Considerations on the protection of teleworkers, in light of the current European regulations. Elements of comparative law

Lecturer **Mihaela MARICA**[1]

Abstract

The proliferation of the teleworking phenomenon entails a number of aspects, such as the organization of working time or the work safety and health of teleworkers, which are not fully covered by the current legislation. This puts teleworkers at an increased risk of being treated less favorably than regular workers and implicitly calls for additional protective measures for teleworkers. Consequently, the present paper offers an overview of the main legislative documents adopted by the European Union, which concern teleworkers directly or indirectly, in order to ascertain the extent to which the current legislative standards meet the specific needs of the teleworkers. Also relevant for this aim is the comparative law analysis which demonstrates how some states of the European Union have increased their efforts to amend their legal systems, in order to eliminate the discriminatory practices detrimental to teleworkers and to enhance the protection they enjoy. The study presents the different legislative perspectives of Germany, France, Spain, Italy.

Keywords: *teleworking, remote work, teleworking arrangements, non-standard work, the right to disconnect.*

JEL Classification: K31, K33

DOI: 10.24818/TBJ/2022/12/4.05

1. Preliminary considerations

Today's reality reflects the digital transformation of society, as the information and communication technologies have allowed the Internet to become, in the words of certain authors, „a window from the workplace into the home and from home into the workplace"[2], with people spending their daily lives connected to phones or other electronic devices, ready to receive or send messages and answer calls at any time. Digitalization is a prerequisite for global social transformations that determines the modern business development path and provides unprecedented opportunities to create value based on its virtualization[3]. The high technology has changed the world around us very rapidly and irreversibly, thus affecting the

[1] Mihaela Marica - Faculty of Law, the Bucharest University of Economic Studies, Romania, mihaela.marica@drept.ase.ro.

[2] See Lerouge, Loïc; Trujillo Pons, Francisco, *Contribution to the study on the 'right to disconnect' from work. Are France and Spain examples for other countries and EU law?* in „European labour law journal", 2022, Vol.13 (3), p. 450, pp. 450-465.

[3] Chyzhevska, Lyudmyla, Voloschuk, Lidiia, Shatskova, Liubov and Sokolenko, Liudmyla, *Digitalization as a Vector of Information Systems Development and Accounting System Modernization*, „Studia Universitatis „Vasile Goldis" Arad – Economics Series", vol. 31, no. 4, 2021, p. 19. https://doi.org/10.2478/sues-2021-0017.

surrounding society. This factor has become especially significant during the world pandemic-Covid 19, because people increasingly buy everything in online stores at this time, and much of the business environment has transferred their employees to a remote way of working[4]. One of the great advantages entailed by technological progress lies in the possibility to organize work remotely, online, based on teleworking contractual arrangements which have brought a significant increase in the flexibility under the legal aspect of employment relationships. Although the emergence of the teleworking phenomenon preceded the European principle of flexicurity[5], the event that significantly encouraged the proliferation of the teleworking phenomenon worldwide was the health crisis associated to the Covid-19 pandemic[6]. The negative consequences of the pandemic are associated with the loss of many people's jobs, reduced working hours, reduced income levels of enterprises and entrepreneurs, suspension of activities in certain types of activities, transfer to remote work, the need to stay at home with children, increased prices for certain food products, limited access to educational services, etc[7]. Throughout this period, teleworking programs allowed workers to comply with the public health measures of social distancing, and thus work was carried out remotely by means of communication technologies.

