

BORS SZILVIA

Bors Szilvia: The Effect of COVID-19 Pandemic in Labour Law with Regards to the Regulation of Home Office^[1]

I. INTRODUCTION

States introduce the application of special legal order when they are not able to guarantee the full ensurance of human rights due to political, economic events or events of natural origin.^[2] The Fundamental Law of Hungary allows the introduction of special legal order in six cases such as: state of national crisis, state of danger, state of preventive defence, unexpected attack, terrorist threat and state of emergency. As per paragraph 1 of Article 53 of the Fundamental Law of Hungary, the government can declare a state of emergency in the event of armed actions aimed at subverting the lawful order or at the acquisition of exclusive control of power, or in the event of grave acts of violence committed with the use of arms or alternative means capable of endangering life and property on a massive scale.

The fundamental law definition of state of emergency is set by Section 44 of Act CXXVIII of 2011 on Disaster Management and the modification of certain related acts as such a situation which is caused by a given event, such as per point ca) a human pandemic, risk of epidemic or animal plague causing massive disease.^[3]

The Government can introduce special measures, so based on Para 2 Section 49 of this Act it can limit citizens' presence in the streets or any other public places. As per Para 2 Section 51/A, in order to prevent a human pandemic causing massive disease threatening the safety of life or property, as well as to avert its consequences, the application of certain acts can be suspended, derogations from acts are possible and other special measures can be taken by the Government.

In accordance with this, in point b) of Para 2 Section 6 of Government decree no. 47/2020. (III. 18.), as well as in point b) of Para 2 Section 56 of Act LVIII of 2020 on the transitional rules related to the termination of the state of danger and on the epidemiological preparedness, the Gov-

[1] The study was made in frames of the program entitled „Programs aiming at improving the standards of legal studies”, financed by the Ministry of Justice.

[2] Lamm, 2020, 95.

[3] Jakab - Till, 2020, 1051.

ernment expressed instant measures on the lessening of the coronavirus' effect on the national economics according to which employers can unilaterally decide on the application of home office or remote working for employees.

Para 3 Section 45 of Act 1 of 2012 on the Labour Code (furthermore referred to as LC) states that the workplace of the employee shall be defined in the employment contract. Failing this, the place where the work is normally carried out shall be considered the workplace. Based on Section 16 of the Labour Code, the employer can unilaterally undertake that the determination of where the work is carried out is set by the employee. Point (1) of Section 53 of the Labour Code makes it possible for the employer to temporarily reassign their employees to workplaces other than what is contained in the employment contracts – though this may not exceed a total of forty-four working days or three hundred and fifty-two scheduled hours during a calendar year. The Labour Code marks the typical case of home office when determining regulated remote working in Sections 196-197 and outworkers in Sections 188-200.

II. SPECIAL MEASURES

Certain European constitutions put emphasis on the rules of procedure when introducing special rule of law and lower regulations set what kind of measures can be introduced in such periods.^[4] The aim of the measures is the averting of the state of emergency for which fundamental rights can also be limited both with regards to citizen and political rights, as well as economic, social and cultural rights.^[5] The latter one also includes the right to work, the right to rest and the right to health.

The restriction is based on the principles of necessity and proportionality. States can order the necessary restrictive measures to the extent the given situation requires it.^[6] Pandemics are considered to be such situations that threaten the life of nations and can make it necessary to limit certain rights.

The Siracusa Principles^[7] state that restrictions on human rights must meet the standards of legality, evidence-based necessity, proportionality and gradualism. In the case of a pandemic restrictions have to be proportional with the aim, that is, the prevention of the spread of the illness. They also have to be necessary, that is, they have to meet the public needs. They have to be legal, that is, they must not be arbitrary or discriminative. Gradual, they have to start with the introduction of smaller-scale, justified restriction.

[4] Csink, 2017, 12.

[5] Farkas, 2017, 27.

[6] Lamm, 2020, 100.

[7] Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights American Association for the International Commission of Jurists, point 68.

Based on Government decree no. 47/2020. (III. 18.) and Act LVIII of 2020, the Government allowed employers to unilaterally determine the place of work. As a rule, the place of work is not a mandatory part of the labour contract, however, if it is missing, the law establishes a legal presumption. Therefore, based on the mutual agreement of the parties, the place of work is set in the labour contract. The modification of the content of the labour relation can happen in various ways. Regardless of the will of the parties, for instance the amount of the remuneration changes in case of employees employed on minimum wage due to the increase in the amount of minimum wage, or the degree of working hours changes in case of an employee dealing with imaging diagnostics with regards to the legal change in the daily working hours. Furthermore, the content of the labour relation can also be established based on the one-sided will of one of the parties, for instance if based on Section 53 of the Labour Code, the employer would like to employ the employee with derogation from the employment contract, or, based on Para 3 Section 61 of the Labour Code, employers shall amend the employment contract based on employees' proposition to work in part-time, covering half of the daily working time until their child reaches the age of three. Furthermore, the content of the labour relation can also be modified based on the mutual agreement of the parties based on Section 58 of the Labour Code.

