

## **HOMEWORKING CONTRACT AND TELEWORKING - IMPORTANCE AND ROLE IN THE ECONOMY**

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**ABSTRACT:** *Work at home leads to greater stability of the community, because changing jobs often lead to a change of life and inherent stress. Employers who choose to work at home do not have the problem of providing housing for service or cost they incurred directly or indirectly or through the gaining that lucrative acquire more space in the office or in premises whose owner is or the fact that there office rents. The individual contract of working at home is an individual employment contract named special character, with the main feature that "work place" is not located in the unit, the employer, but the employee's residence.*

**KEY WORDS:** *homeworking, teleworking, contract, organization, employee, regulation.*

**JEL CLASIFICATION:** *K31, K33.*

### **1. THE CONCEPT OF HOME WORKING**

After 70s of last century, new methods of work organization, imposed revolution impact technical - scientific the increasingly globalization of trade repercussions on the world of work, including more flexibility the need for them, and the need to respond - as appropriate - pressure and unemployment by imagining other ways to reduce its impact, have emerged as the International Labour Organization to pay attention increasingly higher labour issues, in all the forms in which it is performed, including those forms considered "work poor "as work at home, work independently, work part time etc.

### **2. THE IMPORTANCE OF HOMEWORKING**

Work at home is directly interconnected with economic and social development, as well as better coordination of work with the style of life.

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Employees are more efficient because of the flexibility of working hours and the concentration result, teleworking may be achieved through the higher productivity due to several factors:

- Reducing distracting elements;
- Reduction of time spent in transit, meaning and that employees are on time "working days with more traffic than usual or the bad weather;
- Fewer days off due to illness.
- High flexibility - work from home, be scheduled.

By its nature, working from home is more favourable to a management with less hierarchical levels, which obviously reduces labour costs.

Work at home leads to greater stability of the community, because changing jobs often lead to a change of life and inherent stress. Employers who choose to work at home do not have the problem of providing housing for service or cost they incurred directly or indirectly or through the gaining that lucrative acquire more space in the office or in premises whose owner is or the fact that there office rents.

Considering these aspects, teleworking is seen as part of global human resources strategy aimed at:

- to give employees more responsibility in promoting their own careers in the work place and time;
- evaluating employee contribution based on the results;
- increase job satisfaction;
- ensure a better balance in the report work / private life.
- improving company image;
- productivity growth;
- saving space and infrastructure work at the employer.

Many employees will increasingly insist that the option to work at home to be considered a right for all those activities consistent with them.

In so far as it is considered that this relocation work will strengthen family life, there will be strong support from some influential people with political, religious and cultural.

- a) A very promising future and is where teleworkers work even in a holiday away from the problems of city life, starting from the premise that each can choose one style of life and work.
- b) Categories of individual employment contracts on work at home that can be completed in Romania are:
  - the individual home work according to common law;
  - convention work at home individual cooperative members;
  - the individual employment contract of a professional maternal assistant;
  - individual employment contract of professional personal assistant;
  - the individual contract on teleworking.

### **3. INTERNATIONAL REGULATION OF HOMEWORKING**

At international level teleworking only be subject to regulation no.177/1996 Convention on Home Work, adopted by the International Labour Organization, which in art. 3 invites all Member States to ratify, stating that they "must adopt, implement and periodically review a national policy on home work aimed at improving the situation of domestic workers by consulting the most representative organizations of employers and workers when there are organizations dealing homeworkers and those of employers who resorted to domestic workers".

Article 1 letter a) of the Convention stipulates that its meaning, the phrase "home work" means work that a person designated as a home worker performs his home or elsewhere choice, other than the employer, in exchange remuneration, in order to achieve a product or service that meet employer specifications, whatever the origin of the equipment, materials or other items used for this purpose, unless this person has the degree of autonomy and economic independence necessary to be considered an independent worker under national laws or court decisions. "

The International Labour Organization has developed the Convention of the above Recommendation no.184/1996 on work at home, which among other things, promotes the idea of development assistance programs for workers at home.

