



**INTERNATIONAL  
LAWYERS ASSISTING  
WORKERS NETWORK**

**TELEWORK IN  
THE REPUBLIC OF MOLDOVA**

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## LIST OF ABBREVIATIONS

<b>ATIC</b>	Moldovan Association of Information Communication and Technology Companies
<b>CES</b>	Commission for Exceptional Situations
<b>EU</b>	European Union
<b>GBVH</b>	Gender-Based Violence and Harassment
<b>ICT</b>	Information and Communications Technology
<b>ILO</b>	International Labor Organization
<b>MHLSP</b>	Ministry of Health Labor and Social Protection
<b>MECR</b>	Ministry of Education Culture and Research
<b>NCERM</b>	National Confederation of Employers of the Republic of Moldova
<b>NCTU</b>	National Confederation of Trade Unions
<b>NCPDP</b>	National Center for Personal Data Protection
<b>OSH</b>	Occupational Safety and Health
<b>QAES</b>	qualified advanced electronic signature
<b>RM</b>	Republic of Moldova
<b>SLI</b>	State Labor Inspectorate

## 1. PURPOSE OF THIS REPORT AND GENERAL BACKGROUND ON REMOTE WORK IN THE REPUBLIC OF MOLDOVA

### 1.1. INTRODUCTION

This report analyzes current regulation of remote work in the Republic of Moldova, as well as the practical impact of remote work in the country. The report is part of a series supported by the International Lawyers Assisting Workers (ILAW) Network on the regulation and impact of telework in different national contexts. Telework refers to the organisation or performance of work at home or another location other than the employers' premises through the use of information and communication technologies (ICT). Regulations in Moldova use the term "remote work" to refer to this form of employment, so this report also adopts that terminology.

In May 2020, the Moldovan parliament adopted a set of regulations regarding remote work, two months after the declaration of a national state of emergency due to the COVID-19 pandemic. These changes introduced telework to the Moldovan labor market, raising many questions and sometimes confusion in the process of implementation of the law. State authorities, the business community and trade unions all believe these regulations and this type of work arrangement will outlast the pandemic. The Moldovan parliament adopted these regulations to address a sudden emergency, and thus they were not drafted with a thorough consideration for all the issues raised by telework.

In response to this context, and with the goal of improving the current legal framework and ensuring fair working conditions for teleworkers in Moldova, this paper will (1) observe the impact of the existing legal regulations, (2) identify international best practices and (3) propose appropriate amendments to current regulatory language.

### 1.2. SCOPE OF RESEARCH AND METHODOLOGY

To achieve the objectives of this report, the following research questions were identified:

1. What is the impact of the remote work regulations on the labor market and labor force in Moldova?
2. What were the actions realized by the state authorities, trade unions and business community with regards to these changes?
3. What are the practical mechanisms and approaches to implement these regulations?
4. What are the deficiencies in regulation and what can be done to improve the current legal framework on remote work?

This report primarily relies on qualitative research involving desk research examining multiple sources of information, and interviews conducted from July through September 2021. In total, five interviews took place with representatives from the Ministry of Health, Labor and Social Protection (MHLSP), National Confederation of Trade Unions (NCTU), National Confederation of Employers of the Republic of Moldova (NCERM), Moldovan Association of ICT Companies (ATIC), Education Department of the District Drochia, as well as individual workers. It also contains a qualitative analysis of available data on remote work provided by the National Bureau of Statistics for the years 2020 to 2021.

#### Research Questions

1. Is telework regulated by a specific telework law or is it regulated by general labor law?
2. How is telework defined? Do current legal frameworks make distinctions between telework, remote work, home work and other work performed away from the traditional office or worksite?
3. How are the following issues regulated, if at all?
  - a. voluntariness

- b. hours of work and right to disconnect
  - c. costs of maintaining office or worksite, including equipment, utilities and other expenses
  - d. occupational safety and health
  - e. freedom of association and collective bargaining
  - f. non-discrimination, equal access to training opportunities and promotion
  - g. gender-based violence and harassment (GBVH)
4. Which international or regional labor standards are generally applicable to telework? Which of these labor standards might have specific application?
  5. Have any aspects of telework been regulated through framework agreements or pronouncements of multilateral bodies?
  6. What other (non-labor) laws or regulations may impact the performance of telework?
  7. Have labor inspection laws, regulations or practices been adapted or changed in order to properly protect the rights of workers under general labor laws or specific telework laws?
  8. What other laws, regulations and practices should be considered or amended to make telework more equitable?
  9. For each issue listed in question 3 (a-g), what are the specific practical obstacles that workers face in exercising these rights? How are these obstacles overcome?
  10. What are the additional burdens and impacts of telework on women, who often also bear the brunt of care work within the home?
  11. Have there been specific disparate impacts on certain groups of workers, which further entrench racial, gender or other hierarchies? How are these obstacles being overcome?
  12. What are the specific obstacles to labor inspection, and how are these obstacles being overcome?

### 1.3 STATISTICS ON REMOTE WORK

The National Bureau of Statistics (NBS) of the Republic of Moldova studies the impact of the COVID-19 pandemic on the national labor market through the labor survey, a detailed sociological research instrument used by NBS since 1998 to obtain quarterly quantitative indicators of the labor market.

Before 2020, the year when the COVID-19 pandemic began and consequently vast numbers of employees were transferred to remote work, there were no references in NBS documents to remote work or work from home.<sup>1</sup>

Starting in 2020, NBS included remote work in its quarterly and annual analyses. Some interesting conclusions can be inferred from the NBS data, but it should be noted that the data is likely not entirely accurate. Remote work and home work are presented together in NBS sources. Remote work as a separate statistical indicator does not seem to be present in NBS sources. This complicates the general understanding of remote work versus home work. Moreover, it is important to mention that some issues might be present with the data consistency and the standardized indicators used. Of the examined sources, only the report from the first quarter of 2021 contained detailed information on home or remote work. A standardized approach needs to be applied in this context. Standardization would ensure that all NBS materials reflect the same data, indicators and information, so that they could be comparable and used in research and analysis.

<sup>1</sup> Comunicate de presă [Press Release], Biroul Național de Statistică al Republicii Moldova [National Bureau of Statistics of the Republic of Moldova] [NBS], Forța de muncă în Republica Moldova: ocuparea și șomajul în anul 2019 [Labour Force in the Republic of Moldova: Employment and Unemployment in 2019] (Apr. 1, 2020), <https://statistica.gov.md/newsview.php?l=ro&idc=168&id=6617>.

NBS estimates that there were 24,500 people working from home or working remotely in 2020.<sup>2</sup> From this group, 18,600 are employed and 5,900 are self-employed. It is not clear how this evaluation was made. If NBS considered the workers activity for the majority of the year then this data could be correct, since many employees switched to remote work during the periods of national emergency but worked in the usual manner for the rest of the year. If this analysis included the general number of people who worked remotely, even for a short time, this number would be significantly higher.

There is a clear correlation between the increase of the number of remote workers and successive declarations of national states of emergency. In both 2020 and 2021, the percentage of women involved in remote work was higher in the winter and autumn months, when the number of COVID-19 infections increased. This could be explained by the fact that school closures and the disruption of services resulted in more unpaid care work for children and elders, which disproportionately falls on women.