With the above-mentioned two legal regulations, the Government put the temporary determination of the place of work into the discretion of the employer, however, it did not form any other detailed rules, system of conditions or legal consequences besides the authorization. The legal institution is not defined and regulated and the regulations in effect have not been modified either with regard to the place of work which can be modified unilaterally.

III. THE HOME OFFICE REGULATION OF PREVIOUS AND CURRENT MEMBER STATES OF THE EUROPEAN UNION

In Hungary, among the European Network of Legal Advisers^[8] consultant judges of European law judging in the field of labour law turned to the courts of several European states in 2021 with regards to along what factual elements and conditions employers apply the legal institution of working from home, whether the legal institution has been legally regulated, if yes, what legal modifications have been made due to the COVID-19 pandemic.

The Finnish labour law^[9] does not know the concept of working from home and did not introduce it during the pandemic either, however, they apply sever-

[8] Order No. 9/2016 (X. 17) of the National Office for the Judiciary and Order No. 8/2017. (VII. 13.) on the consultant secretary of European law.

[9] Act 55/2001 on labour contracts.

al forms of working from home in practice. Its conditions are set in agreements entered into by various corporations. The agreement includes the cases of working from home, as well as the recording of timesheets, employees' reporting obligations, employers' inspection obligations, aspects of the protection of work and data, methods of communication, reimbursement and the obligation to separate work and private life. Due to the pandemic, the government has only formed recommendations for employers to allow employees working from home. However, for the application of home office, the consent of employees is also necessary besides the voluntary authorization of employers.

The Croatian labour law^[10] does not regulate the occasional working from home. With regards to the pandemic, the government also called upon employers to organize working from home after agreeing on it with the employees or based on unilateral employer measures according to the Croatian labour law, according to which the place of work is the address of the employee. Employers set the rules for working from home in a unilateral order.

The Czech labour law^[11] is familiar with the employment deferring from the employers' headquarters or premises, so no legal changes have been made with regards to the world pandemic of COVID-19. Based on the legal regulations, parties can decide upon working from home and can modify it along conditions set in law. Working from home cannot be ordered unilaterally by the employer, employees' consent is always necessary for it.

In the Slovakian labour law,^[12] the legal institution of home office appeared as a non-standard legal relation before the world pandemic of COVID-19 and is being currently regulated as well. The determination of the place of work – working from home – or in another place than what is stated in the employment contract is based on the mutual agreement of the parties, is of temporary nature and can be applied if the nature of the work allows it. The legislation has been modified due to the pandemics, so the employer is obliged to make working from home possible upon the request or the consent of the employee if the nature of the work allows it. Employers are checked by the state, so they can request various documents, carry out field inspection and can even impose a fine on the employer.

The Dutch labour law^[13] is not familiar with this legal institution and neither did the lawmaker introduce new regulations in connection with the world pandemic of COVID-19. It is the employer who determines whether employees are allowed to work from home. Employees can request working from home which has to be considered by the employer.

The Italian labour law is familiar with the rules of remote working and with regards to the state of emergency, the government made it possible for employers to apply it in labour relations.

[10] Zakon o Radu.

[11] Section 317 of Act 262/2006 of the labour law.

[12] Point b) of Para 1 Section 43 and Section 52 of Tt.311/2001 on labour law.

[13] Arbeitswet 2000 BES.

The Luxembourgish does not regulate remote working by law, but by collective agreements of general effect on a national level. During the times of restrictions because of the pandemic employers can unilaterally decide on the ordering of working from home due to the force majeure situation, so employees can work from home not only on a regular basis but on ad hoc occasions as well. The government introduced a recommendation regarding the application of home office with that certain positions are excluded from this circle. The place and time of work are mandatory parts of the regulation, together with the hours and days when employees have to be available and the degree and amount of benefits in kind.

In the Austrian labour law, parties have to set the place of work in the labour contract, failing this, the place of work is the place where the work is normally carried out. Due to the state of emergency, it has been regulated in law that in order to stop the spread of the virus, wherever it is possible, employees have to work from home, however – having regard to that it can also be employees' property – parties have to agree in the labour contract or the company agreement. This means that neither the employer nor the employee can unilaterally determine working from home. Employers have the right to employ the employee in a place of work other than what is stated in the employment contract, however, it does not provide the unilateral order of working from home. The reason for this is that the different employment can happen in a place which is within the control area of the employer, while in the case of working from home, having regard to the home of the employee, it is not possible.