In this regard, point 29 paragraph 1 indicate that each Member State should, in collaboration with employers and workers to promote and support programs:

- Have to inform domestic workers about their rights and forms of assistance that can benefit them;
- sensitises employers and workers organizations, NGOs and public opinion on labour issues at home;
- facilitate the organization domestic workers organizations of their choice, including cooperatives;
- Provide training domestic workers to enable them to improve their skills, ability to lead and negotiate their productivity; employment opportunities, the ability to earn money;
- Provide training as close to their home and do not require qualifications;
- Improve health and safety at home, in particular by facilitating their access to equipment, tools, raw materials and other essential materials that are safe and of good quality;
- Facilitates the creation of centres and networks of homeworkers to provide information and services to reduce the risk of their isolation;
- Facilitating access to credit, improved living conditions and kindergarten children;
- Promotes consideration of labour at home as work experience recognized.

Work at home has not constitute the object to EU regulation, obviously, is a key concern in relation to the scale of the phenomenon. "In this matter, the International Labour ahead of the European Union adopting Convention. no.177/1996 on homeworking, but we can say that the European Union and the International Labour Organization is on the same wavelength as the Commission, by a Recommendation of

27 May 1998 suggested the Member States to ratify the Convention and requested to inform measures taken to implement it. "

"The results are received by both the International Labour Organization and the European Union".

#### 4. REGULATION OF CONTRACT HOME WORKING

The names given to work from home were domestic industry, industry at home and even collective factory, being delimited by independent artisan. Home industry was defined according to the doctrine of the early 1900s that, that form of industrial operation, an operator uses a number of workers who are not in his workshops, but in their own workshops or in their own homes "

The current Labour Code does not introduce an innovation in the field. Since the start of rent contract for separation and detachment from the scope of the employment contract of civil contracts, the assumptions to which the term of employment contract, fit and work at home, along with apprenticeships and work that is conducted under the supervision employer at its plant or factory or in a place where the owner may order (Țiclea, 2012).

Work at home receives explicit statutory regulation by the Law on employment contracts in 1929, introducing the obligation to respect the employment contract that through the employee be employed continuously or at certain times of the year

Taking as a starting point the international regulations, it was proposed the following definition: individual employment contract at home is that individual contract special character, under which a person, called the employee at home, undertakes to perform, alone or with family members on a regular basis, the duties of the office he holds at home or other place of his choice, except those belonging to the employer, which in turn is obliged to pay remuneration, called salary and ensure adequate conduct of business, maintaining health and safety.

The individual contract of working at home is an individual employment contract named special character, with the main feature that "work place" is not located in the unit, the employer, but the employee's residence (Moțiu, 2012).

"Even if the Labour Code does not refer to another location or another place we appreciate that because inherently, certain activities may take place at the residence of the employee, and no.177/1996 Convention on Home Work, adopted by the Organization international Labour referred to them if the workplace of the employee is residence or place of his choice, other than the employer, we find ourselves still in the presence of such a contract".

Therefore, we subscribe that requires that *lege ferenda* in agreement with the international stipulations, rigid vision might be removed and expand express the opportunity to not only perform the work at home employee, but also in any place of his choice provided they do not belong to the employer.

It should be noted that the residence should appear as the basis for performing the work place just because one of the main means of identification of the person who is an employee, office or residence as the same value for the natural or legal persons employer. From the fact that the employee does not perform work in places that belong

to the employer, not to understand, however, that the presence in these places is prohibited.

Should be considered article 1 letter. b) of ILO Convention no. 177/1996 which specifies that "a person who does not become an employee working at home ... simply because occasionally carry out the work of the employee at his home and his place of work not commonly<sup>†</sup>.

"Place of work", as specific element of the individual employment contract at home, does not affect the normal work organization, meaning that the subordination of the employee to the employer remains an essential - job duties performed outside of locations are, both functionally and legally the "linked" the premises, but not in the classic sense. Appreciate as relevance of this observation in the early 1900s: "The difference between home and factory industry is that industry at home is a great operating decentralized and centralized factory is a big operation." Home industry trade organization of forces is sporadic, but homogeneous organization and discipline of the factory is technique heterogeneous forces". "The employer and the worker industry does not form an economic unit at home as in the factory.

Homeworkers can leave work today off till tomorrow is observed that is missing permanent legal bond between the worker and the entrepreneur.

## **5. THE SITUATION OF THE INDIVIDUAL CONTRACT ON TELEWORKING IN ROMANIA**

In employment law there are no regulations specific to the individual contract on teleworking. Pursuant to freedom of contract, does not preclude anything as such a contract can be completed, how else is happening in practice; is essential to respect the general provisions in individual employment contract and the principle of good faith (article 11 paragraph. 1 of the new Civil Code), and respect public order and morality (Article 11 paragraph 2 of the same Code).

