



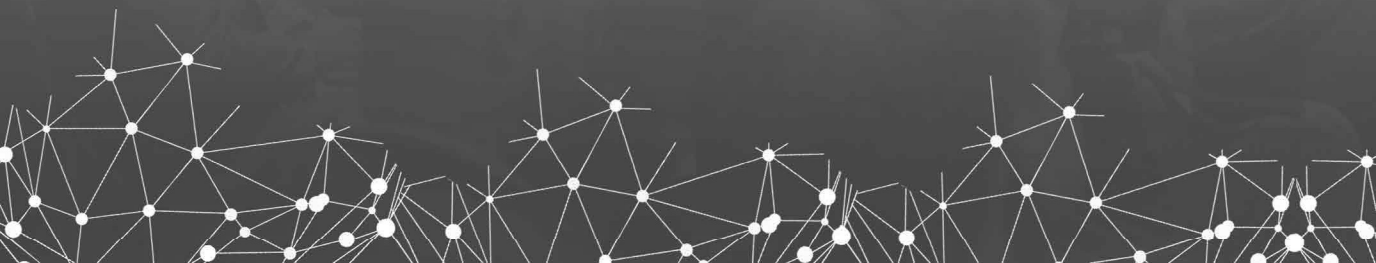
Proceedings of the  
**2<sup>nd</sup> Virtual International Conference**  
**Path to a Knowledge Society-**  
**Managing Risks and Innovation**

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Editors:  
Stanković, M. and Nikolić, V.

Publishers:  
Research and Development Center  
“ALFATEC”, Niš, Serbia  
Complex System Research Center, Niš, Serbia

November 16-17, 2020



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# **PaKSoM 2020**

2nd Virtual International Conference  
Path to a Knowledge Society-Managing Risks and  
Innovation  
Proceedings

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Editors:

Prof. Dr. Miomir Stanković and Prof. Dr. Vesna Nikolić

Technical Editor:

Dr. Lazar Z. Velimirović

Published by:

Research and Development Center “IRC ALFATEC”, Niš, Serbia, and  
Complex System Research Centre, Niš, Serbia

Printed by:

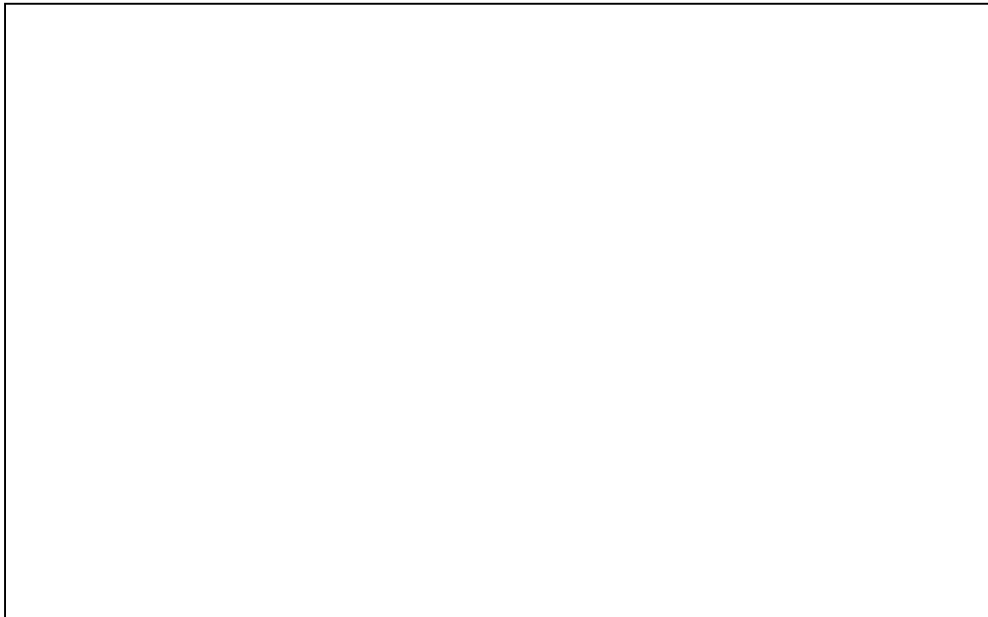
Blue Copy, Niš, Serbia

Number of copies printed: 100

The publishing year: 2020

Printing of this edition has been financially supported by  
Serbian Ministry of Education, Science and Technological Development