In the case of German labour law, remote working consists of exclusive, alternating and mobile forms of employment. The difference between the three forms is based on the time that the employee spends at his workplace and outside of it. Among these home office belongs to the first two categories, as in these cases employees continually carry out their work in their homes. Its significant factual element is the work carried out with IT tools. Parties can agree on working from home, its conditions can be set in the agreement or in a company agreement. Employers are not allowed to apply the institution of home office unilaterally. In order to put this into practice - for reasons of legal certainty -, it shall be put into written form, however, in practice it is often missing, so it is also valid with implied behaviour as well. Due to the COVID-19 pandemic, in the case of office workers or related positions employers are obliged to propose working from home, while in other cases it is based on the discretion of the employer.

In the labour law of the United Kingdom, the legal institution of home office cannot be found. Having regard to the pandemics the government became entitled to order employees to stay at home or close down workplaces. In this case in order to protect employees the work primarily had to be carried out from home. An exception was the work for those employees whose position contained carrying out essential tasks and tasks requiring personal presence.

Besides the above mentioned, international researches were also done in the given topic^[14] which concerned Bulgaria, the Netherlands, Estonia, Germany, Hungary, Italy and Poland. Now I am going to present the regulation of working from home regarding countries I have not been describing in this study so far.

The Bulgarian labour law is familiar with the institution of home office both with regards to individual labour contracts and collective contracts. However, the regulation of individual contracts only covers whether employees should carry out their tasks at home or in another chosen place. Such employees have the same individual and collective rights as employees working from the premise of the employer. Due to the COVID-19 pandemic, the government accepted further regulations, including those regarding the right to information and consultation of employees, as well as the participation of employees. Company level collective agreements contain that remote work can only be carried out up to 5 days per month, the place of work can be modified if it is voluntary and initiated by the employee. Its regulations have not been modified as the result of the pandemic.

In Estonia, working from home is not regulated by law, and it is generally not applied in practice, either. Due to the pandemic and the „necessary” remote work, negotiations have started which primarily focus on health and safety as well as on inspection and data protection, however, no actual regulations have been accepted.

The Polish labour law has been regulating the legal institution of remote work since 2007 as a new and flexible form of work. As a result of the pandemic, the institution of home office has been introduced in an ad hoc nature and with the aim of health protection. As per the regulation, employees have the right to instruct employees to carry out their work in a place other than the place of work for a set period of time. As for this legal institution, employees consent is not necessary to work from home. Employers inspect whether it can be ordered and whether the nature of the given job allows it or not. Employers can oblige employees to make a record of the activities carried out and also has the right to monitor it.

Based on the above, we can conclude that working from home has significantly increased – though in various degrees – in all member states compared to the times before the pandemic. Certain member states found it significant to regulate the legal institution in law, as well as to supplement it with smaller rules. In most cases, the employer can decide whether his employees can carry out their work from home, however, the consent of the employee is also necessary for the full application of the legal institution. The frames of working from home are set based on the regulations applied for remote working, or, in another example, it is connected to the employer’s right to employ other than what is stated in the employment contract. However, the consent of employees is also necessary in this case as well. States have formed recommendations in several cases, while in other cases employers were obliged to apply the rules of working from home, which execution – for instance in Slovakia – is being monitored. The way of keeping in

[14] IRel: National Reports, 2021.

contact, the arrangement of working time, evaluation of performance and the degree of reimbursement have been especially highlighted. Among the factual elements of working from home, every member state declares that its application is ad hoc in nature, it is influenced by the nature of the position in question and that the place of work is separate from the premises of the employer.

However, when inspecting member states' practice, the European Union has also noticed that the lack of definition for the time for employees' availability has arisen as a problem, so employee's time for availability and their right to private and family life has to be completely and clearly divided. Therefore, the European Union is planning to regulate the so-called right to disconnect.^[15] Having regard to points b) and i) of paragraph 1 of Article 153 of The Treaty on the Functioning of the European Union, Articles 20, 21, 23 and 31 of Charter of Fundamental Rights of the European Union and principles no. 5, 7, 9 and 10 of The European Pillar of Social Rights, as well as Article 24 of the Universal Declaration of Human Rights. The mentioned legislations express the obligation of the establishment of safe work environment and the right to rest and freetime, in connection with which the European Union wishes to form the practice of employees' right to disconnect. The right to disconnect is such a right when the employee is not obliged to spend his time with carrying out his job. The aim of the European Union is that with this measure the establishment of the balance between work and private life can be made easier. The planned objective wishes to determine minimum requirements, such as employers need to form a reliable and accessible system, where the daily working hours of employees can be measured.

