

I. Precedents

In the year 2020, the emergence of the coronavirus pandemic (COVID-19) precipitated a series of changes within the domain of labor law, impacting various facets therein. In many cases, these alterations fundamentally modified the substance of the employment agreements previously established between parties. Pursuant to the objectives of pandemic containment and the alleviation of its repercussions, the prospect of remote work has assumed a cardinal significance within our legal framework governing labor relations.

With regard to the structure of a home office arrangement – which, incidentally, does not exist as a separate legal construction in our current legal framework – it must be affirmed that the general provisions of Act I of 2012 on the Labor Code (hereinafter: "Labor Code") provide the opportunity (and have provided it even prior to the public health emergency) for parties to stipulate in the employment contract another place, separated from the usual place of work, where the employee is obliged to perform their duties. This place may include the employee's residence, subject to the general legal provisions. Furthermore, the employer may unilaterally order remote work temporarily, based on the rules different from those stipulated in the employment contract.¹

In accordance with the provisions of the European Framework Agreement on Telework concluded on July 16, 2002, the regulations concerning telework, regulated in Hungarian labor law since 2004, were contained within Sections 196 and 197 of the Labor Code.² The concept of telework in the Labor Code prior to the pandemic was defined as follows: "*teleworking*' shall mean activities performed on a regular basis at a place other than the employer's facilities, using computing equipment, where the end product is delivered by way of electronic means."³ It is evident that home office and telework are not synonymous terms, although they are often used interchangeably in common speech. Undoubtedly, a location separated from the employer's premises could include the employee's home. Notwithstanding this, other work locations could also be designated in the employment contract. An essential conceptual element was also the use of information technology

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¹ Act I of 2012 on the Labor Code, 53. §

² Bankó, Zoltán: A távmunka és az úgynevezett „home office” munkavégzés szabályozásának helyzete Magyarországon. In: Pál Lajos – Petrovics Zoltán: Visegrád 17.0. A Magyar Munkajogi Konferencia szerkesztett előadásai. Wolters Kluwer Hungary, Budapest 2020. p. 71.; Bankó, Zoltán – Békési, Gábor: A távmunkára létrejött munkajogviszony és a lekapcsolódáshoz való jog a magyar munkajogban. In Auer Á. – Bankó Z. – Békési G. – Berke Gy. – Hazafi Z. – Ludányi D. (szerk.): Ünnepi kötet Kiss György 70. születésnapjára. Clara pacta, boni amici. Budapest, 2023, Wolters Kluwer, 42 – 50.

³ Act I of 2012 on the Labor Code, 196. § (1) [in force: 2012.07.01. – 2022.05.31.].

tools for work. Essentially, this meant that this atypical construct could only be applied in certain segments of the market (e.g., office workers, graphic designers, etc.).

Due to the spread of the global pandemic, there was a widespread demand to expand the possibility of remote work. Consequently, legislative measures were enacted in connection with the containment of the pandemic and the mitigation of its consequences, focusing on the regulations governing remote work and telework. During the initial phase of the pandemic, provisions were also established by regulation to facilitate remote work. According to emergency legislation, "*the Labor Code shall be applied, with the deviation that [...] the employer may unilaterally order remote work and telework for the employee for a period of thirty days following the cessation of the state of emergency.*"⁴ In the absence of further regulation, numerous questions arose regarding the details of provisions, particularly concerning the employer's supervisory obligations, recording of working hours, and the provision of work equipment and conditions. It is noteworthy that, based on the legislation, parties could deviate from the provisions of the Labor Code in any direction as a general rule, thus allowing for the determination of rights and obligations pertaining to both home office and telework.⁵ Although the legislator acknowledged concerns related to the relevant emergency provisions, and despite expectations for statutory regulation of the institution(s), the re-declaration of the state of emergency⁶ prompted a renewed attempt to regulate this matter through emergency legislation.

During the state of emergency, the Government, through its Decree No. 487/2020 (XI. 11.) (hereinafter: "Decree"), allowed for deviations from the regulations concerning telework as stipulated in the Labor Code, and in connection with this, it also made provisions regarding the differing regulations related to occupational safety as specified in Act XCIII of 1993 on Labor Safety (hereinafter: "Act on Labor Safety") and Act CXVII of 1995 on Personal Income Tax (hereinafter: "PIT Act").⁷ According to the Decree, in force prior to July 3, 2021, "*during the state of emergency, the employee and the employer may deviate from Section 196 of Act I of 2012 on the Labor Code by mutual agreement.*"⁸ Accordingly, the parties could, by separate agreement, adopt a specific solution until the cessation of the Decree's validity without modifying the employment contract. Departing from the definition in Section 196 (1) of the Labor Code, they could also deviate from the provision stipulating that telework regulations apply only to work performed using information technology tools, thereby undoubtedly broadening the scope of applicability.

The amendment of the Decree, effective as of June 3, 2021, brought several changes regarding the legal institution in question.⁹ While certain expanded provisions were specified, the scope of telework further narrowed.¹⁰ Pursuant to the new

⁴ Government Decree 47/2020 (III. 18.) 6. § (2) [in force: 2020.03.19. – 2020.06.17.].

⁵ Government Decree 47/2020. (III. 18.) 6. § (4) [in force: 2020.03.19. – 2020.06.17.].

⁶ Government Decree 478/2020 (XI. 3.) [in force: 2020.11.04. – 2021.02.07.].

⁷ Government Decree 487/2020. (XI. 11.) 1-2. § [in force: 2020.11.12. – 2021.07.02.].

⁸ Government Decree 487/2020. (XI. 11.) 3. § [in force: 2020.11.12. – 2021.07.02.].

⁹ Government Decree 393/2021. (VII. 2.).