While teleworking has positive effects due to the increased flexibly it allows, domestic markets may struggle with a lack of clarity on the juridical regime and legislative framework applicable to it. At European level, the legislative framework is insufficient and does not reflect the current technological developments. There are certain aspects, such as the organization of working time, and the safety and health of teleworkers, which are not fully covered by the current legislation. This increases the risk of teleworkers being treated less favorably than standard workers and implicitly calls for additional protective measures for teleworkers. Consequently, I shall provide an overview of the main legislative documents adopted across the European Union, which directly or indirectly concern teleworkers, in order to ascertain the extent to which the current legislative standards meet the specific needs of the teleworkers. Also relevant for this aim is the comparative law analysis which demonstrates how some states of the European Union have increased their efforts to

[4] Aristova, Irina; Brusakova, Oksana; Koshikov, Denis and Kaplya, Oleksandr, *Developing information technology law and legislation: analysis of international experience and possibilities of its application in Ukraine*, „Ius Humani-Revista de Derecho", Vol. 10 (II) (2021), p. 119.

[5] The concept of „flexicurity" is closely related to the emergence of flexible work arrangements and was first used by the European Union in 1997 on the launch of European Employment Strategy, to refer to the idea of a balance between the need for flexibility, and the safety of workers. (For further details of the „flexicurity" concept, see M. E Marica, *Contracte de muncă atipice*, Universul Juridic Publishing House, Bucharest, 2019, pp. 54-58).

[6] In 2020 an Eurofound survey revealed that the coronavirus pandemic prompted companies to resort to teleworking as the customary mode of working, and the number of teleworkers in the EU soared. According to the same survey, 37% of respondents started to work from home during the lockdown (https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20059en.pdf, accessed 3.11.2022).

[7] Pinkovetskaia, Iuliia, *Impact of Covid-19 pandemic on household income: results of a survey of the economically active population*, „Studia Universitatis „Vasile Goldis" Arad – Economics Series", vol. 32, no.1, 2022, p. 44, https://doi.org/10.2478/sues-2022-0003.

amend their legal systems, in order to eliminate the discriminatory practices detrimental to teleworkers and to enhance the protection they enjoy. The study presents the different legislative perspectives of Germany, France, Spain, Italy, etc.

2. European legislative norms that apply to teleworkers

The European Union and its member states originally promoted teleworking as an instrument in applying employment policies able to meet the need for flexibility in the work relationships. However, regulations have not always addressed the workers' protection as their main objective. They were more concerned with the admissibility of such types of employment in the interest of the labour market and of the employment policies, and less concerned with workers' protection[8]. Despite the current trend of teleworking and its positive aspects, in some respects telework remains an atypical work arrangement, and from the teleworkers' standpoint a precarious one with regard to their protection[9]. Although teleworking is currently considered as one of the most common flexible work arrangements, the precarious situation of teleworkers is expressed in the fact that they often perform a greater amount of work than standard workers[10]. Obviously, it is not always possible for all some aspects to be fully regulated, given the principle of contractual freedom, but aspects such as the safety and health of teleworkers, which require specific provisions, should be addressed by the European regulations[11]. Home work and telework are not regulated uniformly across the European Union[12]. As we shall see,

[8] For an overview of atypical work arrangements, see Karl Riesenhuber, *European Employment Law. A systematic exposition*, pp. 560-562, Intersentia Publishing House, 2021.

[9] From the workers' standpoint, *precarious work* is insecure, unpredictable, unprotected, with major negative effects at macroeconomic, social, collective, family and individual level (for further details on the *precarious work* concept, see Ana-Maria Preoteasa, *Munca precară, soluție pentru populația vulnerabilă din mediul rural rezultate dintr-o cercetare calitativă*, in „Calitateta Vieții", XXVI, no. 1, 2015, pp. 36-59).

[10] There are numerous studies that demonstrate that persons who regularly work from home are twice more likely to exceed the maximum 48 hours per week and and thus are deprived of the 11 hours minimum rest between working days. According to reports, almost 30% of teleworkers work during their free time every day or several times a week, compared to less than 5% of standard workers, who carry out their work on the employer's premises (See Lerouge, Loïc; Trujillo Pons, Francisco, *op. cit.*, p. 450).