IV. THE LEGAL INSTITUTION OF WORKING FROM HOME IN HUNGARY

The Labour Code makes working from home possible in the case of remote working and outworkers. As for the methods of carrying out the work, the Labour Code mentions two instances when it is possible for the employer to unilaterally determine the following: derogation from the employment contract with regards to the place of work and authorization of determining the place of work by the employee in frames of unilateral commitment of the employer.

Remote working as a way of organizing work done in a non-standard legal relation:^[16] the law requires regularity, more precisely that the employee carries out his work with an IT equipment and its result is transferred electronically. Employers shall have a special obligation to inform employees with regards to inspection, therefore, employees have to be informed on the method of inspection and on the time when the inspection on the place of work is announced. On top of this, the limitation of the usage of the computing equipment also has to be

[15] European Parliament: Resolution of 21 January 2021.

[16] Bankó, 2018, 36.

told to the employee and the related organizational unit has to be appointed as well. As a main rule, the commencement of the inspection only covers the tasks to be carried out by the employee and the work schedule of employees is flexible.

In the employment relation of outworkers remuneration is determined in the form of piece rate on the basis of the work done. Parties mutually determine the work that can be done individually^[17] in the employment contract together with the place of work and the method and degree of remuneration. The employers' obligation to reimburse costs refers to costs or lump sum actually arising during the employment. The place of work can be either the home of the employee or another place mutually agreed by the employee and the employer. Employers' right of instruction is limited solely to the technique to be applied and the method of working. As a main rule, employees carry out the task with their own equipment and their working schedule is flexible. The employer informs the employee on the method of inspection and on the time when the inspection on the place of work is announced.

In the case of unilateral commitment, the employer can demand the completion of the undertaken obligation, regardless of the employees' acceptance or the normality of the information stated to him.^[18] A commitment may be amended to the beneficiary's detriment, or may be terminated effective immediately in the event of subsequent major changes in the circumstances of the person making the commitment, whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship.

In the case of employment in workplaces, other than what is contained in the employment contracts, the legislation appoints a period of transition (forty-four working days or three hundred and fifty-two scheduled hours during a calendar year).^[19] Besides the general obligation to provide information, employers are also obliged to provide information on the expected period of the derogation from the employment contract. The legislation provides an exclusion if the work should be carried out in another place, namely that the consent of the employee is necessary when the employee belongs to a vulnerable group of workers.

Employees cannot be ordered to carry out their work remotely or as outworkers, parties have to agree in it in all cases. The unilateral commitment is not an order but it is a further discount for the employee, however, taking the circumstances into account, this discount can be revoked. Temporarily reassigning employees to workplaces other than what is contained in the employment contract is possible, however, it is not without conditions as its duration is regulated by law.

[17] Jakab, 2016, 220.

[18] Halmos - Petrovics, 2014, 66.

[19] Kiss, 2020, 260.

V. SPECIAL MEASURES TAKEN DUE TO THE COVID-19 PANDEMIC REGARDING WORKING FROM HOME

Legislative regulations of the legal institution of employers' right regarding the ordering of working from home cannot be found in the Hungarian Labour Code,^[20] however, in practice, the Hungarian labour law differentiates between remote working and "home office".^[21] The legal institution has appeared as a resort, however, due to its several ways of application the determination of its definition, the appointing of its factual elements that is the substantive law regulation essential. Via examining the aim and degree of its necessity and proportionality of this special measure, and with comparing it to the above mentioned legal institutions, we can provide the system of conditions for this legal institution as well.

With regards to the COVID-19 pandemic, the aim of the special measures is the protection of public health. The possibility of ordering working from home is a necessary measure from public health point of view. With this measure, employers are able to modify one content element of the labour relation unilaterally, and with this, employees' not independent basic right of the freedom of entering into contracts, connecting to the basic human right is being limited.^[22] The freedom to contract can be limited, as the Constitutional Court has pointed out in several of its decisions. The freedom to contract as an independent constitutional right,^[23] on one part is being derived by the Constitutional Court from the market economy, on the other part, from the right to human dignity as the expression form of the general freedom to act and not a constitutional right.^[24] In the current practice of the Constitutional Court, the right to contract is considered an important element of human dignity, but it is not essential, still it is considered as an independent constitutional right.^[25] The right to contract can be limited based on paragraph 3 of Article I of the Fundamental Law of Hungary: a fundamental right may only be restricted in order to enforce another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, and proportionate to the objective pursued and respecting the essential content of the relevant fundamental right.

With regards to employment relations, the right to contract is basically the freedom of will to enter into a contract and the freedom of formation regarding the content of the contract in frames of the legal regulations.^[26] Therefore, the essential element of possibility of limitations is whether the necessity to protect another fundamental right or constitutional right exists. In the present case,

[20] Kun - Rácz - Szabó: National report on Hungary, 8.

[21] Kun: New Employment Forms and Challenges to Industrial Relations: Country Report, 2020, 8.