NBS mentioned that for the year 2020 the performance of home work/remote work took place in each quarter of the year, having the highest level in the fourth quarter, at 40.5%. Similarly, in the fourth quarter, the highest level of home work/remote work was registered among women at 51.8%.<sup>3</sup> For 2021, NBS provided data only for the first and second quarters, with the most detailed information on this topic in its report for the first quarter of the year. During the first quarter of 2021, the number of persons who performed work at home due to COVID-19 was 9,500. This number is similar to the level of persons working from home in the first quarter of 2020. NBS mentions that during this quarter of the year, some of the situations in the labor market caused by the pandemic manifested themselves as follows: 38.9% of people either worked from home or worked remotely and 38.3% of people worked fewer hours per week. In the gender distribution of people working remotely, 77.5% were women and 22.5% were men, compared to 75.2% and 24.8%, respectively, in the first quarter of 2020. The area of residence indicator showed that 80.4% of home work/remote work was in urban areas and 19.6% in rural areas. In the first quarter of 2020, these numbers were 51.4% and 48.6%, respectively. In terms of age, people aged 35-44 and 25-34 made-up the majority of remote workers, 37.7% and 27.0%, respectively. These age groups are followed by people 45-54 years old at 24.2%. Also, only this NBS source mentions the sectors of the economy more involved in home work/remote work, the majority being made up of education workers (21.3%), followed by the information and communications sector (19.2%), workers from other service activities (13.3%) and those from professional, scientific and technical jobs (10.3%). In the first quarter of 2020, the sector breakdown was as follows: 54.7% in education; 18.1% in professional, scientific and technical activities; and 12.0% in trades.<sup>4</sup> This shows that Moldova mirrored the trends in other countries, in numbers of remote workers in professions connected to information technology, such as ICT, education, research, and some positions in the public sector. It is evident that the majority of jobs that required physical presence could not be transferred to a remote form of employment.

The NBS data for the second trimester of the year 2021 indicates that in this period every third person either worked from home or worked remotely or was transferred to part-time work, 37.5% and 37.6%, respectively. This situation was connected to the fact that in the second trimester a national emergency was declared and a large number of employees were transferred to remote employment. Among men, there was a higher level of work at home/remote

<sup>2</sup> NATIONAL BUREAU OF STATISTICS OF THE REPUBLIC OF MOLDOVA [NBS], LABOUR FORCE IN THE REPUBLIC OF MOLDOVA: EMPLOYMENT AND UNEMPLOYMENT 110 (2021), [https://statistica.gov.md/public/files/publicatii\\_electronice/Forta\\_de\\_munca/AFM\\_2021.pdf](https://statistica.gov.md/public/files/publicatii_electronice/Forta_de_munca/AFM_2021.pdf).

<sup>3</sup> Comunicate de presă [Press Release], Biroul Național de Statistică al Republicii Moldova [National Bureau of Statistics of the Republic of Moldova] [NBS], Impactul COVID-19 asupra indicatorilor forței de muncă în anul 2020 [Impact of COVID-19 on labor force indicators in 2020] (June 4, 2021), <https://statistica.gov.md/newsview.php?l=ro&idc=168&id=7006>.

<sup>4</sup> Comunicate de presă [Press Release], Biroul Național de Statistică al Republicii Moldova [National Bureau of Statistics of the Republic of Moldova] [NBS], Forța de muncă în Republica Moldova: ocuparea și șomajul în trimestrul I 2021 [Labour Force in the Republic of Moldova: Employment and Unemployment in the First Quarter 2021] (June 7, 2021), <https://statistica.gov.md/newsview.php?l=ro&idc=168&id=7007>.

work, 39.6% for men versus 35.9% for women.<sup>5</sup>

## 2. LEGAL REGULATION OF TELEWORK

### 2.1 NATIONAL REGULATIONS REGARDING REMOTE WORK

Regulations on “remote work” were introduced in the Labor Code by Law No. 69 on May 21, 2020, during the public health emergency caused by the COVID-19 pandemic.<sup>6</sup> This law introduced five new provisions in Chapter IX<sup>1</sup> of the Labor Code, entitled “Remote work,” and another separate article (Art. 73).

MHLSP considered the adoption of either amendments to the Labor Code or a separate law on remote work. The Ministry decided that remote work is based on the general basic principles of the regulation of labor relations, and that the Labor Code regulates all individual and collective labor relations, the control of the application of regulations in the field of labor relations, labor jurisdiction, and other relations directly related to labor interactions. Therefore, it would have been irrelevant for these provisions to be included in another normative act.<sup>7</sup>

The MHLSP reported consulting similar legislation from Romania, Russian Federation and France during the drafting process.<sup>8</sup> The regulations in these three countries differ. While the Russian Federation<sup>9</sup> and France<sup>10</sup> regulate remote work in their respective Labor Codes, Romania<sup>11</sup> has a separate law for this type of employment. We can also observe the similarity of the regulations in the Labor Code of Republic of Moldova with those from the French Labor Code. A significant aspect which is different for the French labor code are the regulations regarding the rights of workers to require the transfer to remote employment, which is absent in the Moldovan legislation. There are similar regulations regarding the transfer of workers to a remote form of employment during extraordinary circumstances, epidemics or national emergencies.<sup>12</sup>

### 2.2 INTERNATIONAL REGULATIONS ON TELEWORK

In the association agreement signed between Moldova and the EU, Moldova undertook the obligation to implement the EU Acquis in its national legislation. Therefore, in relation to remote work, EU directives and regulations also apply. There is no specific EU Directive on telework, but several Directives partially regulate this form of employment: the EU Working Time Directive (Directive 2003/88); the Framework Directive on Safety and Health at Work (Council Directive 89/391/EEC); the Transparent and Predictable Working Conditions Directive (Directive (EU) 2019/1152); and the Work-Life Balance Directive (Directive (EU) 2019/1158).

The main EU regulation addressing telework was introduced through the EU Framework Agreement on Telework (2002), an autonomous agreement between the European social partners (ETUC, UNICE, UEAPME and CEEP) that commits the affiliated national organizations to implementing the agreement according to the ‘procedures and

<sup>5</sup> Comunicate de presă [Press Release], Biroul Național de Statistică al Republicii Moldova [National Bureau of Statistics of the Republic of Moldova] [NBS], Forța de muncă în Republica Moldova: ocuparea și șomajul în trimestrul II 2021 (Sept. 6, 2021), <https://statistica.gov.md/newsview.php?l=ro&idc=168&id=7115>.

<sup>6</sup> Cu privire la instituirea unor măsuri pe perioadăstării de urgență în sănătate publică și modificarea unor acte normative, Lege 21 mai 2020, n. 69, in Monitorul Oficial 26 mai, 2020, n.124-25, art. 222 (Mold.), [https://www.legis.md/cautare/getResults?doc\\_id=125899&lang=ro](https://www.legis.md/cautare/getResults?doc_id=125899&lang=ro).

<sup>7</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

<sup>8</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

<sup>9</sup> Trudovoi Kodeks Rossiiskoi Federatsii [TK RF] [Labor Code] art. 312 (Russ.), [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_370070/3d0cac60971a511280cbb229d9b6329c07731f7/#dst100009](http://www.consultant.ru/document/cons_doc_LAW_370070/3d0cac60971a511280cbb229d9b6329c07731f7/#dst100009).

<sup>10</sup> Code du travail [C. trav.] [Labor Code] art. L1222-9 (Fr.), [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006072050/LEGISCTA000025558058/#LEGISCTA000025558058](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072050/LEGISCTA000025558058/#LEGISCTA000025558058).

<sup>11</sup> Lege 30 martie 2018, n.81, in Monitorul Oficial Apr. 2 2018, n.296 (Rom.), <https://legislatie.just.ro/Public/DetaliuDocument/199418>.

<sup>12</sup> Code du travail [C. trav.] [Labor Code] art. L1222-11 (Fr.), [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000035643952](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000035643952); Codul Muncii [Labor Code] art.73 (Mold.), [https://www.legis.md/cautare/getResults?doc\\_id=120714&lang=ro](https://www.legis.md/cautare/getResults?doc_id=120714&lang=ro).



practices' specific to each Member State.<sup>13</sup> Regarding the legal content of the telework/remote work relationship, it is important to mention that the legislation of the Republic of Moldova does not currently include many of the fundamental regulations of the EU Framework Agreement on Telework.

Regarding other international Conventions, the most important instrument is the International Labor Organization (ILO) Convention 177 on Home work, adopted in 1996<sup>14</sup> along with Recommendation 184.<sup>15</sup> Like the provisions regarding home work in the Moldovan Labor Code, the Convention was not created with the development of IT technologies and the current realities of telework in mind. Still, this mechanism remains the most important international instrument which can be applied to remote work / teleworking relations. RM has not ratified ILO C177<sup>16</sup> or R184.<sup>17</sup>

## 2.3 DEFINITIONS OF HOME WORK AND REMOTE WORK

### Definition of Home Work

Chapter IX of the Labor Code contains regulations on home work adopted on March 28, 2003. Article 290(1) states: „employees performing home work are considered the persons who concluded an individual labour contract on performing work at home, using materials, instruments and mechanisms offered by the employer or procured from their own means.”