ISBN 978-86-80616-06-3



# **PaKSoM 2020**

## **2<sup>nd</sup> Virtual International Conference Path to a Knowledge Society-Managing Risks and Innovation**

**Organizer:**

Research and Development Center “IRC ALFATEC”

**Co-organizers:**

- Mathematical Institute of the Serbian Academy of Sciences and Arts
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**Supported by:**

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# Forms of Working from Home in Hungary

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*Abstract*— **Teleworking and home office are special forms of work. In addition, we find other forms of work that the employee carries out from home. As a result of the Covid-19 epidemic, these forms of work have come to the fore. The epidemic has brought many changes, we had to learn new concepts such as „social distance”. The motto for the spring of 2020 campaigns was “stay home if you can”. The fact that many people’s work activities took place outside the workplace has also been brought with it. Digital technology, which made it possible to work from home, helped us a lot in this. However, we would like to point out definitely that not all work at home is done through digital devices. The virus stays with us for a while longer, so depending on the level of the infection, there may be periods again when we will have to work from home. This is why the aim of our study is to examine the home as a place to work. We do this in the form of presenting the relevant legal relationships and the issues and problems they generate in the light of the Hungarian rules.**

**Keywords** – telework, home office, outwork, workplace

## I. INTRODUCTION

Social distance introduced by the virus did not make classical work easier. It is impossible to maintain „protective or social distance” in a significant number of workplaces. The other problem is that if there are more people in the same airspace, the risk of the infection also increases significantly. Therefore, where possible, the employer has ordered teleworking or home office. It should be noted that most of the companies were not prepared in either legal, HR or technical terms. On the other hand, it is a fact that not all work can be done from home.

Many companies have switched to telecommuting/home office. It can already be seen that there are companies that do not even want to bring work back to the classic working framework. Teleworking and home office is also appropriate for them. This phenomenon necessitates the reinterpretation of the concept of work even in the short term. One of the first signs of this is that the debate is already under way in Germany on an autumn bill that would enshrine the right to work from home into law. According to the draft, those jobs where home office is possible, the employees would have the right to choose whether they want to work in the classic way or from a home office. Similar changes are conceivable in Hungary, but the details of the legislative act planned for the autumn of 2020 are not known, only some keywords.

It should be emphasized that fundamental differences can be detected in the reactions between the first (spring 2020) and the second stage of the virus (autumn 2020). At the time of the first wave of the epidemic, even with relatively lower numbers of cases, the legislator favoured working from home. However, at the beginning of the second wave, despite the exceptionally high number of cases, this phenomenon did not recur. There was no indication from the state that it would strongly recommend switching to work from home. The promised amendment to the law is still pending.

## II. FORMS OF WORKING FROM HOME

The topic is also particularly interesting because some of these forms have been known for a relatively long time in Central Europe. The emergence of the home as a place to work is not new. The first regulation of the outwork took

place in the Hungarian legal system in 1967. For a long time, outwork was a part of the Hungarian legal system as another legal relationship, which was similar to a labour contract. Act I of 2012 on the Labour Code. (hereinafter: 'LC.')

incorporated the outwork. According to the Hungarian rules in force, the outwork is home work that it can be done independently and paid in performance pay. So, outwork is every work that qualifies as a measurable, long-term, atypical employment, and the activities do not require the use of IT tools. In this form of employment, the employer's right to instruct is also limited. The hierarchical position of the parties arising from the employment relationship prevails less. The law also states that work-related part of the costs must be reimbursed by the employer.

Technological development has generated the changes of social and living conditions. Under the new circumstances, in addition to the performance-based workflows, the law allowed to perform a wide range of activities at home under an employment contract. The opportunity to work from home has been made available by the development of technological development. One of the most typical forms of this is teleworking. The appearance of teleworking in the Hungarian legal system as a result of EU accession was introduced into the law as an atypical form of work.

Recently, home office has become a common term, partly related to telework. Home office is used as a synonym for telework. However, the two legal institutions are not the same. The essence of the difference is in the function. Teleworking is an atypical form of work that assumes the active use of computer and IT tools. Teleworking usually takes place as a permanent legal relationship usually from home, but not necessarily. Teleworking can also be done in a neutral place, such as a coffee bar. Point 2 of the European Union's Telework Framework Directive does not only require the use of IT tools, but also that the work carried out away from a place of establishment. The work is not necessarily done at home, but typically takes place in the employee's home. Before looking at the national rules on teleworking and anomalies, it is definitely important to clarify the concepts.