[11] The massive use of teleworking programs during the Covid 19 pandemic demonstrated, on the one hand, the incontestable usefulness of teleworking programs for increasing flexibility of work, and on the other hand the urgent need for adapting and amending legislations on teleworking since the progress of technology brings about certain specific modes of work organization. The European Economic and Social Committee showed in a report on „Challenges of teleworking: organisation of working time, work-life balance and the right to disconnect" that the aspects requiring the greatest attention are those concerning the organization of working time, work-life balance, the right to disconnect and the effectiveness of labour rights. For further details, see *Opinion of the European Economic and Social Committee on 'Challenges of teleworking: organisation of working time, work-life balance and the right to disconnect'* (Exploratory opinion at the request of the Portuguese Presidency), 2021, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020AE5278&qid=1665476498581, accessed 11.10.2022.

[12] Currently there are four Directives on atypical work arrangements: Directive 97/81/CE concerning the Framework Agreement on part-time work, Directive 1999/70/CE concerning the framework

there are a number of secondary normative documents that either refer explicitly to a corpus of general principles applicable to teleworkers, or are tangentially seen as part of the legislative context applicable to them.

2.1 The framework agreement on telework

The general principles on telework are illustrated by the Framework Agreement on telework[13], which can be considered as the most important document of the European legislative context of teleworking agreements. Principles such as: the principle of equal treatment of teleworkers and standard workers, the principle of reversibility of telework and the principle of voluntary nature of teleworking arrangements are mentioned in the Framework Agreement, but there is a degree of ambiguity. According to these provisions, the teleworking agreement is reversible in the terms agreed on by employer and employee, and if such a possibility is allowed by the national legislation; the voluntary nature of telework is declared by the references to occasional teleworking.

The European document needs to be promptly adjusted to reflect today's context, where teleworking arrangements have become common occurrence, instead of occasional arrangements as they were in 2002, when the Framework Agreement on telework was concluded[14]. This document provides minimal juridical regulations on telework, but does not enforce them on the member states[15]. This creates a reasonable probability for potential inequities in the degree of harmonization between general norms and domestic legislations on the rights of teleworkers. Recent studies conducted in the European Union reveal that many of the member states have only partially enacted the provisions of the Framework Agreement into their domestic legislations and that many aspects pertaining to the balance between the private and professional life of teleworkers, their right to disconnect, their data protection, their safety and health at work, are still unregulated[16]. Legislative measures that tangentially concern teleworkers are included in other European documents on which I shall comment below.

---

agreement on fixed-term work, Directive 2008/104/CE on temporary agency work, and the Directive on the health and safety of temporary workers. (For the content of these documents, see https://eur-lex.europa.eu).

[13] See https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=LEGISSUM%3Ac10131, accessed 2.11.2022.

[14] See Eurofound (2020), *Telework and ICT-based mobile work: Flexible working in the digital age. New forms of employment series*, Publications Office of the European Union, Luxembourg, p. 46.

[15] As Regulations and Directives do. From the standpoint of the juridical regime, the Regulations express the legislative authority of the European Union and have mandatory effects on the member states. Directives oblige the member states with regard to the objectives to be reached and leave it to national authorities to decide on the manner and means of reaching these objectives. (For a discussion on normative aspects, see A. Popescu, *Dreptul internațional și european al muncii*, second edition, C.H. Beck, 2008, pp. 305-306).

[16] Since the Framework Agreement on Telework was adopted in 2002, that version is not fully adapted to the situation created by today's advanced technology. See Eurofound (2020), *Telework and ICT-based mobile work: Flexible working in the digital age. New forms of employment series*, Publications Office of the European Union, Luxembourg, p. 46.

From a **comparative law** perspective, it can generally be stated that most legal systems have enacted the contents of the Framework Agreement on Telework either in their general norms and regulations, or into collective employment contracts. In **Belgium, Hungary, Luxembourg and Romania,** telework is regulated by a special law, whereas in states such as **Denmark, Greece, Sweden, Italy**, collective employment contracts play an important role in defining and regulating the aspects related to the juridical (legal) regime of teleworkers[17].