The regulations on home work were not envisioned to regulate workers using ICT to complete ongoing work, but instead were targeted primarily at artisans producing specific goods.

### Definition of Remote Work

Amendments to the Labor Code, enacted in May 2020, define and regulate remote work. This change was mostly dictated by circumstances, as a vast number of workers were transferred to remote work during the state of emergency caused by the COVID-19 pandemic. Article 292<sup>1</sup> of the Labor Code defines remote work as the form of work organization in the fields of activity, through which the employee fulfills his duties specific to the occupation, function or profession he holds, in another place than the one organized by the employer, inclusive by using means in the field of information technology and communications. Remote employees are the employees who have concluded an individual employment contract or an additional agreement to the existing contract, which contains remote employment clauses.<sup>18</sup>

The difference between the definition of home work and the definition of remote work is relatively minor, namely the use of ICT and the fact that remote work can be performed in any alternative location agreed to by the employer and employee, not just at home. The National Confederation of Trade Unions (NCTU), which was actively involved in the elaboration of these reforms, considered that the proposed regulations on remote work could be included in the already existing chapter on “work from home” and that no specific separate chapter on remote work was necessary.<sup>19</sup>

<sup>13</sup> Pablo Sanz de Miguel, Maria Caprile & Juan Arasan, European Agency for Safety and Health at Work [EU-OSHA], REGULATING TELEWORK IN A POST-COVID-19 EUROPE 4, 27 (2021), <https://euagenda.eu/upload/publications/telework--20post-covid.pdf>.

<sup>14</sup> Home Work Convention, n. 177, June 20, 1996, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C177](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C177).

<sup>15</sup> Home Work Recommendation, n. 184, June 20, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100\\_ILO\\_CODE:R184:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:R184:NO).

<sup>16</sup> *Supra* note 15.

<sup>17</sup> *Supra* note 16.

<sup>18</sup> Codul Muncii al Republicii Moldova [Labor Code of the Republic of Moldova], Arts.159-162, [https://www.legis.md/cautare/getResults?doc\\_id=113032&lang=ro](https://www.legis.md/cautare/getResults?doc_id=113032&lang=ro).

<sup>19</sup> Comunicate de presă [Press Release], Confederația Națională a Sindicatelor din Moldova, Sindicatele se expun asupra „Muncii la distanță (Apr. 23, 2020), <http://sindicat.md/sindicat-se-expun-asupra-muncii-la-distanța/>.

Others have argued<sup>20</sup> that the rules on home work and remote work complement each other, from specific to general. Thus, if an employee works from home and uses information and communication technology equipment, practically his work meets both the characteristics of home work and remote work. From this perspective, it is possible to classify the employee both in the typology of home work and remote work, depending on the place of work indicated in the individual employment contract. However, depending on the applicable situation, the requirements of labor law will be considered, such as the obligation of specific contractual clauses.

Under the logic of current regulations, the concept of remote work is identical to that of telework, because one of the defining traits of remote work is the use of informational technology instruments and means.

According to the Labor Code, the only manner to perform remote work is through an individual employment contract, which will grant teleworkers all general rights contained in the Labor Code. An individual employment contract deems an individual an employee subject to the provisions of the Labor Code. National regulations clearly state that remote work relations cannot take place through other types of contracts specific for the Civil Law branch. Article 2.3 of the Labor Code states that when courts establish that through a civil law contract, “labor relations between the employee and the employer are in fact regulated, the provisions of the labor legislation shall apply to these relations,”<sup>21</sup> allowing courts to look beyond the terms of the contract to the nature of the relationship. Tax legislation consolidates this position. Article 88.5 of the Fiscal Code stipulates that “[t]he incomes of the natural person who does not carry out entrepreneurial activity, obtained from the provision of services and / or works ... are considered as salary from which tax is deducted.”<sup>22</sup> The above-mentioned regulations together with practice established in the country leads to the conclusion that even in cases where a civil law contract (for example, a contract for provision of services) is formally conducted with a natural/physical person, *de jure*, it still could be considered an employment relationship if the nature of work falls under the standard of employment.

It is important to mention that the current legislation does not regulate specific forms of remote work, among which the most important could be a mixed form of remote and classical type of employment, sometimes called the “hybrid” remote work model. According to some opinions, this hybrid form of employment, where the worker has the option to work a certain number of days from home or other location during the work week, could have a bigger impact on the future employment relations than remote work proper.<sup>23</sup> Therefore, it may be necessary to amend the labor code to include the option for mixed/hybrid forms of remote work, which could be negotiated and agreed to by the parties in the employment relationship.

## 2.4 VOLUNTARINESS AND REVERSIBILITY

Moldovan law currently does not have explicit provisions on whether telework is voluntary or reversible, except in certain cases involving exceptional situations or national emergencies where it can be imposed unilaterally. The regulations on both home work and remote work leave the specifics of how the arrangement is established and maintained to the individual employment contract or the terms of a collective agreement. Article 292<sup>2</sup> states “(1) The employee involved in remote work enjoys all the rights and guarantees provided by law, the collective employment contract, the individual employment contract or by other normative act at unit level applicable to employees whose workplace is organized by the employer. (2) The particularities regarding remote work may be

<sup>20</sup> Silvia Grosu & Olese Chirica, *Munca la distanță: munca din orice loc*, PWC ROMANIA BLOG (Sept 9, 2020), <https://blog.pwc.ro/2020/09/09/munca-la-distanța-munca-din-orice-loc-adaptarea-la-noile-realități-si-asigurarea-securității-informațiilor/>.

<sup>21</sup> Codul Muncii al Republicii Moldova [Labor Code of the Republic of Moldova], Arts.159-162, [https://www.legis.md/cautare/getResults?doc\\_id=131266&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=131266&lang=ro#).

<sup>22</sup> Codul Fiscal al Republicii Moldova [Tax Code of the Republic of Moldova], [https://www.legis.md/cautare/getResults?doc\\_id=79111&lang=ro](https://www.legis.md/cautare/getResults?doc_id=79111&lang=ro).

<sup>23</sup> Christine Ro, *Why the Future of Work Might be 'Hybrid'*, BBC WORKLIFE (Aug. 30, 2020), <https://www.bbc.com/worklife/article/20200824-why-the-future-of-work-might-be-hybrid>.

provided in the individual employment contract, in the collective employment contract or in the internal regulation of the unit or in another normative act at unit level.” Article 292<sup>5</sup> states that the “[t]ermination of the individual employment contract regarding remote work shall take place under the general conditions provided for in [the Labor] Code.”

Under the EU Framework Agreement on Telework, worker refusal to accept a transfer to telework is explicitly listed as not a valid reason for terminating the employment relationship, or changing terms and conditions of employment.<sup>24</sup> This more explicitly enshrines the right of workers to accept telework only on a voluntary basis, and would prevent the employer from unilaterally imposing this change on workers without their consent, allowing workers who refuse telework to access severance and other protections against dismissal.

Article 73 of the Labor Code states that, in cases related to defense of the country, preventing or addressing a natural disaster, or to remove situations that could jeopardize the proper functioning of critical services, “the employer may temporarily change, for a period of maximum one month, the place and specifics of the employee’s work without his consent and without operation of the respective changes in the individual employment contract.” This provision was amended with supplementary regulations introduced during the pandemic to specifically state the following:

In case of impossibility for the employee to perform work at the workplace organized by the employer and in order to protect the safety and health of the employee during exceptional situations related to the declaration of a state of emergency, siege and war or the declaration of a state of emergency in public health, the employer, depending on the specifics of the employee’s work, may decree, through an order (disposition, decision, resolution), the temporary change of the employee’s job with the performance of work at home or remotely, without making those changes in the individual employment contract. The order (disposition, decision, resolution) is communicated to the employee in a timely manner, including by electronic means.