[22] Parallel opinion of constitutional judge László Salamon in Paragraph 128 of No. 8/2014. (III. 20.) Constitutional Court decision.

[23] 13/1990. (VI. 18.) Constitutional Court decision, 29/1993. (V. 6.) Constitutional Court decision.

[24] 24/1996. (VI. 25.) Constitutional Court decision.

[25] 7/2006. (II. 22.) Constitutional Court decision.

[26] Török, 2014.

Article XVII of the Fundamental Law of Hungary – every employee shall have the right to working conditions that respect his or her health, safety and dignity – contains such a state objective of social nature, which is regarded as constitutional right being under the protection of the Fundamental Law.^[27]

VI. STANDPOINTS OF SPECIAL LITERATURE

According to the justification of László Ancsin, the legal institution of remote working and working from home is not the same, however, based on legislations in effect, it is the institution of remote working which ensures that work does not stop in the case of state of emergency. As far as he is concerned, working from home is unplanned and required temporary and quick measures. Due to the deficient infrastructure and data protection, as well as the continuous communication, parties have to make more compromises. Carrying out the work can be done from anywhere and there is no difference in regulations referring to the responsibility of occupational safety with regards to the place of work. It also covered that the right to inspection of the employer is limited due to the obligation of prior notification.^[28]

According to Zoltán Bankó, remote working and working from home are both ways of organizing work. The delimitation of the two legal institutions is complicated due to the several types of work belonging here. I agree with him in that for employees, due to the phenomenon of home office, the employer allows to carry out their work outside of what is stated in the employment contract and where generally the work is carried out on an exceptional and temporary basis,^[29] which is generally employees' home or another place besides the employer's operational unit based on parties' mutual agreement. Further delimitation of the two legal institutions could be done based on the equipment being used, the duration, the difference between the created goods, as well as the creative nature of the task.^[30]

As per the understanding of Gyula Berke, the Labour Code provides flexible possibilities of employment, such as working from home. At the moments employers are not obliged to order working from home – for an indefinite period of time. However, employers are obliged to ensure the general obligations of employment, such as ensuring occupational safety and health, however, in several cases it's basically impossible and cannot be expected from them.^[31] The application of working from home nowadays can not necessarily happen based on the mutual

[27] 8/2014. (III. 20.) Constitutional Court decision.

[28] Ancsin, 2020, 11.

[29] Bankó, 2020, 70.

[30] Bankó, 2010, 220.

[31] Berke, 2020, 34.

agreement of parties, employers can also oblige their employees to that. However, in such cases the appointment of the place of work does not become final.

When determining the substantive law of the legal institution of working from home, István Herdon and Henrietta Rab started out from the differentiation and analysis of postings, commitments and agreements.^[32] According to them, due to their temporary nature, postings are the ones which are the most suitable when talking about the realization of working from home. In case of exceeding the period set in legislation as well as its regularity parties can enter into a contract on remote working. This undertaking resembles the legal institution of working from home as the employee can choose the place of work. Based on the agreement, parties can decide on working from home in the labour contract but it does not reflect its ad hoc nature.

Based on the rules of remote working, István Horváth and Krisztina Szladovnyik believe that it is possible to determine the rules of working from home.^[33] They believe that the most important rules of working from home have been formed by legal practice. A significant difference is that parties agree on remote working, also determining the place of work. Remote working is characterized by regularity.^[34] Derogation from the employment contract is not applicable here as employers cannot oblige employees to carry out their work in their home.^[35]

With regards to the difference between remote working and home office, Zsolt Marencsák expressed that in the case of home office employers one-sided declaration of intention, permit is enough instead of the labour contract, furthermore, employers do not have neither the right nor the obligation to establish and ensure the safe work environment, also, the institution of checks by labour authorities cannot be realized with regards to this legal institution and during the inspection of employers' liability, their possibility for exemption is wider, due to that the event is out of their control.^[36]

As far as Bence Molnár is concerned, choosing the place of completion cannot be transferred to the employee, as if parties agreed in that, alteration is only possible with a contractual declaration,^[37] furthermore, based on the legislative authorization due to the state of emergency because of the pandemic, the unilateral order of employers with regards to working from home is possible that is, it is not possible if there is no special rule of law.^[38]

Lajos Pál differentiates the workplace stated in the contract (which is also the place where the employee has to be available) from the place where the work is actually carried out – that is, the place of completion. As far as he is concerned, the legal institutions of remote working, working from home and outworking as-

[32] Herdon – Rab, 2020, 1-20.

[33] Horváth – Szladovnyik, 2020a.

[34] Horváth – Szladovnyik, 2020b.

[35] Horváth – Szladovnyik, 2020c.

[36] Marencsák, 2020, 117.

[37] Molnár, 2020.