2.2 The Directive concerning certain aspects of the organisation of working time (The Working Time Directive 2003/88)

Prompted by the need to ensure the safety and health of workers, Directive 2003/88/CE of the European Parliament and the Council, issued on November 4, 2003 on certain aspects of the organization of working time („Directive 2003/88")[18] lays down a number of general standards for the working time and the daily and weekly rest. According to this document, the maximum weekly working time is 48 hours, including overtime work. Also, this European document sets a reference period of maximum 4 months, which by derogations through collective agreements can be extended to 6 months[19].

Regarding the relevance of Directive 2003/88/CE, its provisions apply to the „workers". Conceptually, however, the Directive does not contain special provisions and does not exempt any category of workers, based on the type of their employment contracts. The jurisprudence of the Court of Justice of the European Union does not offer clarifications either, but offers a broad interpretation by defining the worker as „a person who for a period carries out work for and under the authority of another person, in exchange for remuneration"[20]. In other words, these stipulations equally apply to teleworkers, irrespective of the specific issues related to the delimitation of working time, imposed by teleworking arrangements. Since teleworkers generally work more hours per week than standard workers[21], the Directive's provisions on certain aspects of the organization of working time become important. Thus, by defining the reference period, the Directive offers the member states the possibility to ensure the necessary flexibility by applying the general standards to the particular

[17] For further details, see R. Dimitriu, *Dreptul muncii. Anxietăți ale prezentului,* Rentrop & Straton, 2016, p. 143.
[18] https://eur-lex.europa.eu, accessed 12.11.2022.
[19] Article in the Directive.
[20] See Karl Riesenhuber, *European Employment Law. A systematic exposition*, Intersentia Publishing House, 2021, p. 530.
[21] For instance, an Eurofound survey shows that home-based teleworkers are more likely to declare they work in their free time (28%) than employees who work on their employer's premises (approximately 4%). See Eurofound (2021), *Right to disconnect: Exploring company practices*, Publications Office of the European Union, Luxembourg, p. 4.

needs of the various categories of workers, including teleworkers. These provisions can assist the EU member states in ensuring the desired flexibility with respect to the working time of teleworkers. However, this hypothesis is interpreted by some authors as a way for the legislator to „take with one hand what it had given with the other"[22].

2.3 Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work

An important step in the direction of enhanced protection for the workers, was taken by the European Union in 1989 with the adoption of *Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work*[23]. One of the objectives mentioned by the Directive is to introduce measures to encourage improvements in the safety and health[24] of workers at work[25]. To reach this objective, the Directive lays down a set of „general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers and their representatives, as well as general guidelines for the implementation of the said principles"[26]. As shows this point (art 1, point 2) of the Directive, the document offers a number of instruments by which employers ensure the workers' protection, with regard to their safety and health. Regarding the assessment of risks threatening the safety and health of workers, employers shall have a duty to ensure the safety and health *in every aspect related to the work*[27]. However, the safety and health of teleworkers is still a sensitive topic. Although the Directive defines as „worker" any person employed and paid a salary, this document does not clarify the notion and offers no information on the type of employment contract. The jurisprudence of the Court of Justice of the European Union is not relevant either, in this respect. However, there are a number of nuances discussed by the specialized juridical literature. They concern the question whether the new work arrangements[28] are concerned by the stipulations of this Directive. It has been

[22] See Karl Riesenhuber, *op. cit.*, p. 525.

[23] https://eur-lex.europa.eu/eli/dir/1989/391/oj, accessed 3.11.2022.

[24] I mention that the Directive does not define „health". An important contribution in this respect is made by the Court of Justice of the European Union whose jurisprudence has defined the term as „a state of complete physical, mental and social well-being that does not consist only in the absence of illness or infirmity" (Case C-84/94, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A 61994CJ0084&qid=1667486243085, accessed 3.11.2022).