Home office means working from home. Sullivan's (2003) and Hodder's (2020) cited studies also highlight the importance of

distinguishing between teleworking and home working. If an employee works from home while working and uses IT tools, it does not automatically mean that he is a teleworker. All these criteria are required for a teleworking, home working and housework / domestic work conceptual examined in the system of relations. This line fits to the previously presented outwork.

Not only telecommuting, but the home office concept should be placed in this conceptual palette. Home office can overlap with both telework and outwork. In the case of home office, we are talking about working from home, but there is not determined by what means it is done. The work is done with IT tools within the home office; however, it is also possible by other means. The point is that the employee is in her/his home, but only on a temporary basis. In the case of teleworking and outwork, the parties specify separately in the contract, according to which the employee's work is telework, or will be provided mainly through teleworking. However, for home office, as a general rule, we are not talking about a separate agreement. Available within the legal framework, the employer has the possibility to order home office for the employee. Home office therefore always assumes hierarchical and dependent work that can be unilaterally ordered by the employer. However, teleworking and outwork are always hierarchical, but independent, which is based on a telework contract.

According to some authors, the difference between telecommuting and home office is the length of time spent in that particular form. However, the difference between the two forms is much greater than this. This difference is shown in §125-126 of Act CXXV of 2018 on the Governmental Administration (hereinafter 'GA.'). The relevant provisions of this Act regulate teleworking and home office separately. Interestingly, in the case of civil servants, the issue was regulated earlier than in the economic sector. The state recognized that home as a place to work can also be used in the public administration. The 'GA.' ministerial explanatory memorandum to the law also emphasizes that home office work, the legal institution of working from home, as defined in §126, has been so well-proven in business. We also need to add that work from home is a legal institution regulated by the home office of the parties based on an agreement. In this case, the



government official's workplace is different from his usual place of residence, at his place of residence or stay, if the nature of the work permits so. The parties must agree as follows: time spent working from home, tasks to be done individually and keeping in touch and the manner and date of submission of the work performed. Teleworking formulated in §125 of the Act, on the other hand, is regular work in which work is performed by IT tools and the results of the work shall be communicated through such means. In the case of teleworking, the legislator also emphasizes regularity and the means of working by which the work is done. Teleworking is an atypical work in which workflow is digitized. Home office is a working form, which does not necessarily regular and is not even digitized. However, it should be added that working from home can be ordered not only on the basis of §126, but also on the basis of unilateral instructions from the employer. This is not specifically mentioned in the Act, but there is no legal obstacle for the employer to oblige the employee to work from home. LC also provides the possibility for a period not exceeding 44 working days within the framework of an employment institution outside the employment contract. Of course, not only public employment conditions, but also in employment relationships, it is possible to work from home if the parties agreed in the contract.

The above also shows the difference that teleworking is a lasting atypical employment denoting a legal relationship that can significantly relativize the employer's superior position. It is not significantly affected by the fact that it is based on a contract or in the form of a unilateral instruction. The rules described so far have in common that the home appears as a working place. In these cases, work takes place in the employee's living space, but not in relation to the living space. The employee uses his home as a workplace from where he performs his task. However, in the case of domestic work, the employee is someone else working at home. The person doing the housework uses the home as a workplace where he performs his task. Pursuant to Article 1 of ILO Convention 189, the term "domestic work" means work performed in or for a household. Consequently, under the Convention, a domestic worker means a person who regularly does housework as a part of an employment relationship. The Hungarian rules are worded in an expanded form compared to the ILO

definition. One early regulation was drafted by Act CLII of 2009 on Simplified Employment. In this context, domestic work was considered as atypical work, the category of which was mentioned by the LC, therefore, interpretable as a named form. This rule was soon repealed and only the tax legislation remained. In essence, domestic work is not named in the LC, therefore, it is a form of work in tax law, as an action outside the tax system employment. Under the tax rules of domestic work: exclusively natural person and persons living with him in his household, as well as close relatives every day the following activities to ensure the necessary conditions for life: cleaning of the dwelling, cooking, washing, ironing, babysitting, home tuition, home care and nursing, housekeeping, gardening. An employed person can also be only a natural person.

Based on the above, we can see in the Hungarian law that in the case of working from home, a whole wide range is available.