NCTU proposes the amendment of this norm so that it will include obligatory consultations with the employee on this transfer. NCTU mentions that this proposal aims to exclude situations in which the employee is forced to perform work at home, not having this possibility, and even in some cases, not being informed about this change.<sup>25</sup> The interdiction to terminate the employment contract with the employee for his refusal to transfer to remote work could also be included in the Labor Code in compliance with the EU Framework Agreement and to protect workers’ rights to voluntariness.

A wide category of workers were moved to remote work during the two periods of national state of emergency (17 March 2020 to 15 May 2020 and 31 March 2021 to 30 May 2021). These were mostly workers in the public sector, most notably public servants and teachers. The Decisions of Commission for Exceptional Situations (CES), especially the Disposition no.6 of 26 March 2020 (point 6.4) stipulated that the manager of the public body through his disposition, by administrative act, will transfer to work at home the staff, whose activity does not require the obligatory presence at work and can be ensured remotely during the state of emergency, with the calculation of their salary in full according to Law no. 270/2018 regarding the unitary salary system in the budgetary sector.<sup>26</sup>

These regulations were amended through another CES Disposition, No. 24 of 29 April 2020,<sup>27</sup> which include more

<sup>24</sup> Framework Agreement on Telework, July 16, 2002, <https://www.etuc.org/en/framework-agreement-telework>.

<sup>25</sup> *Lucrul la distanță: CNSM va insista ca propunerile sale să fie incluse neapărat în Codul muncii*, VOCEA POPORULUI (May 19, 2020)(Mold.), <https://vocea.md/lucrul-la-distanța-cnsm-va-insista-ca-propunerile-sale-sa-fie-incluse-neaparat-in-codul-muncii/>.

<sup>26</sup> Comisia pentru Situații Excepționale a Republicii Moldova, Dispoziția 26 martie 2020, n.6, [https://gov.md/sites/default/files/dispozitia\\_cse\\_nr.6.pdf](https://gov.md/sites/default/files/dispozitia_cse_nr.6.pdf).

<sup>27</sup> Comisia pentru Situații Excepționale a Republicii Moldova, Dispoziția 29 aprilie 2020, n. 24, [https://gov.md/sites/default/files/dispozitie\\_nr.24\\_din\\_24.04.20\\_cse.pdf](https://gov.md/sites/default/files/dispozitie_nr.24_din_24.04.20_cse.pdf).

details on the procedure of transfer to a remote form of employment. The new regulations emphasize the fact that this decision by the employer is unilateral, and no longer requires the employee's consent for the performance of remote work. Therefore, each entity in the public sector independently selected the corresponding staff and sent the disposition transfer of the workers to work from home/remote work. Both terms — work from home and remote work— are used in this document, which could show that national authorities did not differentiate clearly between them at that time. According to these dispositions, these supplementary attributions of employers in the public sector are temporary, being valid only during the period of the national state of emergency.

For example, according to an interview with a representative of the Education Department of the district of Drochia, teaching staff were transferred to remote work in the same manner as public servants. Two orders of the MECR regulated the general procedures for distance learning in the general and superior cycle of studies: Order nr.351 from 19.03.2020 and nr.366 from 20.03.2020. The representative emphasizes that practically all internal orders and guiding documents of MECR in this period reflect aspects regarding remote work, organization of education processes in new conditions, impact of remote work on teaching staff and students etc. This period was very difficult, yet the transition to a remote form of employment in education is viewed as successful by the Department. In the 2021 school year which started from January 2021, all the remote work processes were put in place and the educational process was normalized.<sup>28</sup> The representative of the Department mentioned that the quick, practically immediate transfer of employees to remote work with the issue of new employment contracts or annexes to the preexisting contracts would be very difficult or even impossible. This is because in many schools the only person that manages documentation is the Director (Head of the School) who has many other responsibilities beyond that, especially in the pandemic period.<sup>29</sup> In addition, there is a significant number of employees in the educational sector which would have to be documented.

Another important aspect which is absent in the legislation of RM is the reversibility of telework/remote work. Reversibility could be established by individual and/or collective agreement. According to the EU Framework Agreement on Telework reversibility of telework means that if telework/remote work is not part of the initial job description, but instead results from an agreement between the worker and the employer (through individual or collective agreement) during the course of the employment relationship, the worker should retain the right to revert to the employers' premises upon request.<sup>30</sup>

### 3. WORKER RIGHTS IN THE REMOTE WORK RELATIONSHIP

#### 3.1 HOURS OF WORK AND THE RIGHT TO DISCONNECT

The regulation of working time in the context of remote work is covered by the general regulations of the Labor Code. Title IV of the Labor Code regulates work and leisure time, with Article 95 (2-3) stating that the normal duration of working time cannot exceed 40 hours per week, excluding exceptional situations relating to the declaration of a state of emergency, siege, and war or the declaration of a state of emergency in public health, where authorities may provide for a different length of working time for certain categories of employees. Article 100(5) stipulates that the maximum daily working time may not exceed 10 hours within the limits of the normal working time of 40 hours per week. Article 100(6) indicates that for certain types of activity, units or professions, a daily working time of 12 hours may be established by a collective agreement, which has to be followed by a rest period of at least 24 hours. These regulations include a wide variety of protection mechanisms: especially in the case of work of minors between 15 - 18 years (art 96, para 2) letters a and b), for persons working in damaging work conditions (art 96,

<sup>28</sup> Interview with a representative of Drochia District Education Department (August 9, 2021).

<sup>29</sup> Interview with a representative of Drochia District Education Department (August 9, 2021).

<sup>30</sup> *Supra* note 25.

para 2) letter c), for part-time workers (art 971), for workers involved in nightshifts (articles 103), for overtime work (art.104, 105), etc.

According to Article 292<sup>3</sup>(2)(b)-(c) of the Labor Code, the interaction of the employee with his employer takes place in the existing work schedule, therefore theoretically after the working hours included in the contract, the employee cannot be obliged to respond to emails, or other forms of correspondence or communication. However, studies from around the world have shown that because of the imbalance in power relations, employees often feel compelled to be 'on' after normal business hours and to respond to all requests made by their supervisors. For example, detailed international research on 16 large metropolitan areas in North America, Europe and the Middle East, involving 3,143,270 workers, found significant and durable increases in length of the average workday (+8.2 percent, or +48.5 minutes). Partly due to increases in emails sent after business hours (+8.3%).<sup>31</sup> While no data confirming these trends could be found for Moldova, it seems likely that workers could experience similar pressures.

A European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)), recommendation number 20 "underlines the fact that employers should not require workers to be directly or indirectly available or reachable outside their working time and that co-workers should refrain from contacting their colleagues outside the agreed working hours for work purposes; recalls that time during which a worker is available or reachable for the employer is working time."<sup>32</sup>

### 3.2 THE RIGHT TO FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Article 292<sup>2</sup> of the Labor Code mentions the general applicability of the collective contracts which are active in the employing entity, and states that the general provisions of the Labor Code apply. Article 9(1)(i)-(k) of the Labor Code states that employees have the right to freely form and join the trade unions "for the purpose of protection of his labour rights, his freedoms and legal interests" and "to carry on collective negotiations and conclude collective labour contracts and collective conventions, through his representatives, to be informed about the enforcement of the respective contracts and conventions." Article 26(1) of the Labor Code stipulates that employees' and employers' representatives have the right to initiate and conclude collective bargaining contracts or collective bargaining agreements. Collective bargaining contracts are negotiated and signed at the level of the company or employer, while collective bargaining agreements are concluded by authorized representatives of workers and employers at the national, territorial, or branch levels.

NCTU warned that the use of remote work could become a discreet tool for employers to diminish or reduce the process of collective bargaining.<sup>33</sup> The physical absence of the workers from a common working space makes it practically impossible to create groups of interest and representative organizations for the workers. In this context, the recognition by NCTU of the need to include aspects related to remote work in the future collective agreements is very important. All remote workers must be able to exercise the fundamental right to organize and bargain collectively, and regulations must ensure that the barriers presented by working remotely are addressed by creating an enabling environment for organizing.

