, quantitative assessment of the risks to the health and safety of workers, in particular with regard to the work equipment used, dangerous substances and mixtures, the stresses to which workers are exposed and the design of workplaces. During the risk assessment, the employer identifies the likely hazards (sources of danger, hazardous situations) and the persons at risk, and estimates the degree of exposure according to the nature of the hazard (accident, health hazard). The risk assessment shall include occupational hygiene tests to determine

²⁹ Article 86/A (1)–(2) of the OSH Act.

³⁰ Article 2 (2) of the OSH Act.

*the level of exposure in the event of the occurrence of a pathogenic factor regulated by the health protection limit value*³¹

With regard to the risks, it is clear that risks arising from teleworking are no exception. In this context, the proliferation of wireless, mobile and other innovative technologies and their increasing use in the workplace makes it essential to further analyse the exposure of workers to, for example, optical radiation and electromagnetic fields³². Furthermore, we believe that it will be of paramount importance to address and assess the psychosocial risks associated with teleworking.

As we have highlighted in our research so far, a key issue will be to define what exactly is meant by the actual place of work. The relevant provision of the OSH Act defines a workplace as *any open or enclosed space where workers are present for the purpose of or in connection with work*³³.

Proper and complete information will be a crucial factor before the start of work, and the employer must provide the employee with written information on the rules of the conditions that comply with the health and safety at work regulations. On the basis of this information, the worker should choose the place of work in the light of the above requirements. On 17 June 2022, the Department of Occupational Safety and Health Management of the Ministry of Technology and Industry published an information note (hereinafter: Guide) to provide guidance on the rules on OSH for teleworking with information technology or computing equipment (hereinafter: computing equipment) in view of the amendment of the Occupational Safety and Health Act on 1 June 2022. On the question of what exactly can be considered a workplace in the light of what has been said so far, the Guide specifies that if teleworking takes place in the home of the employee, this does not mean that the entire home will be considered the workplace. According to the Authority's guidelines, at a minimum, the area of approximately 2-4 m² where the work desk, work chair, computer, filing cabinet, printer, etc. are located is considered to be a workplace³⁴.

³¹ Article 54 (2) of the OSH Act.

³² EU strategic framework on health and safety at work 2021–2027, Occupational safety and health in a changing world of work, European Commission, Brussels, 28.6.2021 COM(2021) 323 final, p. 2, 8.

³³ Article 87, point 5 of the OSH Act.

³⁴ A Technológiai és Ipari Minisztérium Munkavédelmi Irányítási Főosztályának tájékoztatása az információtechnológiai vagy számítástechnikai eszközzel végzett táv-

Moving along this path of reflection, the question immediately arises as to what impact this will have on the management of any accidents that may occur, and under what circumstances can an accident be classified as an accident at work. The Guide deals with the question in a rather generous way when it gives the guidance that the OSH Act considers accidents at work to be accidents at work which occur in the course of or in connection with the performance of work. If the employer classifies the accident as an accident at work, the employer must investigate the circumstances of the accident³⁵. This does not cover the assessment of the work-relatedness or the scope of accidents occurring in the home or in the different premises of the worker. On this basis, if a minimum area of 2 to 4 m² is defined as the place of work in a given case, an accident occurring there is considered to be an accident at work. However, it would not be considered an accident at work if the worker had an accident outside this predefined work area, for example in the bathroom, kitchen or garden. In this case, since the premises which are not operated by the employer – in the case of teleworking this includes other premises set up by the employee – are already under the responsibility of the employee, as defined in Article 87 point 3 of the OSH Act.

As we reach this point in our study, it becomes increasingly clear why we see the role of OSH as a cornerstone of the practical implementation and sustainability of telework. In this context, it is also necessary to emphasise the key role of OSH education, which must also be specific. According to the recommendation of Hungarian authorities, priority is given to prevention and to identifying the risk factors associated with working in front of a screen. In addition, we believe that the practice of Cyprus on teleworking is worth mentioning. In the official recommendation of Cyprus (hereinafter: Recommendation) regarding telework, particular emphasis is placed on the fact that tele-

munka során a munkavégzéshez szükséges, egészséget nem veszélyeztető és biztonságos munkakörülmények szabályairól. 2022.06.17, pp. 2–3. See more at: http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=851 (10.09.2022).

³⁵ A Technológiai és Ipari Minisztérium Munkavédelmi Irányítási Főosztályának tájékoztatása az információtechnológiai vagy számítástechnikai eszközzel végzett távmunka során a munkavégzéshez szükséges, egészséget nem veszélyeztető és biztonságos munkakörülmények szabályairól. 2022.06.17, p. 2. See more at: http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=851 (10.09.2022).

working should be voluntary, that the equipment necessary for the employee to work should be provided by the employer and that the employer and the employee should be trained in the use of effective communication methods.

It is also important that the parties clarify the channels of communication that will be used and the process for how and with whom the employee will be contacted in the event of a problem, and what the protocol will be. In addition, in order to avoid undue interference with the employee's private and family life, the time period during which the employee cannot be contacted should be agreed as well. Furthermore, the Recommendation also underlines that teleworking should not imply an increase in working hours, so that employees may refuse to work beyond working hours without prior notice³⁶. These are just a few ideas worth highlighting, but in our view they illustrate that effective practical implementation of telework is best conceived as part of a complex system shaped by a number of factors.