¹⁰ Considering that the Government Decree 47/2020 (III. 18.) enabled unrestricted free agreement, and the previous text of Government Decree 478/2020 (XI. 11.) allowed deviation from the regulations of the Labor Code regarding telework.

regulations,¹¹ teleworking means where the employee works at a place other than the employer's facilities in some or all of the working time. Essentially, the institutionalization of a "hybrid" home office occurred (where the employee performs work only partially at their workplace), while the boundary between home office and telework continued to be determinable solely through the general provisions of the Labor Code. Despite the increased specificity compared to the previous emergency regulations (which allowed for settlement through mutual agreement), the rules remained significantly expanded from the original provisions of the Labor Code. This is primarily evident in the fact that the arrangement could be applied not only to individuals working with information technology tools but essentially to any employees performing activities by their nature. There has been no change in the requirement for such type of work to be agreed upon in the employment contract. Bearing in mind the principle of dispositivity, the legislation contained various detailed provisions:

- a) the employer's right to give instructions covers the definition of duties to be discharged by the employee,
- b) the employer shall exercise the right of supervision remotely, via computing equipment,
- c) the employee performs work in the employer's facilities in not more than one-third of all working days in a given year, and
- d) the employer shall provide access to the employee for entering its premises and to communicate with other employees.

Although the agreement between the parties remained paramount, the legislator has defined criteria that have made the legal institution more delineated. Put differently: if the parties have only agreed on the fact of telework, the provisions of the Decree must be applied to all other matters. The provision regarding the right to issue instructions aligned with the original rule of the Labor Code, while the specific determination of the supervisory right narrowed the employer's possibilities to the online sphere. In cases where the employer exercised the right of supervision at the location of telework, such supervision could not impose disproportionate burdens on the employee or any other person using the property serving as the place of telework. Regarding the obligation to provide information related to telework, the Decree stipulated that the employer was obliged to provide the teleworking employee with all information provided to other employees (omitting the employer's specific obligation regarding telework). The amendment, in line with the new construct, also brought changes regarding the application of the provisions of the Act on Labor Safety and the PIT Act concerning telework.

In December 2021, the National Assembly adopted Act CXXX of 2021 concerning certain regulatory issues related to the state of emergency, which entered into force on January 1, 2022, with certain provisions of the law becoming effective upon the termination of the state of emergency.¹² This meant the following: legislation was enacted regarding the possibility of remote work (the law continued to use the term

¹¹ Government Decree 478/2020 (XI. 11.) [in force: 2021.07.03. – 2022.05.31.].

¹² Act CXXX of 2021 104. §

"telework"), but the provisions concerning this – amendments to the Labor Code, Act on Labor Safety, and the PIT Act – only came into effect on June 1, 2022, upon the cessation of the state of emergency.¹³ Put differently: during the state of emergency – in the absence of divergent legal provisions – the provisions of the Decree were still to be applied. Considering that as a result of the legislative amendment, the laws regulating teleworking (Labor Code, Act on Labor Safety, PIT Act) essentially incorporated the provisions of the Decree,¹⁴ the reiterating of statements regarding the regulations is not warranted.

II. Assessment

The labor law regulations introduced in the spring of 2020 (essentially rendering the Labor Code dispositive) perfectly illustrated the following duality: despite the legislative intent to reflect the extraordinary situation at the time, the unpredictability of the pandemic situation, coupled with the almost complete absence of regulatory precedents for modifying various legal institutions, led to a unique situation that, from certain perspectives, would not have been sustainable even in the short term. Partly justified by this, at the onset of the so-called "second wave" of the pandemic, potential inconsistencies from the earlier period of epidemic-related legislative interventions seemed to have been addressed. The legislation recognized that beyond regulating rules related to telework – excluding certain ancillary or necessary supplements – excessive intervention in the realm of work was not necessarily justified. Regarding telework, the regulations introduced by Government Decree No. 478/2020 (XI. 11.), as well as subsequent amendments, and the provisions of the Labor Code effective from June 1, 2022, perfectly reflect the aforementioned trend. At the onset of the pandemic, we transitioned from the unilateral expansion of employer's power to a focus on compromise solutions between the parties, leading to a consistent, long-term applicable substance of the legal institution. Naturally, understanding this process and the underlying perspectives of the amendments necessarily entails summarizing the experiences derived from the previous regulations. Following the legislative amendments effective from June 1, 2022, the norms regulating the legal institution (Labor Code, Act on Labor Safety, PIT Act) essentially incorporated the provisions of the Decree. The rationale of the legislative proposal reveals that the legislator considered the emergency regulations concerning teleworking successful, thus intending to depart from the previous, less flexible telework rules after the termination of the state of emergency, essentially elevating the crystallized regulations during the emergency to the force of law.¹⁵

Of course, the issue of telework was brought to the agenda not only in Hungary but also in most European countries during the early stages of the pandemic. In

¹³ Government Decree 181/2022. (V. 24.) [in force: 2022.06.01. – 2022.10.22.]

¹⁴ "The proposal establishes the necessary rules for phasing out Government Decree 487/2020 on the application of rules related to telework during the state of emergency. The amendment involves the transfer of the practices established during the state of emergency regarding telework into the normal legal framework." Cf.: Justification for Bill No. T/17671.

¹⁵ Justification for Bill No. T/17671

summary, it is worth mentioning that in most European countries, telework was possible based on general rules (e.g., Germany, Czech Republic), with existing legal regulations being "adjusted" as needed to the severity of the pandemic situation (e.g., Italy). In line with this, some countries – considering the severity of the pandemic situation and the nature of the job positions – temporarily mandated telework (e.g., Slovakia, Austria).