Through the Romanian labour legislation and collective labour contract at national level, we can talk about a contract unnamed that borrows, by analogy, some their own rules at home employment contract (Article 105-107 of the Labour Code).

Teleworking has received only on the way doctrinal definitions. For example, was defined as "a form of organization or work performance under modern information technologies, based on a contract or employment relationship, in which the work is - usually - on premises" or as "a form of ongoing work that is characterized by the fact that activity - comparable to that of an employee to the employer - are provided regularly by an employee outside the office - at the residence of the employee or to another place - using the information technologies in connection with the employer's computer network" (Ștefănescu, 2012, p.303).

The economic doctrine, teleworking was defined as "the work done by a person in a different place from the person who directly supervise or pay for work

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<sup>†</sup> In the same sense are the provisions of point 1. b) ILO Recommendation no. 184/1996 on work at home.

done” or as representing the use of telecommunications technology to replace, wholly or partly, moving to work and back home.

For the private sector, teleworking is not yet widespread, but there is a growing interest in the field, this is evident when you see the reality around us namely growth number of organizations are increasingly using applications of information and communication technologies, increasing spectacular level of use of the Internet, personal computers and mobile phones, there is a vision of information society and a government strategy in this respect, and the high level of collaboration and appreciation enjoyed by the Romanian sector of information technology developed countries (Ştefănescu, 2011).

Although it is very useful in Romanian public administration, teleworking is still hampered by fear of detention or lack of experience. I pointed out that certain categories of specific activities civil service system which, according to article 2 paragraph. 3 of Law no. 188/1999 on the Statute of civil servants, involving the exercise of public power could be achieved successfully through teleworking.

The public administration might even require take their own measures of restructuring, modernization and even to rethink the role and functioning, especially in the conditions of the information society.

An important role for the development teleworking Romanian Association for Telework plays and Teleactivities. If the most important of these associations are based on the largest companies in the field, either bidders Internet service or activity in electronics or computer science. Romanian Association for Telework and Teleactivities draws its ranks primarily individuals - experts in various fields - acting individually and teleactivities telework and very small firms - micro-enterprises - mostly at start up.

Is to improve legislation on telework and teleactivities, create favourable attitudes among both telework and teleactivities operators and consumers; obtaining and disseminating information and instruments required of telework and teleactivities; promoting activities of members of the Association<sup>‡</sup>.

## **6. THE INDIVIDUAL CONTRACT ON TELEWORKING IN EUROPEAN LAW AND COMPARATIVE LAW**

At international level the International Labour Organisation any rules or regulations and EU directives do not refer to the individual on teleworking (Vartolomei, 2008).

Individual labour contract on teleworking is defined as the individual contract of employment with special character, under which an employee called teleworker undertakes to exercise regularly, alone or together with his family members, tasks specific to the position holds, using information technologies in home or other place of his choice, except locations employer, who in turn is obliged to pay remuneration, called salary and ensure appropriate conditions are in operation, maintaining health and safety employment.

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<sup>‡</sup> <http://www.teleorg.org/ro/index.htm>.

Teleworking is defined, according to article 2 paragraph 1 of the European Framework Agreement as a form of organizational or occupational achievement using information technologies in a contract or employment relationship, the work - which could be done equally in employment that belonging to the employer - is performed outside their regular. According to paragraph 2 of the same Article, the party who performs the work in such a contract is called teleworker (Țiclea, 2009).

The laws of many countries such as Belgium, Switzerland, Germany, Italy, Spain, Russia, Belarus, Ukraine, Uzbekistan provides for of the employee participation in family work at home to achieve its duties. It is natural that the individual contract manageable and on teleworking, because of the similarity of the two forms of work organization (Cioriciu Ștefănescu, 2008).

The European Commission has recommended that countries in this regard to take as a model the ILO Convention no. 177/1996 on work at home and take into account its recommendation no. 184/1996 on work at home<sup>§</sup>.

In September 2006, in the European social dialogue has been completed first joint report on its application. In most EU Member States except Cyprus, Estonia, Lithuania and Slovakia, and in Iceland and Norway applied Agreement respecting traditions and mechanisms in the field of labour relations or national or sectorial collective agreements - the branch (Denmark, France, Greece, Italy, Luxembourg, Sweden, Belgium) by the adoption of codes of conduct (England, Ireland) and finally by adopting laws (Portugal, Czech Republic, Hungary). In other countries, like Britain and Germany, governments or other authorities were limited to issuing guidelines teleworking (Ținca, 2005).