[25] Art. 1 in the Directive.

[26] Art. 1 point 2 in the Directive.

[27] Art. 5(1) in the Directive.

[28] The phrase „new work arrangements" is closely related to the emergence of new types of workers, differing from standard workers either with respect to working hours and the place of work, or with respect to the use of computer technology, etc. (For further details on the new work arrangements that have proliferated in the European economic area over the last years, see M. E Marica *Contracte de muncă atipice*, Universul Juridic Publishing House, 2019, pp. 332-333).

considered that a decisive factor in determining this is whether work is carried out at the workplace (on the employer's precincts), although this hypothesis does not cover the situation of work performed in „virtual factories", on platforms[29].

Similarly, given the vague character of the regulations included in the Framework Agreement on teleworking, *Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work* offers a broad perspective on work safety and health. Teleworkers observe these general rules for prevention of occupational risks, safety and health protection at the workplace, eliminating the risks of occupational accidents, information and consulting; however, we note that in some situations these norms are incomplete and fail to address the specific character of this atypical work arrangement. Nowadays, the circumstances of work have changed significantly as a result of the strides made by digitalization and technologization. Consequently, work accidents and occupational diseases have changed too, and no longer match the prototype of worker today. On this topic, some authors[30] address the accidents *caused by burnout* – physical or mental overwork, associated with great stress and intense work over a long period of time, and affecting mainly the employees who are permanently connected online to their work environment.

Some legislative systems have decisively pursued the aim imposed by D*irective 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.* **Spain** has recently adopted Law 10/2021 on remote work, which guarantees the teleworkers' right to digital disconnection and applies in the sphere of national legislation Article 5(1) of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, and to promote well-being at work[31].

2.4 The Work–Life Balance Directive (EU) 2019/1158

Anther directive which can be considered as part of the current legislative context relevant for teleworkers' employment arrangements is the *Work–Life Balance Directive (EU) 2019/1158*[32]. This Directive applies to workers and mainly aims to extend the existing right to request flexible working arrangements to all working parents with children up to the age of eight and to all careers. In order to improve their work-life balance, this category of employees may opt for flexible work arrangements, remote work or fewer working hours. Also, in keeping with the stipulations of this Directive, employees in this situation are protected against discrimination or any unfavorable treatments[33]. In themselves, the provisions of the Directive are meritorious and can improve the work – life balance. The problem is

[29] See E. Ales; M. Bell; O. Deinert; S. Robin-Olivier, *International and European Labour Law*, in *Internațional and European Business Law*, Nomos, 2018, p. 1217.
[30] See R. Dimitriu, *op. cit.*, 2016, p. 450.
[31] Lerouge, Loïc; Trujillo Pons, Francisco, *op. cit.*, p. 454.
[32] https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32019L1158&from=EN, accessed 7.11.2022.
[33] Art. 11 in Work–Life Balance Directive (Directive (EU) 2019/1158.

that the Work–Life Balance Directive (EU) 2019/1158 does not include regulations on the potentially negative impact on the work-life balance of work arrangements that involve the use of technology[34], the teleworkers putting in extra working hours, or the blurring of boundaries between private and professional life.