5. Summary

Our main objective in this study has been to provide a comprehensive overview of the relationship between home office and telework, the regulatory environment that defines the conceptual framework, and to highlight some of the key issues and problems related to the demarcation and the legislative outcomes. We have seen that the pandemic, the emergence of changing forms of work brought about by digitalisation and the new approach to the concept of the workplace in the changing world of work are all new challenges for the legislator. The significant increase in the number of teleworkers and home office workers³⁷ also brings a new approach to health and safety at work. In

³⁶ Guide on Teleworking during COVID-19 Pandemic Knowledge and results from Tele-WOSH as a RESTART 2016-2020 project, belong to the participating organization carrying out the work that produced them. 2021, pp. 30–31.

³⁷ According to Eurofund data, the number of people teleworking has increased significantly since the pandemic, with around 40% of workers switching to full-time teleworking, but this includes cases where it is made compulsory by the national authorities. See for more on this the Opinion of the European Economic and Social Committee on *The challenges of teleworking: the organisation of working time, work-life balance and the right to decoupling* (2021/C 220/01), "Official Journal of the European Union" 9 June 2021, Vol. 64, p. 8.

this context, well-designed health and safety rules can, among other things, contribute to achieving and maintaining a good work-life balance.

It is important to underline that technological development and the social and economic challenges of the 21st century are constantly shaping the legislative environment. In connection with this, in Hungary, with regard to the amendments to labour law, working in the context of a home office has not been named as a separate legal relationship in the provisions of the Labour Code, instead the legislator has redefined the concept of telework, breaking and broadening its traditional conceptual framework.

This hybrid approach goes against the autonomous entity of teleworking as a separate, *sui generis* atypical employment relationship. Indeed, teleworking is a specific atypical employment relationship with a legal history going back several decades in EU law, based on the concept of flexicurity, i.e. flexibility and security. With this new, broad aspect, it is not possible to maintain teleworking as a separate, distinct atypical employment relationship. Ongoing changes, new practical problems and as yet unforeseen technological advances all point to the need to re-examine telework from both a domestic and an international, EU perspective, so that it can be applied to hybrid circumstances³⁸ without internal contradictions.

In our view, the core value of labour law should be a guiding principle in shaping regulatory trends; that is, creating *security* by ensuring a decent living and decent working conditions, and ensuring *flexibility*, with sustainability as the basis. Against this background, we see a need to develop a conceptual approach to teleworking in order to ensure that its potential is realised in practice.

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³⁸ Hybrid conditions are not new abroad, see: E. Kossek, C. Ozeki: *Bridging the work-family policy and productivity gap: a literature review*. "Community Work and Family" 1999, 1, pp. 7–32.

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Case Law

- A Technológiai és Ipari Minisztérium Munkavédelmi Irányítási Főosztályának tájékoztatása az információtechnológiai vagy számítástechnikai eszközzel végzett távmunka során a munkavégzéshez szükséges, egészséget nem veszélyeztető és biztonságos munkakörülmények szabályairól. 2022.06.17., http://www.ommf.gov.hu/index.php?akt_menu=172&hir_reszlet=851 (10.09.2022.)
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Na pograniczu fizycznego i wirtualnego miejsca pracy – dogmatyczne kwestie *home office* i telepracy w ogólnym ujęciu i w prawie węgierskim

Streszczenie

Niedawna pandemia zmusiła firmy do przejścia na pracę wykonywaną w domu, co było konieczne dla zachowania zdrowia i efektywności ekonomicznej. Przejście od fizycznych miejsc pracy do wirtualnych miejsc pracy w przestrzeni cyfrowej rozpoczęło się jednak wcześniej niż pandemia. Pandemia jedynie spotęgowała ten proces. Jednocześnie widzimy, że zakłady pracy zdobyły pozytywne doświadczenia w procesie tworzenia wirtualnych miejsc pracy. Jednakże z wirtualnym miejscem pracy wiążą się poważne problemy technologiczne, nad którymi próbujemy się zastanowić. Część pracowników zaakceptowała tego rodzaju rozwiązanie; znaczna część firm nie powróciła już nawet do klasycznych, dawnych metod pracy. Musimy skupić się również na kwestiach związanych z wirtualnym miejscem pracy. Ze względu na jego upowszechnienie w praktyce konieczne było uregulowanie kwestii *home office* na poziomie prawnym, ponieważ eksperci wygłaszali sprzeczne opinie na temat jego istotnych elementów. W celu zamknięcia tej debaty ustawodawca opracował nowe rozporządzenie dotyczące telepracy, które zmienia przepisy węgierskiego kodeksu pracy dotyczące telepracy z mocą obowiązującą od zakończenia stanu nadzwyczajnego. Celem niniejszego artykułu jest omówienie nowych przepisów, ze szczególnym uwzględnieniem kwestii spornych i podstaw ich stosowania w praktyce.

Słowa kluczowe: *home office*, elastyczność, telepraca, wirtualne miejsce pracy, bezpieczeństwo i higiena pracy