### III. ISSUES OF WORKING FROM HOME FROM THE POINT OF VIEW OF OCCUPATIONAL SAFETY

The most basic obligation of the employer is to ensure healthy and safe working conditions. This is created by labour law regulations and this is a basis of the employer's occupational safety obligation, which is set out in preamble Act XCIII of 1993 on Occupational Safety and Health (hereinafter: OSH). How does the obligation of employers in this direction develop if the employee performs job duties at home? The relevant literature distinguishes between telework and home office working activities. According to Lajos PÁL, in the case of teleworking, the employer is responsible for complying with occupational safety and health rules, in the case of a home office, as a result of the transfer of the determination of the place of performance, the employer is obligated to ensure working conditions at the workplace. In the case of so-called contract workplace (when the employer and the employee have an agreement to determine the place of work, so the measure is not unilateral), the agreement decides who is obliged to provide the conditions.

According to the § 86 / A (8) of the 'OSH.', "In the case of teleworking, the workplace is the room specified by the parties in the employment contract where the employee

Carries out his work on a regular basis by the means of information technology or a computer device." This is typically the employee's place of residence, less often some other separate physical locations (possibly office space rented by the employer). It should be noted that, in this regard, the employee also has an obligation that "At the workplace, the employee may not change working conditions without the consent of the employer". The situation is different in the case of a home office, as the 'OSH.' does not contain a regulation for it. The current state could change if home office were to be regulated in the LC. The distinction between teleworking and home office was not facilitated by the Government Decree 47/2020 (III.18) entered into force at the time of the emergency, since § 6 (2) Paragraph 2 (b) treated the two concepts of employment law in the same way and allowed the employer to order the employee to use them. In the literature there are views that do not distinguish from an occupational safety point of view between telecommuting and working from home. In our opinion, based on the substantive interpretation, besides temporary working, it is not justified to equate the justification of occupational safety requirements of this type of work and the compliance of teleworking from an occupational safety point of view, while all occupational safety and health rules could be expected to be kept from home office as well. In our view, the dilemma can be resolved by only the legislation, which would need to be addressed as soon as possible, as the issue is very important. On the one hand, to our knowledge, the emergency transition to working at home has remained for a very large number of employers, with a number of jobs in Hungary where workers were deemed successful in working from home and even at the end of the emergency, they did not return to the previous practice. On the other hand, if the occupational safety rules need to be extended to work from home, it places a huge burden on the employers and can come at a huge cost to them. Making the employee's home safe as a workplace can impose an unpredictable financial burden on the masses of employers. In addition, the 'OSH.' also imposes an obligation on the employer to monitor occupational safety and health rules, which is another difficult task for the employers. From the point of view of the employer, it matters that an employer with 100 employees has only one place of work (at the registered office or premises of the employer)

where monitoring must be carried out or they should be examined in all of the employee's homes as the places of work. Home inspection of employees raises separate issues.

#### IV. EMPLOYER AND OFFICIAL INSPECTION AT THE EMPLOYEE'S HOME

Based on § 54 (7) of the 'OSH.' (b), "In order to health and safety work, the employer should regularly inspect whether working conditions meet the requirements, they are known to the employees, and whether the provisions applicable to them are kept by them". Pursuant to § 86/A (4) of the 'OSH.', the inspection of the employer or his agent is considered to be a justified case in the LC, if it is carried out in order to perform the tasks described in § 54 (7) (b) . Paragraph 5 provides that "over the inspection provided for in paragraph 4, the employer or his agent - in particular the person marked in § 8 and §§ 57-58. §- can enter and stay at the place of work in the field of real estate to carry out the risk assessment, the accident investigation, and to check working conditions. It can be concluded from the above rules that the obligation of the employer is to control the fundamental labour law rules of the LC and the rule contained in the preamble of the OSH. In addition to the general rule, the law also lists special cases where the employer or his agent can enter the employee's home (and at the same time providing space for work). Employer inspection may only be applied to the part of the property where the actual work takes place, other premises of the property cannot be inspected. During the inspection, the rights of personality guaranteed in § 9 of the Civil Code must be taken into account, concerning the date and manner of the inspection. A distinction must be made between an inspection by the employer and an inspection by the authority, its framework is defined in § 81 (4) of the OSH. § 86/A(7) of the OSH. outlines the conditions for the inspection in details. According to the law, "official control by the authority can be performed only on a working day, between 8 a.m. and 8 p.m. The occupational safety authority should inform the employer and the employee at least 3 working days before the start of the inspection. The employer procures the employee's consent required to enter to the place of work until the start of the inspection. In such cases, the authority therefore inspects the employee's home, but in fact, it oversees how the employer performs its occupational safety obligations. If