[38] Molnár, 2020, 46.

sist to the determination of the factual elements of working from home. Working from home is such an umbrella term in which frames the electronic transfer of the job is not a condition, it is not regular and lacking special regulation, general labour rules have to be applied.^[39]

Several researchers consider the legal institution of remote working and working from home to be the same,^[40] who believe that remote working that is working from home as a virtual presence is the safest method of working, having regard to the COVID-19 pandemic.^[41]

Based on all this, I agree with the majority standpoint, which is that working from home should be differentiated from the legal institution of remote working. In order to determine the factual elements of working from home, we have to make a delimitation with regards to outworking, unilateral commitment and derogation from the employment contract.

VII. FACTUAL ELEMENTS OF WORKING FROM HOME

Upon analysing the elements of the legal institution of working from home, we can conclude that parties do not enter into the employment contract for this activity. Its usage cannot be determined or planned in advance. Its necessity is ad hoc, its justification – at the moment – is public health. Its definite period cannot be determined either, at present it is adjusted to the period of the state of emergency. Its regularity cannot be determined as this way of organizing work appears as a resort. Among its conditions, we find the actual tasks to be carried out in the given position.

Legal institution	Remote working	Outwork	Unilateral commitment	Employment in workplaces other than what is contained in the employment contracts	Working from home
Parties' will	mutual	mutual	employer	employer	employer?
Legislative factors influencing parties' will	none	none	Regardless of the employer	In case of vulnerable employees: consent	none?

Table I: Comparison of legal institutions - subjects (edited by the Author)

[39] Pál, 2018, 56., 59.

[40] Fodor, 2020.

[41] Poór - Dajnoki - Pató - Szabó, 2021, 66.

Legal institution	Remote working	Outwork	Unilateral commitment	Employment in workplaces other than what is contained in the employment contracts	Working from home
Modification	mutual	mutual	at the expense of the beneficiary	employer	employer?
Effect on employees	neutral	neutral	disadvantage	disadvantage	disadvantage?

Table 2: Comparison of legal institutions - objects (edited by the Author)

Based on the analysis of the legal institutions, we can determine that working from home can be ordered with the unilateral will of the employer. I also believe that it is also possible that parties mutually agree in it. At the moment, the will of the employer is not limited from the side of employees. Neither employees belonging to a vulnerable group, nor the personal circumstances or will of employees cause legal effect. However, I think that the entitlement of employers is not unlimited because as per Para 3 Section 6 also contains the prohibition of harm among the general rules of behaviour.

After ordering working from home, the employer is entitled to modify it unilaterally, hence determine its period and demand the work to be carried out what is set in the employment contract. I think that parties can also modify the place of work in this instance as well. Generally, ordering working from home is a change that happens to the advantage of employees. However, this statement is not always true, as there are certain employees who cannot carry out their work at home due to material circumstances, or they can only carry it out at the cost of great difficulty. Having regard to that, it cannot be obviously determined whether ordering working from home is advantageous or disadvantageous for the given employee.

Legal institution	Remote working	Outwork	Unilateral commitment	Employment in workplaces other than what is contained in the employment contracts	Working from home
Appearance	Employment contract (written form)	Employment contract (written form)	Unilateral measure of the employer (written or oral form)	Unilateral measure of the employer (written or oral form)	Unilateral measure of the employer (written form)?
Mandatory element	Place of work	activity, place of work, reimbursement	obligation	Place of work	Place of work?
Advised element	Method of communication, reimbursement, providing work equipment	-	Appointing the place of work	reimbursement	Method of communication, reimbursement, providing work equipment?
Work-related tasks	Naming the position, carrying it out and transferring it with the possible IT equipment	can be evaluated with the naming of exact activities, with piece rate	the nature of certain tasks makes it possible	the nature of all tasks makes it possible	the nature of certain tasks makes it possible, it does not disturb the intended use of homes
Type of work	More gradually independent	independent	-	Not independent	More gradually independent?
Place of work	a separate place from the employer's establishments	The habitation of the employee or another place in which the parties agreed on (at the employer)	a separate place from the employer's establishments	a separate place from the employer's establishments	The habitation of the employee or another place in which the parties agreed on (at the employer)?
Duration	regular	regular	regular	regular	regular?

Table 3: Comparison of legal institutions - content (edited by the Author)

Working from home can be ordered by the employer with a unilateral measure. Employers usually commit their instructions to writing, however, as far as I am concerned, it can also be ordered in speech, as Section 22 of the Labour Code does not prescribe any formal constraints. It is the task of the employer to determine the place of work. I personally believe that the home of employees, as well as other places, determined by the parties are also suitable for employees to carry out their work in the frames of working from home. I find it crucial to

make the method of communication, the way of reimbursement of the arising and reasonable costs – which are much higher due to working from home^[42] – and the providing of equipment clear. I believe that it is not only the actual tasks to be carried out and the nature of these tasks which influence the possibility of working from home, but also that employees are expected to carry out their work more individually and that carrying out their tasks shall not influence the proper use of their home. Compared to the complete period of full employment, its period is of temporary nature, ad hoc, not regular, however, within one legal relation, it can be ordered several times without legal limitation of its duration.