2.5 The Directive on Transparent and Predictable Working Conditions (EU) 2019/1152

To address the same need for enhanced protection of workers, the European Parliament and the Council of the European Union adopted on 20 June 2019 the *Directive on Transparent and Predictable Working Conditions (Directive (EU) 2019/1152*[35]. The Directive originally issued in 1991 was centered around the general information, but the 2019 version evinces some changes in the normative perspective, which is very relevant to the atypical contractual arrangements which involve the use of computer technology. The general aim of the Directive in its revised version „is to improve working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability"[36]. According to the Directive, employers are required to inform workers of the essential aspects of the employment relationship, aspects concerning the place of work, the nature or category of work for which the worker is employed, the description of the work assigned to the employee, the commencement of the contract, and the duration of the employment relationship[37]. Another important aspect addressed by this Directive concerns „work patterns", that is, the form of organization of working time according to a certain pattern determined by the employer[38]. In pursuit of the same aim (ensuring the transparency and predictability of working condition, from the beginning of the employment relationship), the Directive seeks to protect the workers under non-standard contracts with irregular working hours. From this perspective, the Directive stipulates that if the work pattern is „entirely or mostly predictable, the length of the standard working day or week must be indicated"[39], and if the work pattern is entirely or mostly unpredictable, the employment contract must mention the fact that the work schedule is variable, the number of guaranteed paid hours, the reference hours or days, and the minimum notice periods[40]. All these stipulations have a major, significant impact which improves the work-life balance of employees[41].

---

[34] Eurofound (2021), *Right to disconnect: Exploring company practices*, Publications Office of the European Union, Luxembourg, p. 12.

[35] For further details, see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1152&qid=1667811601766, accessed 7.11.2022.

[36] Art. 1(1) in The Transparency Directive 2019/1152.

[37] Art. 4 (2) in The Transparency Directive 2019/1152.

[38] Art. 2 (letter c) in The Transparency Directive 2019/1152.

[39] Art. 4 (letter l) in The Transparency Directive 2019/1152.

[40] Art. 4 (2) (letter m) in The Transparency Directive 2019/1152.

[41] See Eurofound (2020), *Telework and ICT-based mobile work: Flexible working in the digital age, New forms of employment series*, Publications Office of the European Union, Luxembourg, p. 46.

From a **comparative law** perspective, the situation differs from state to state. National legislations include general norms, which mostly reflect the contents of the original 1991 version of the Directive. For instance, **in Germany**, the implementation of the Transparency Directive is still pending, and the current regulations that enact the original directive - the Written Statement Directive, have a degree of ambiguity. According to these regulations, if the employer does not (fully and correctly) notify the employee of the conditions of employment, this will not lead to invalidity for lack of form under the Civil Code. On the other hand, if the worker cites certain employment agreements which cannot be proven because there is no written agreement, then this litigious situation can be brought to court[42]. This is a solution that differs considerably from the general aim of the directive, namely the protection of workers by ensuring that the employer applies the principle of transparency and predictability of working conditions.

2.6 The Resolution of the European Parliament of 21 January 2021, containing recommendations to the Commission on the right to disconnect

The flexibility of the workplace, namely the location where work is carried out under a teleworking agreement, brings significant changes to the structure of standard employment contracts. The effects of these substantial changes in the employment relationship, as a result of digitalization, are reflected in many aspects of work organization, especially in the sphere of workers' private life and of working time organization. As remote work carried out by means of computer technology, the duration of teleworkers' working time is no longer clearly defined. Permanent contact with the employer, via online platforms, somehow implied an absolute availability of teleworkers at any time – with negative impact on their private life[43]. This reality is compared by certain authors with „modern slavery".[44] At first, the European Union was directly involved in promoting the flexibility of work, by means of employment policies intended to ensure the admissibility on the labour market of contractual agreements as flexible and diverse as possible; today, its efforts pursue substantial changes in the legislation so that it addresses the legal aspects of work organization. An important step in this direction was taken on 21 January 2021, when the European Parliament adopted a resolution whereby it demanded the European Commission to submit a proposal for a Directive (a draft directive) on the workers' right to disconnect[45]. The aim of the current directive is to improve the working conditions for all employees, by laying down minimum standards on the right to disconnect[46]. Conceptually, the right to *log off* enables the workers to not take part