Following the negotiations of the social partners, 16 collective agreements have been concluded at the national level.<sup>34</sup> The 16 general collective agreements do not apply generally to public workers, there are approximately two

<sup>31</sup> Evan DeFilippis et al., *Collaborating During Coronavirus: The Impact of COVID-19 on the Nature of Work* 31 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27612, 2020), <https://www.nber.org/papers/w27612>.

<sup>32</sup> European Parliament Resolution of 21 January 2021 with recommendations to the Commission on the Right to Disconnect, 2019 O.J. (C456), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021IP0021>

<sup>33</sup> Interview with the National Confederation of Trade Unions from Moldova (Sep. 2, 2021)

<sup>34</sup> ANDRIAN LUNGU, *DIALOGUL SOCIAL ÎN REPUBLICA MOLDOVA* 16 (2019), [http://moldova.fes.de/fileadmin/user\\_upload/2019/Dialog\\_social\\_RO.pdf](http://moldova.fes.de/fileadmin/user_upload/2019/Dialog_social_RO.pdf).

branch collective agreements in the public sector.<sup>35</sup>

No specific regulations regarding remote work in national or collective agreements exist at this moment. NCTU has advocated in favor of reviewing the current collective bargaining agreements to adjust them to the needs of remote work or to include regulations on remote work in future collective bargaining agreements and collective agreements.<sup>36</sup> The NCERM has stated that the current regulations on remote work are sufficient, and all other aspects should be regulated through collective agreement or collective contract. In interviews, NCERM mentioned that many employers find it difficult to understand the legal procedures for switching to this form of work.<sup>37</sup>

The NCTU considers that the legislation must provide for the regulation of important aspects regarding remote work. NCTU mentions that although some conditions of this form of work may be established by the parties through individual and collective labor agreements, the legislation has to provide for the cases on how to compensate the expenses incurred by the employee involved in remote work, and to ensure that the legal regulation on remote work does not infringe on the constitutional right of the citizen to establish and join trade unions.<sup>38</sup>

### 3.3 THE RIGHT TO NON-DISCRIMINATION

There are no specific provisions on discrimination against remote workers, either to protect them from discrimination relative to workers at the employers' premises or based on social identity. Under Article 8 of the Moldovan Labor Code, "[i]n the framework of the labour relations operates the principle of equality in rights for all employees. Any direct or indirect employee discrimination on criteria of his gender, age, race, skin color, ethnicity, religion, political option, social origin, residence, handicap, infection with HIV / AIDS, membership or trade union activity, as well as other criteria not related to his professional qualities, is prohibited."

On 25 May 2012, the Parliament of the Republic of Moldova voted on the Law on Equal Opportunities, un-officially named the anti-discrimination law. This law promotes the general non-discrimination clause contained in Protocol 12 to the European Convention on Human Rights, which Moldova signed on November 4, 2000, with the aim of preventing and combating discrimination against all persons and guaranteeing equal rights for Moldovans.<sup>39</sup> Article 7 of the Law on Equal Opportunities includes specific regulations regarding the prohibition of discrimination in employment, including protection mechanisms and guarantees for workers in various situations of discrimination.<sup>40</sup>

Teleworkers should have a right to equitable treatment under these general laws, however this is as of yet untested. More specific measures would solidify the right of teleworkers to enjoy equal treatment with workers who work at the employers' premises. Teleworkers may also be at increased risk of discrimination based on social or economic identity, and isolation may make it more difficult to identify patterns of discriminatory behavior, such as disparities in job responsibilities, pay or promotion.

#### Right to a World of Work Free from Gender-Based Violence and Harassment

Gender-based violence and harassment (GBVH) – violence and harassment directed at a person because of their

<sup>35</sup> There are no general restrictions regarding the right to collective bargaining, even so, it is in practice more complicated in relation to the public sector, mostly because the budget lines are fixed for a specific institution and do not permit much flexibility to amend and change work or salary conditions.

<sup>36</sup> Interview with the National Confederation of Trade Unions from Moldova (Sep. 2, 2021)

<sup>37</sup> Interview with the National Confederation of Employers of Republic of Moldova (Sep. 29, 2021).

<sup>38</sup> Interview with the National Confederation of Trade Unions from Moldova (Sep. 2, 2021)

<sup>39</sup> Council of Europe, *Legea cu privire la asigurarea egalității de șanse a fost adoptată*, NEWS – MOLDOVA (May 25, 2012), <https://www.coe.int/en/web/help-country/-/legea-cu-privire-la-asigurarea-egalitatii-de-sanse-a-fost-adoptata>.

<sup>40</sup> Cu privire la asigurarea egalității, Lege 25 mai 2012, n.121, in Monitorul Oficial May 29, 2012, n. 103, art. 355 (Mold.), [https://www.legis.md/cautare/getResults?doc\\_id=106452&lang=ro](https://www.legis.md/cautare/getResults?doc_id=106452&lang=ro).



actual or perceived gender or sex or that affects people of a particular sex or gender disproportionately<sup>41</sup> – is a form of discrimination based on gender and/or sex. It is inclusive of sexual harassment, as well as abusive or demeaning conduct that is not sexual but rooted in gendered stereotypes, norms and expectations.<sup>42</sup>

The Law on Equal Opportunities Article 2 defines “harassment” as “any unwanted behavior that leads to the creation of an intimidating, hostile, degrading, humiliating or offensive environment, with the purpose or effect of harming a person’s dignity based on the criteria set forth in this law.” Article 1 of the Labor Code defines “sexual harassment” as “any form of physical, verbal or nonverbal behavior of a sexual nature that harms a person’s dignity or creates an unpleasant, hostile, degrading, humiliating or insulting atmosphere.”

Article 10 of the Labor Code requires employers to take measures to prevent sexual harassment of men and women in the workplace, as well as measures to prevent retaliation for filing discrimination complaints with the government. Article 10(f<sup>5</sup>) requires the employer to introduce internal regulations prohibiting discrimination on all grounds and sexual harassment. Further, Article 199 of the Labor Code requires that the internal regulations of employers must contain “observance of non-discrimination principle and elimination of sexual harassment at any form of violation of dignity at work.”<sup>43</sup>

Remote workers may face increased risk of gender-based violence and harassment at work due to isolation. The use of ICT may present new risks of invasive forms of online harassment. Compliance with the current provisions of the Labor Code would include the obligation on employers to enact measures to address and prevent gender-based violence and harassment against remote workers and prevent retaliation for reporting harassment. While these are positive, more specific requirements on employers to address the dynamics of remote work would further protections and prevent abusive treatment.

ILO Convention 190 (C190) on Ending Violence and Harassment in the World of Work is the most recent Convention adopted by the ILO, and provides a minimum standard for governments, employers and workers to address GBVH and other forms of violence and harassment at work. Moldova has yet to ratify C190, but it provides useful guidance, developed from tripartite global negotiations, on how to address GBVH and other abuses - in the telework context and beyond. C190 applies throughout the entire “world of work” to all conduct linked to, arising out of or occurring at work, including explicitly private homes where they are places of work and violence and harassment enabled by ICT.<sup>44</sup> It requires employers to adopt measures to prevent violence and harassment arising from exposure to third parties such as customers and clients, which may be particularly relevant to teleworkers in customer support or other public-facing roles.<sup>45</sup> Currently, the Labor Code does not require that employers ensure access to victim-centric remedies, including compensation, workplace accommodations and changes to policies and practices and access to psychosocial support.<sup>46</sup> Article 10.3 of the Labor Code creates an obligation for the employer to prevent the persecution of workers who file formal complaints regarding sexual harassment with national authorities, but does

<sup>41</sup> International Labor Organization, *Violence and Harassment Convention*, No. 190, Art. 1 (adopted June 21, 2019) [hereinafter C190 or Convention 190], [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190)

<sup>42</sup> CASSANDRA WATERS & ROBIN RUNGE, SOLIDARITY CENTER, MADE FOR THIS MOMENT: HOW ILO CONVENTION 190 ADDRESSES GENDER-BASED VIOLENCE AND HARASSMENT IN THE WORLD OF WORK DURING THE COVID-19 PANDEMIC AND BEYOND (2020), <https://www.solidaritycenter.org/publication/made-for-this-moment-how-ilo-convention-190-addresses-gender-based-violence-and-harassment-in-the-world-of-work-during-the-covid-19-pandemic-and-beyond/>.