Legal institution	Remote working	Outwork	Unilateral commitment	Employment in workplaces other than what is contained in the employment contracts	Working from home
Employer's right to instruct	Determination of tasks	Determination of the work and the technique to be applied	-	Determination of tasks	Determination of tasks?
Special obligation to inform	inspection, usage of electronic tools and belonging to an organizational unit	inspection	inspection	Expected duration	Expected duration, inspection?
Obligations of the employer	admission, communication	reimbursement (rent)	-	reimbursement	?
Working conditions	Cannot be changed by the employee	Can be changed by the employee	Cannot be changed by the employee	Cannot be changed by the employee	Can be changed by the employee?
Limit of inspection	should not be disproportionate burden	should not be disproportionate burden	should not be disproportionate burden	-	should not be disproportionate burden?

Table 4: Comparison of legal institutions – rights and obligations (edited by the Author)

[42] Mélypataki – Máté – Rácz, 2020, 285.

With regards to working from home, those tasks are worth to be named which are expected from the employer. However, there are some complex positions in which only the position should be named, because employees can carry out the tasks as they wish and can complete them fully. The duration of working from home is not limited, so it is justifiable for the employer to provide information on its expected duration. The employer shall have a right to inspect,^[43] so its method and conditions also have to be told to employees in advance. However, at this point, I must note that this should not mean a disproportionate burden on the employee. If the employer wants to carry out inspection at the exact place of work, it also has to consider other people using the given property.

Legal institution	Remote working	Outwork	Unilateral commitment	Employment in workplaces other than what is contained in the employment contracts	Working from home
Tools	Belong either to the employee or to the employer	Belong to the employee	Belong either to the employee or to the employer	Belong to the employer	Belong either to the employee or to the employer?
Type of tools	computer, IT	Not necessarily computer, IT	Not necessarily computer, IT	Not necessarily computer, IT	Not necessarily computer, IT?
Work schedule	flexible	flexible	Determined by the employer	fix	flexible?
Remuneration	Based on time and performance	Performance pay	Based on time and performance	Based on time and performance	Based on time and performance?
Employment protection rules	Risk assessment	-	Risk assessment	Risk assessment	Risk assessment

Table 5: Comparison of legal institutions – further factual elements (edited by the Author)

[43] Mélypataki – Máté – Rácz, 2020, 284.

In frames of working from home, the work can be carried out by tools provided either by the employer or the employee, it is not necessarily related to computer or IT tools. As far as I am concerned, with the lack of special occupational safety rules the employer has a general risk assessment obligation. The work schedule is set by the employer, but it can be both flexible and fix.

VIII. SUMMARY

The legal institution of home office is such a way of organising work which assists the flexibility of work relations. All states are familiar with the employment that is carried out in a different place than the establishment of the employer. The legal institution of home office is not regulated on a legislative level in all states, it is not regulated in Hungary either, however, employers apply it many times, mainly in the private sector. The origins of the legal institution of home office definitely comes from the institution of remote working. States define the characteristics of home office compared to this legally regulated institution.

Nowadays, having regard to the human epidemic, it appears in the form of public health measures. All states try to reduce employees' physical contact and health risk. In its frames, certain member states introduced strict regulations regarding the obligatory application of home office, for instance Germany and the United Kingdom. Croatia and Luxembourg widened employers' power of assessment in a way that it can also be practiced unilaterally. However, there are such solutions as well, where the application of home office requires the consent of employees as well, for instance in the Czech Republic and the Netherlands, also, in other countries, employers are obliged to allow working from home upon the request of employees, such as in Slovakia and Austria, where parties particularly have to agree in working from home either individually or - as in Finland - collectively.

Among the factual elements of home office, we can always find the exact tasks to be carried out, as well as that it is ad hoc, temporary, done with IT equipment and that the place of work can be other as well besides the employees' home. There are differences in employers' obligations. In certain countries employers' right to inspect is also regulated together with the way of communication and reimbursement, such as in Finland, Luxembourg, whereas in other countries special rules can be determined by the employers, for instance in Italy and the Czech Republic.

The European Union has noticed that during the practical application of home office, employees' right to private and family life can be harmed, so it decided that there is need for the formation of minimal expectations. In its frames, employers have to form an objective, reliable and accessible system, have to determine the practical rules of turning off digital tools, have to make health risk assessment and have to provide adequate information to employees and have to set up an adequate sanction system in case of violations. As far as I am con-

cerned, it still has a lot of risks both for the employer and the employee that this legal institution has not been regulated yet.