[42] See Karl Riesenhuber, *op. cit.*, p. 473.
[43] For a discussion of the impact of digitalization on the mode of working, see R. Dimitriu, *op. cit.*, 2016, pp. 446-451.
[44] P. Adam, *L' individualisation du droit du travail*, Librairie Générale de Droit et de Jurisprudence, Paris, 2005, p. 364.
[45] https://www.europarl.europa.eu/doceo/document/TA-9-2021-0021_RO.html, accessed 10.11.2022.
[46] Point 20 in the preamble to the new draft directive on the right to disconnect.

in tasks or communications related to their professional activity, by using digital tools, either directly or indirectly, outside their working hours[47]. In other words, this explicitly acknowledges the workers' right to stop being available for their employers at a certain moment of the day, that is, to fully disconnect from their virtual availability for work[48]. Also, to safeguard this right, employers are explicitly required to take the necessary measures in order to enable their workers to disconnect, thus to exert their right, and are obliged to set up an *objective, reliable and accessible* scheme whereby the duration of daily working time can be measured for every worker, recognizing the worker's right to private life and to the protection of their personal data. The workers can require and obtain the records of their working time[49].

In brief, the stipulations of the new Directive offer enhanced protection by regulating the aspects related to the flexibility of teleworkers' working time, in keeping with the realities of the labour market which has become highly heterogeneous and is undergoing an intense process of digitalization, which entails significant structural changes which impact the traditional manner of working. The Directive on the right to disconnect aims to safeguard the health of teleworkers by guaranteeing rest periods (rest time, leisure time) thus reducing the risk of overworking and exploitation now faced by teleworkers.

Although until the legislative proposal of the European Parliament recommending the adoption of the Directive on the right to disconnect, there was no legislative document of the European Union containing explicit stipulations on the right to disconnect, some national legal systems did include the right to disconnect, in one way or another, in their respective legislations. For instance, in **France,** the Labour Code contains provisions which oblige employers to implement measures protecting the workers against the potential negative effects caused by constant connection to the digital tools[50]. In other legal systems, such as that of **Spain**, the general legal framework that guarantees rest periods for workers (in the context of measures ensuring confidentiality and the balance between their professional and the private life), is completed by special norms concerning the right to disconnect. The Organic Law 3/2018, issued on December 5, on Personal Data Protection, guarantees digital rights as a worker's right in accordance with its articles 88 (digital disconnection), 91 (collective bargaining), 13th final provision (Art. 20 bis ET for workers of private companies) and 14th final provision (Art. 14 j bis for workers of public companies)[51].

[47] Art. 2 in the draft directive.

[48] As shows the preamble to the draft directive (point 9), digital modes have created a culture whereby the worker is permanently connected, permanently online and always available. In this context it is important to safeguard the fundamental rights of the workers, equitable working conditions, including their right to fair compensation and remuneration, observance of their working hours, ensuring their health and safety as well as equal treatment of men and women.

[49] Art. 3, point 2 in the draft directive.

[50] Article L. 4121-1 of the French Labour Code.

[51] For further details, see Lerouge, Loïc; Trujillo Pons, Francisco, *op. cit.*, p. 454.

In countries such as **Germany, Malta, Sweden, Slovenia** as well as **Romania**, the right to disconnect is not yet addressed by the general legislation regulating the teleworking activity, but this right to disconnect can be enforced and put into practice through collective employment contracts for units or unit sectors[52].

3. Conclusions

The notion of telework is not a new concept in the sphere of individual employment relationships. It has long been integrated as an important instrument for the flexible organization of the working time, aiming to ensure the balance between the professional and the private life of the workers, but the plurality of juridical aspects, generated by the specific manner in which telework is organized, deserves special attention in the context of the changes undergone by today's society. The digital revolution brings about paradigm changes in the organization of work. As we have seen, the general norms regulating the safety and health of workers do not fully reflect the peculiar situations created by the teleworking programs. The risk of workers' private and professional life overlapping, as a result of the current practices whereby teleworkers tend to be exploited by working more hours than standard workers, is one of the greatest challenges that must be overcome. Such a challenge can only be controlled or kept in check by the legislator, by means of regulations on the duration of the working time, which meet the needs of the teleworkers entailed by the specific nature and organization of their digitalized work.