<sup>43</sup> Codul Muncii al Republicii Moldova [Labor Code of the Republic of Moldova], Arts.159-162, [https://www.legis.md/cautare/getResults?doc\\_id=131266&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=131266&lang=ro#).

<sup>44</sup> C190, art. 3, *supra* note 42.

<sup>45</sup> C190, art. 4(2), *supra* note 42.

<sup>46</sup> C190, arts. 4(2),10, *supra* note 42.

not contain any broader protections against retaliation for speaking out against GBVH at work in informal settings.<sup>47</sup>

As outlined in C190,<sup>48</sup> GBVH in the world of work includes the impact of domestic violence on the world of work. Due to isolation and the fact that many work out of their home, teleworkers may face increased difficulties reporting abuse, and have less opportunities to escape their abusers. During the COVID-19 pandemic, the Moldova “La Strada” Center<sup>49</sup> – like many centers around the world who support victims of domestic violence – reported a decrease in calls to its hot-line,<sup>50</sup> in part because many people were trapped with their abusers during the lockdown.<sup>51</sup> The MHLSP 2020 Report on domestic violence and violence against women found a fourfold reduction in calls to hotlines, while texting by SMS and comments/messaging on social media pages created for the support of victims of domestic violence increased.<sup>52</sup>

An evaluation realized in August 2020 by La Strada, after the first state of national emergency, also examined the impact of remote work on the functioning of services for domestic violence victims. Local town halls, social assistants and even local police offices closed and transferred workers to remote work. Services could not be contacted on the usual phone numbers in their offices, and alternative contact data were not provided.<sup>53</sup> Other aspects which complicated the assistance of victims because of the transfer of authorities to a remote form of work were the difficulties to obtain proof for the cases examined in courts.<sup>54</sup> Criminal investigation police bodies maintained their activity remotely, which contributed to the suspension of deadlines and freezing of investigations.<sup>55</sup> Significant changes also occurred because of the switch of the employees from the victim placement centers to remote work.<sup>56</sup> The pandemic and remote work also affected the involvement and effectiveness of specialists in cases of violence.<sup>57</sup> Services for the protection of women victims of domestic violence need to be adjusted so that they can be accessed both remotely, using existing technologies and physically.<sup>58</sup>

Remote workers facing domestic violence may require specific interventions, including transferring to work in the employer’s premises or making other workplace accommodations to ensure their safety. Conversely, workers experiencing domestic violence who generally work on the employers’ premises may wish to work remotely, particularly if they have taken steps to leave an abuser and work is the most obvious place they could be located. Currently, there are no explicit requirements on employers to ensure access to such accommodations. There are also no specific leave provisions for victims of domestic violence, who often need to move, attend hearings to obtain restraining orders or custody of children, attend medical appointments or take other measures to address the abuse. These measures are critical to ensure that workers can remain employed while seeking safety. Economic independence is a critical factor in many victim’s decision to leave their abusers, and too often victims face retaliation

<sup>47</sup> C190, art. 10(b)(iv), *supra* note 42.

<sup>48</sup> C190, art. 10(f), *supra* note 42.

<sup>49</sup> Member of La Strada International (LSI), which is present in 8 countries of origin and destination of human trafficking from Central and Eastern Europe.

<sup>50</sup> *Când tăcerea devine asurzitoare: să nu pretindem că nu auzim strigătul de ajutor al victimelor violenței în familie*, LA STRADA MOLDOVA (Apr. 7, 2020), <http://lastrada.md/rom/articole/cand-tacerea-devine-asurzitoare-sa-nu-pretindem-ca-nu-auzim-strigatul-de-ajutor-al-213>.

<sup>51</sup> *Id.*

<sup>52</sup> MINISTERUL SĂNĂTĂȚII, MUNCII ȘI PROTECȚIEI SOCIALE, RAPORTUL PENTRU ANUL 2020 CU PRIVIRE LA VIOLENȚA ÎN FAMILIE ȘI VIOLENȚA FAȚĂ DE FEMEII 5 (2021), <https://msmps.gov.md/wp-content/uploads/2021/04/Raport-2020-privind-violen%C8%9Ba-%C3%AEn-familie-%C8%99i-fa%C8%9B%C4%83-de-femei.pdf>.

<sup>53</sup> DANIELA MISAIL-NICHITIN & LILIANA ISTRATE-BURCIU, NEVOILE FEMEILOR AFECTATE DE VIOLENȚĂ ÎN FAMILIE, VIOLENȚĂ ÎN BAZA DE GEN ȘI RĂSPUNSUL SISTEMIC LA CAZURILE DE VIOLENȚĂ ÎN FAMILIE ÎN CONTEXTUL CRIZEI COVID-19 23 (2020), [https://moldova.unwomen.org/sites/default/files/Field%20Office%20Moldova/Attachments/Publications/2020/RAPORT\\_VIOLENTA\\_COVID\\_0608\\_1.pdf](https://moldova.unwomen.org/sites/default/files/Field%20Office%20Moldova/Attachments/Publications/2020/RAPORT_VIOLENTA_COVID_0608_1.pdf).

<sup>54</sup> *Id.* at 23.

<sup>55</sup> *Id.* at 33.

<sup>56</sup> *Id.* at 17.

<sup>57</sup> DANIELA MISAIL-NICHITIN & LILIANA ISTRATE-BURCIU, RĂSPUNSUL ORGANELOR DE DREPT LA CAZURILE DE VIOLENȚĂ ÎN FAMILIE ÎN CONTEXTUL CRIZEI COVID-19 ÎN REPUBLICA MOLDOVA 36 (2021), [https://lastrada.md/pic/uploaded/Studiu\\_Raspuns\\_org\\_drept\\_RO.pdf](https://lastrada.md/pic/uploaded/Studiu_Raspuns_org_drept_RO.pdf).

<sup>58</sup> MISAIL-NICHITIN & ISTRATE-BURCIU, *supra* note 50, at 48.



at work related to the abuse.<sup>59</sup> Government regulations can prevent retaliation against workers for their actual or perceived status as a victim of domestic violence, and ensure access to psychosocial support and crisis counseling, including by offering guidance to employers on how to issue referrals to available services in their community.

### 3.4 THE RIGHT TO RECONCILE WORK AND FAMILY LIFE

The right to reconcile work and family life is an important issue, particularly for caregivers to children and/or elders, and when implemented in a rights-centric manner telework can provide a channel to allow caregivers to remain employed while attending to family obligations. Several countries recognize the right of workers to request to telework or to request to adapt working time in order to exercise this right to reconcile work and family life. Article 250 of the Labor Code allows pregnant workers and workers caring for children under 3 to transfer to different work locations or different work, but there is no specific mention of remote work as a tool to balance work and family obligations. Number 34 in the Recitals of the EU Directive on Work-Life Balance states that “[i]n order to encourage workers who are parents, and caregivers to remain in the work force, such workers should be able to adapt their working schedules to their personal needs and preferences. To that end, and with a focus on workers’ needs, they have the right to request flexible working arrangements for the purpose of adjusting their working patterns, including, where possible, through the use of remote working arrangements.”<sup>60</sup> This is important for gender equality as women are disproportionately likely to be primary caregivers.

In practice, some entities informally provided a more flexible work schedule for women, but this was at the discretion of managers not a requirement. For example, in the IT sector, ATIC mentioned that many employers provided a flexible work schedule for workers, especially for women after childbirth.<sup>61</sup>

A study of the impact of the pandemic on women found that the economic impact of the pandemic was lower in the case of women with higher education, who often had the option to transfer to remote work and thus maintain their economic stability. While in the case of women with lower level of education this was not the case.<sup>62</sup>

While telework can allow for greater flexibility to attend to care needs, it is also critical to ensure that telework is not used as a substitute for leave policies to meet care and family obligations. It would be helpful to provide clear guidance that leave protections apply equally to teleworkers and that telework is not used as a substitute for time off to provide care.