In Hungary, the Labour Code does not regulate working from home, still, this legal institution is applied by employers both in the private and public sector. As far as I am concerned, this legal institution shall not only be applied in force majeure situations but in times of peace as well. It has several characteristics that make it possible both for the employer and the employee to establish a flexible, cost-effective way of working and the balance between private life and work.

The characteristics of the legal institution of home office is formed by the practice. We can say that the place of work or the place of completion is not the usual place of work. There is no such regulation according to which only the employees home can be the place of work, so I believe that it can be carried out in other places as well. We have to highlight the certain tasks that need to be carried out and also to that carrying out the work at home should not influence the intended use of the property. As a main rule, parties agree on the place of work in the employment contract, so it can also be changed with the common intention of the parties. Regulations in a state of emergency form the basis of the unilateral order of the employer. However, I do not necessarily believe that this is the solution. Employers are not obliged to apply the institution of working from home either with considering employees' will or with the lack of the state's compulsory order. I believe that with the application of the above-mentioned two ways, the protective measure can be even more successful.

With the lack of legislative regulations, the will of employees is not represented in the case of working from home. It has not been investigated when employees have difficulties or cannot carry out their tasks at home due to their parental role, the quarantine situation or other individual, personal circumstance.^[44] Employers do not have to take into consideration when employees ask for working from home.^[45] With the lack of sanctions the scope of eligibility of the employer is unjustified, with regards to which Para 3 Section 6 of the Labour Code applies: we can refer to the principle of equitable assessment and disproportionate harm.

In the case of working from home, the general obligations of employers remain the same with the lack of other regulations, such as the obligation to provide occupational safety. With regards to this, I can only agree with Gyula Berke in that the same level of responsibility cannot be expected from the employers than according to the general rules. I find it justifiable that just like in the case of remote working Act XCIII/1993 on Occupational Safety and Health shall contain different and adequate rules on risk assessment, equipment, variability of work environment, obligation to inform and the employers' obligation to inspect. With regards to the regulation employees belonging to a vulnerable group or suitability for more independent work could be highlighted.

[44] Horváth - Szladovnyik, 2020a.

[45] Soltész, 2020.

The typical characteristics of working from home are that it is ad hoc, not planned in advance and it is temporary. I do not agree with the standpoint of István Herdon and Henrietta Rab, according to which if the degree of working does not exceed what is regulated in law, we are not talking about working from home. However, I agree with István Horváth and Krisztina Szladovnyik in that working from home cannot be ordered in the above-mentioned case, so the two legal institutions cannot be the same within the legislative timescale.

As far as I am concerned, the obligation for reimbursement stated in Para 2 Section 51 of the Labour Code also obliges employers with regards to the institution of working from home as well. Employers do not have to provide information to employees – in the absence of a provision. Despite, employees can demand their costs such as power use or the usage of own equipment from the employers.

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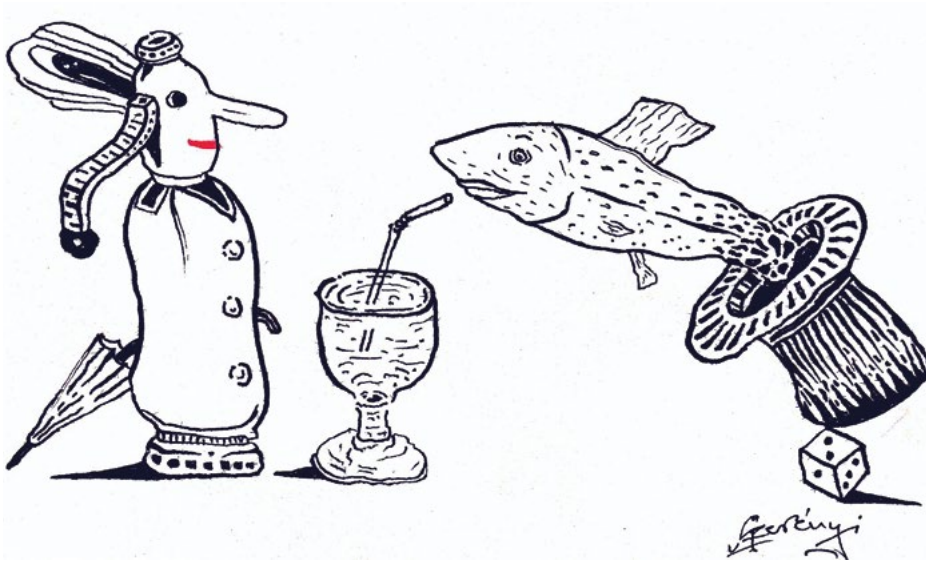
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