The insufficient regulation of telework at European level has left room for substantial differences in its juridical regime from one state to the next. This easily leads to abuse from the part of employers, concerning the amount of work required from teleworkers, and enhances the precarity and the risk that teleworkers be treated less favorably than standard workers, with respect to their working hours. The absence of a Directive on telework proves that this is an area where autonomy of domestic regulations prevails and the intervention of the European legislator is rather discreet.

I note that an important step in curbing abuse and exploitation of teleworkers with respect to their number of working hours, was taken by the European legislator by proposing a Directive on workers' right to disconnect, which will explicitly assert at European level the teleworkers' right not to be virtually available during their rest time. In this context, the future harmonization of the legislations of member states, in compliance with the general standards enforced by the future European Directive on the right to disconnect, will become essential in eliminating the disparities between regulations concerning teleworkers, still existing in various national legislations.

[52] For details on the right to disconnect, in a comparative law approach, see the Eurofound study (2020), *Telework and ICT-based mobile work: Flexible working in the digital age. New forms of employment series*, Publications Office of the European Union, Luxembourg, p. 50.

Bibliography

1. Adam, P., *L'individualisation du droit du travail, Librairie Générale de Droit et de Jurisprudence* Paris, 2005
2. Ales, E., Bell, M., Deinert, O., Robin-Olivier, S., *International and European Labour Law*, in *Internațional and European Business Law*, Nomos, 2018.
3. Aristova, Irina; Brusakova, Oksana; Koshikov, Denis and Kaplya, Oleksandr, *Developing information technology law and legislation: analysis of international experience and possibilities of its application in Ukraine*, „Ius Humani Revista de Derecho", Vol. 10 (II) (2021), pp. 117-128.
4. Chyzhevska, Lyudmyla, Voloschuk, Lidiia, Shatskova, Liubov and Sokolenko, Liudmyla, *Digitalization as a Vector of Information Systems Development and Accounting System Modernization*, „Studia Universitatis „Vasile Goldis" Arad – Economics Series", vol. 31, no. 4, 2021, pp.18-39. https://doi.org/10.2478/sues-2021-0017.
5. Dimitriu, R., *Dreptul muncii. Anxietăți ale prezentului,* Rentrop & Straton, Bucharest, 2016.
6. Eurofound, *Right to disconnect: Exploring company practices*, Publications Office of the European Union, Luxembourg, 2021.
7. Eurofound, *Telework and ICT-based mobile work: Flexible working in the digital age. New forms of employment series*, Publications Office of the European Union, Luxembourg, 2020.
8. Lerouge, Loïc., Trujillo Pons, Francisco, *Contribution to the study on the 'right to disconnect' from work. Are France and Spain examples for other countries and EU law?* in „European labour law journal", 2022, Vol.13 (3).
9. Marica, M.E., *Contracte de muncă atipice*, Universul Juridic Publishing House, Bucharest, 2019.
10. Pinkovetskaia, Iuliia, *Impact of Covid-19 pandemic on household income: results of a survey of the economically active population*, „Studia Universitatis „Vasile Goldis" Arad – Economics Series", vol. 32, no.1, 2022, pp.43-57. https://doi.org/10.2478/sues-2022-0003.
11. Popescu, A., *Dreptul internațional și european al muncii*, second edition, C.H. Beck Publishing House, Bucharest, 2008.
12. Preoteasa, Ana-Maria, *Munca precară, soluție pentru populația vulnerabilă din mediul rural rezultate dintr-o cercetare calitativă,* in „Calitatea Vieții", XXVI, no. 1, 2015.
13. Riesenhuber, Karl., *European Employment Law. A systematic exposition*, Intersentia Publishing House, 2021.
14. The legislative portal of the European Union: https://eur-lex.europa.eu.