## 4. EMPLOYER OBLIGATIONS

### 4.1 PROVIDE AND MAINTAIN NECESSARY EQUIPMENT

Under Article 292<sup>3</sup>(2)(d) the individual employment contract must contain “the conditions regarding the bearing of expenses related to the activity in remote work regime.” Article 10(2)(f) of the Moldovan Labor Code states that employers have an obligation “to provide employees with equipment, instruments, technical documentation and other needed means for fulfilling their working obligations.”

In an interview, a representative of the Education Department of the District of Drochia stated that teachers who did not have a computer or tablet for organizing remote work were provided with one. Donations were distributed to children who did not have such equipment. In addition to offering this equipment, from 2019 teachers receive

<sup>59</sup> SOLIDARITY CENTER, DOMESTIC VIOLENCE IS A WORKER RIGHTS ISSUE (2022), [https://www.solidaritycenter.org/wp-content/uploads/2022/02/DV-is-a-Worker-Rights-Issue-Fact-Sheet\\_2-2022.pdf](https://www.solidaritycenter.org/wp-content/uploads/2022/02/DV-is-a-Worker-Rights-Issue-Fact-Sheet_2-2022.pdf).

<sup>60</sup> Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers.

<sup>61</sup> Interview with a representative of the Moldovan Association of ICT Companies (Oct. 19, 2021)

<sup>62</sup> MISAIL-NICHITIN & ISTRATE-BURCIU, *supra* note 50, at 12.

2000 lei MDL, annually to offset the expenses related to organization of the study process.<sup>63</sup> In the IT sector, the employment contract often establishes a compensation clause for the cost of internet and electricity in the cases of remote work, along with providing furniture, depending on the situation, to employees. During the pandemic, some companies allowed employees to take certain furniture and equipment so that they can equip a home office.<sup>64</sup>

Current regulations do not define the nature and content of the supplementary expenses. At the moment, this concept can be elaborated through collective employment contracts, collective agreements, or national courts precedent. There is a danger that employers will see telework as an opportunity to shift the costs of providing and maintaining work equipment onto teleworkers. This will disproportionately impact workers with less financial security, who might not currently own computers or other equipment. The law should clearly stipulate that employers will bear the expenses for necessary equipment and maintenance, including costs associated with the use of ICT such as internet services and electricity.

## 4.2 PROTECT OCCUPATIONAL SAFETY AND HEALTH

Article 292<sup>4</sup> of the Labor Code states:

The employer organizes the work safety and health of employees involved in remote work in accordance with the provisions of the Law on safety and health at work no. 186/2008, as well as other normative acts in the field of occupational safety and health.

In interviews, the MHLSP confirmed that the Labor Code amendments did not change the general regulations on safety and health at work.<sup>65</sup> This includes Law No. 186 from 10.07.2008 on labor security and health.<sup>66</sup> Further, under Article 9(1)(f<sup>1</sup>) of the Labor Code, employees have the right “to be informed and consulted on the economic situation of the entity, safety and health at work and on other matters related to the operation of the unit.”

In an interview, a representative from MHLSP noted that in the public sector, each state body has organized independently its activity regarding work safety and security during remote work.<sup>67</sup> A representative of the Education Department of the District of Drochia mentioned that the issue of OSH for teachers during remote work was relatively easy to manage because even before the pandemic, the teaching staff conducted many activities at home (e.g. grading homework, filling specific reports, etc.). So, some training on security aspects in the case of work from home had been discussed. Also, work safety training with teachers is done once every 3 years.<sup>68</sup>

In the case of the private sector, a representative from NCERM extensively described the lack of clarity around OSH in the context of remote work. This lack of clarity was an important factor in the refusal of many employers to use this form of work. The NCERM representative noted that the most appropriate approach in this situation is the one that was already implemented by some employers, namely, to train employees at level 1 OSH.<sup>69</sup> In this case, the issues regarding OSH are clarified and the responsibility in the context of remote work is shared with the employee since s/he is trained and informed in detail on OSH issues.

<sup>63</sup> Interview with a representative of the Education Department of the Drochia District (August 9, 2021).

<sup>64</sup> Interview with a representative of the Moldovan Association of ICT Companies (Oct. 19, 2021)

<sup>65</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

<sup>66</sup> Securității și sănătății în muncă, Lege 10 iulie 2008, n.186, in Monitorul Oficial Aug. 5, 2008, n.143-44, art. 587 (Mold.), [https://www.legis.md/cautare/getResults?doc\\_id=110580&lang=ro](https://www.legis.md/cautare/getResults?doc_id=110580&lang=ro).

<sup>67</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

<sup>68</sup> Interview with a representative of the Education Department of the Drochia District (August 9, 2021).

<sup>69</sup> There are officially 2 levels of trainings in line with the obligatory training that needs to be provided at the moment of signing the individual employment contract. The law regulates which category of workers must pass obligatory relevant level of OSH training. Level 1 training is more advanced than the usual one which have to be obtained by the workers at the moment of signing the employment contract, whereas level 2 training is for the workers / specialists in the field of OSH.

NCERM noted that the EU Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, does not differentiate where the requirements on safety and health at work apply. So, the employer's liability is equal, either at the workplace organized by him, or at the workplace of the employee at his home or other workplace in the context of remote work. However, NCERM mentions that they do not know of any case at the EU level, when the employer has been sanctioned for breaching the conditions of safety and health at work in the context of working at home or remotely.<sup>70</sup>

Regarding the IT sector, ATIC mentions that such safety and security training is carried out in general conditions according to the legislation in force. The safety training is workplace-oriented and is not focused on the whole workers' household. This training proves that the employee perceives the dangerous situations (to check that the computer cable is not damaged, that there is no liquid near the computer, that the office chair is stable and not damaged, etc.). ATIC mentions that other more detailed forms of control of the workplace security at the employees' home is not possible, as the employer can not show up and check the working conditions of the worker. The employer also cannot ask for a video record of the place of work, as this would be an interference in the private life of the employee. Other forms of continuous training are also carried out, for example, through zoom video calls. ATIC mentions that in practice, a company of 1000 people, for example, will not be able to check 1000 different workplaces at the employees' homes or other locations.<sup>71</sup> ATIC considers it necessary to clarify the OSH aspects and the responsibility of each party in the employment relation.

The necessity to introduce more specific regulations regarding safety and security in situations involving remote work was also mentioned by NCTU, which emphasized the importance of clear regulation of these aspects. NCTU highlighted the role and impact of individual and collective agreements, as well as the necessity to discuss such mechanisms in the context of social dialogue via the tripartite working group made up of representatives from government, trade unions and employers.<sup>72</sup>

Issues and the lack of clarity around OSH was also mentioned by MHLSP, as this was one of the most frequent questions addressed by employers to the Ministry.<sup>73</sup> Gender-based violence and harassment in the world of work for remote employees are of significant concern and should be incorporated into OSH risk assessment and planning.

The Ministry of Labor and Social Protection could design a specific OSH training for remote work. The implementation of such training by independent training centers will involve some supplementary costs for the employer, but it will be more effective in the longer term. Such training is preferable to a signed declaration by the employee that he is informed about the OSH at the workplace. The Ministry must be clear about the continuing responsibility of the employer for their workers' health and safety, even in a remote work location, and the rights that workers continue to have despite not working at their employer's premises. The training should cover issues particularly relevant to remote work, such as ergonomics, risks of technology-enabled violence and harassment and other risks arising from isolation, and how to report any violations that occur.

<sup>70</sup> Interview with the National Confederation of Employers of Republic of Moldova (Sep. 29, 2021).