Although the public sector, strictly speaking, is excluded from the European Agreement, there is reluctance in the reconsider this aspect of the organization of work by the social partners. Moreover, given the broad spectrum of in the light teleworking flexicurity concept, we can say that such an approach is even encouraged (Cioriciu Ștefănescu, 2009).

## **7. LEGAL NATURE AND THE SPECIFIC ELEMENTS THE INDIVIDUAL CONTRACT ON TELEWORKING**

The individual contract on teleworking is an individual contract of employment with the special character that sometimes identifies individual contract of homeworking, because the "work place" is residence teleworker or any place of his choice. Because of this, the European Commission recommended that countries consider adopting legislation on telework ILO Convention no. 177/1996 on work at home and ILO Recommendation no. 184/1996 on work at home.

What differentiates the individual contract on the individual employment contract teleworking at home under civil law is "the type of work". It "consists in the provision of an electronic means activities", underlining that the use of information technology should be the key and not of benefit to both accessory and not only in the

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<sup>§</sup> [www.un.ro/ilo/3/RECOMANDAREA%20184.doc](http://www.un.ro/ilo/3/RECOMANDAREA%20184.doc).

stage of sending the result to the headquarters of belonging, both in the real and execution phase of the benefit itself (Man, 2007).

Individualization of precise place of supply is definitely an essential element in the formation of parties' agreement of the parties. In this respect the court ruled in Milan, in the a dispute having as object the determination of the actual job at the end of a contract for teleworking address due to the exchange between the parties. The court rejected the employee's claim, alleging that in the agreement on teleworking could be talking about a "job" than the "telematic" so would not disclose the employer where the employee had chosen to conduct the performance, stating on the contrary, that it was an essential element for the formation of the agreement between the parties (Cioriciu Ştefănescu, 2009).

It was pointed out that if telework, "place of work" is not related to jobs located in telecentres or television, as various studies have shown that they either belong to the employer, or are both owned by and other employers or self-employed workers or their organization those listed are involved. From the perspective of "place of work" is excluded and mobile work performed or semi-mobile with information technology because they are mobile directed by the employer pursuant to any mobility of an individual contract "standard" (Cioriciu Ştefănescu, 2009).

Given the specific "type of work" in the teleworking shows that they are compatible with related activities' preparation, processing, handling and dissemination of information, as appropriate, by analysts, programmers, program directors, managers, accountants, consultants in various fields, translators and other people using the computer system, etc., "and from this it follows that teleworkers must have knowledge in information technology.

From the mentioned above it follows that what characterizes the legal concept of teleworking is the combination of functionally - organization of two elements, topographical and technology. In other words, to configure a report teleworking, that benefit executed outside employer jobs through technological elements must be both functionally and from the legal point of view can be linked based employer (Lucafo, 2007).

Considering this feature, we consider it useful to point out just below legal issues specific to the contract analyzed in relation to individual employment contract "standard", and in relation to individual employment contract at home.

For both parties teleworking is eminently volunteer; pursuant to article 3 of the European framework agreement on teleworking, whichever depending on specific interests, may refuse or accept the offer. "It may be part of the original description - at the conclusion of the work - the place and type of work the employee, or may subsequently negotiate addendum; such an agreement is always reversible (Ştefănescu, 2012).

The employer is in a position to decide the organization of teleworking under the privilege enjoyed by the labour organization. From this, it should be understood that if the employer proposes such work during the execution of an individual contract of employment "standard", the employee may not accept them a reason to unilaterally change working conditions for sanction or disciplinary dismissal.

The employer must notify the person selected for employment on the following specific elements:

- actual place of performance teleworking;
- the work to be carried out under conditions of information technology;
- department within which forms part teleworker;
- name of supervisor to whom they respond or work-related inquiries;
- concrete ways in which it is required to prepare reports on the performance of duties;
- legal norms applicable to conventional, especially surprised by the internal regulations of the establishment;
- restrictions on the use of technical equipment available;
- disciplinary sanctions for failure to comply with these rules.

Work at home is an extremely complex phenomenon - it covers not only traditional activities, manual or craft, but also covers those activities legal predetermined specific child protection or the protection and promotion of disabled persons also international development and technical - science have led to a modern and flexible ways of performing the job at home, called teleworking, which will continue to grow increasingly more.

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