<sup>71</sup> Interview with a representative of the Moldovan Association of ICT Companies (Oct. 19, 2021)

<sup>72</sup> Interview with the National Confederation of Trade Unions from Moldova (Sep. 2, 2021)

<sup>73</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

### 4.3 ENSURING TELEWORKERS' RIGHT TO PRIVACY

#### Work Oversight and Control

Current regulations require that some mechanisms of work oversight and control are included in the individual employment contract.<sup>74</sup> Article 292<sup>3</sup>(2) of the Labor Code states that “[t]he individual employment contract regarding remote work must contain, in addition to the clauses provided in art. 49, clauses regarding: a) the conditions for performing remote work; b) the program within which the employer is entitled to verify the activity of the employee and regarding the manner of performing the control; c) the manner of recording the working hours provided by the employee involved in remote work; d) the conditions regarding the bearing of expenses related to the activity in remote work regime; e) other conditions agreed by the parties.” The term “program,” stipulated at letter b, is not clear, according to the Explanatory Dictionary of Romanian language it could be interpreted in three manners: a software application, a time schedule or an activity plan.<sup>75</sup> The issue of remote work is new in the country, and the practice has yet to be established, however the provision regulating remote work should be not vague, but clear and understandable.

While there are no clear limitations on the use of intrusive surveillance technology in remote work, the Labor Code stipulates robust guarantees and protection mechanisms regarding data protection and personal privacy in Articles 91 - 94. Article 91 states that “the processing of personal data of the employee may be carried out exclusively for the purpose of fulfilling the provisions of the legislation in force, providing employment assistance, training and advancement in service, ensuring personal security of the employee, controlling the volume and quality of work performed and ensuring the integrity of the entity.” Article 91(d-e) prohibits collecting data on employee’s political and religious opinions or membership in trade unions, or social or religious organizations, as well data regarding the workers’ “private life.” In “cases stipulated by the law, the employer can request and process the data on the employee’s private life only with employee’s written consent.” Article 91(f) states that an employer cannot make decisions affecting an employee’s interests based on “the personal data of the employee obtained exclusively as a result of automated or electronic processing.” This norm can be subject to interpretation because it is not clear what the term “electronic processing” could include. This aspect would currently have to be interpreted by judiciary case law. Article 91 further requires informed consent regarding “the manner of processing and keeping” data, states that the employer is responsible for protecting data and stipulates that measures to protect personal data must be arrived at by collective bargaining. Article 92 contains detailed provisions on the transfer of data and Article 93 outlines the right of the employee to receive full information about his personal data and how it is processed and to require from the employer any collected personal data regarding himself, free of charge.

Also, significant importance can be attributed to the case law of the European Court for Human Rights (ECtHR), which is binding on Moldovan courts. The ECtHR has examined some cases regarding the monitoring of workers at the workplace using electronic means.<sup>76</sup> In *Copland v. the United Kingdom* the ECtHR found that the collection and storage of personal information relating to a workers’ use of the telephone, e-mail and internet, without her knowledge, had amounted to an interference with her right to respect for her private life and correspondence.<sup>77</sup> In *Antović and Mirković v. Montenegro*, the Court found camera surveillance of a worker amounted to an interference with the right to privacy.<sup>78</sup>

<sup>74</sup> Codul Muncii al Republicii Moldova [Labor Code of the Republic of Moldova], Arts.159-162, [https://www.legis.md/cautare/getResults?doc\\_id=131266&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=131266&lang=ro#).

<sup>75</sup> Program, DEXONLINE, <https://dexonline.ro/definitie/program> (last visited May 31, 2022).

<sup>76</sup> See, e.g., *Copland v. United Kingdom*, App. No. 62617/00, (Apr. 3, 2007), <https://hudoc.echr.coe.int/eng?i=001-79996>; *Bărbulescu v. Romania*, App. No. 61496/08, (Sept. 5, 2017), <https://hudoc.echr.coe.int/eng?i=001-177082>; *Antović and Mirković v. Montenegro*, App. No. 70838/13, (Nov. 28, 2017), <https://hudoc.echr.coe.int/eng?i=001-178904>.

<sup>77</sup> EUR. CT. OF HUM. RTS, PRESS UNIT, ECHR, FACTSHEET – SURVEILLANCE AT WORKPLACE 2 (2022), [https://www.echr.coe.int/Documents/FS\\_Workplace\\_surveillance\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Workplace_surveillance_ENG.pdf).

<sup>78</sup> *Id.*

In practice, oversight and monitoring has been implemented in different ways depending on the sector. In interviews, public servants stated they report on their work through periodical reports, weekly or biweekly.<sup>79</sup> In the education sector, this includes the possibility to check in on teachers through “Google classroom,” the main software used for remote studies. According to a representative of the Education Department of the District of Drochia, managers of educational institutions can attend teachers’ classes, but this is usually not done without prior notice and the teacher’s consent. Managers of educational institutions are included in all the teaching groups in “Google classroom,” and each teacher must prepare a detailed report regarding his activity at the end of the semester.<sup>80</sup>

In the IT sector, according to an interview with ATIC, monitoring is conducted through software. Companies encourage employees to install time management software, such as Meetmo, Downtime or other such software, to track their hours. Some monitoring software is used by specific companies for monitoring working time and overtime. IT companies also have a responsible HR manager who monitors that each worker takes his days off.<sup>81</sup> ATIC mentions that the practices of monitoring workers are rarely used in the IT industry because the market demand for IT specialists is very high, and companies are often very permissive with their staff. According to ATIC, the employees would not agree to a monitoring of the general internet traffic in the work process. There is a certain monitoring process, however. There are periodic reports submitted by employees, and managers have monitoring functions, because employees offer their tasks, for example on software, internal platforms or other tools.<sup>82</sup> This aspect was confirmed by an independently interviewed IT worker, who mentioned that he would rather quit his job than accept software monitoring of his work.<sup>83</sup>

Regarding the possibility to check and monitor the employee’s workplace in the context of remote work, the current legislation does not stipulate any legal mechanism for this. This means that considering the fundamental principle of inviolability of domicile, the employer has „de jure” no possibility to check the workplace of the remote worker, at home or in other premises which he uses. In practice employers can monitor their employees working from home because of the principle of subordination in labor relations but must do this without interfering in the personal space of their domicile. Therefore, written reports or audio interactions could be acceptable. No clear national practice exists regarding this aspect at this moment.

Telework presents a risk that invasive means of surveillance will be deployed by employers which can impinge on workers’ right to privacy. Current regulations contain no specific language on how to protect worker privacy, particularly monitoring systems, although there are robust protections regarding data that should protect remote workers from infringements on their privacy, more specificity would prevent potentially invasive practices.

### Protection of Teleworkers’ Personal Data

One of the significant regulations which impacts the implementation of remote work, are those on personal data protection. The National Center for Personal Data Protection (NCPDP) has issued a recommendation regarding the processing of personal data in the context of the COVID-19 pandemic in the Republic of Moldova. In this recommendation, the Center reminds that during the professional activity at home, as a measure to combat COVID-19, a list of protection measures and mechanisms will be used for the transmission of data for work related purposes, which also integrates personal data: secure email addresses, encryption methods and technical means of

<sup>79</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

<sup>80</sup> Interview with a representative of the Education Department of the Drochia District (August 9, 2021).

<sup>81</sup> Interview with a representative of the Moldovan Association of ICT Companies (Oct. 19, 2021)

<sup>82</sup> Interview with a representative of the Moldovan Association of ICT Companies (Oct. 19, 2021)

<sup>83</sup> Interview with Informational Technologies Specialist (August 6, 2021).

communication strictly intended to perform professional duties in order to avoid security breaches.<sup>84</sup>

Research on remote work also mentions other security measures that the employer has to apply in the normal course of activity, ranging from implementing an antivirus solution, to including complex passwords to gain access to information, performing security updates to operating systems, installing firewall programs and encrypting equipment. This research concludes that in the context of these supplementary requirements for the cases of remote work, it is advisable for employers to review individual employment contracts and adjust them, as appropriate, to the new provisions, to review (cybernetic) security policies and measures, to train and inform staff about technologies and risks associated with their use, as well as safety and health rules during remote work.<sup>85</sup>

NCERM and ATIC mentioned significant limitations to remote work caused by personal data protection legislation and the need to adjust it to ensure that the current regulations don't block the functioning of norms on remote work<sup>86</sup>. This is mostly because the current legal framework in the field does not correspond to the modern realities of information technologies and the labor market. For example, ATIC mentions that NCPDP prohibits the use of software that stores information on "Cloud" servers, so theoretically businesses cannot use the "Zoom" software because it stores information in the "Cloud". ATIC mentions that in some cases these rigors are necessary and applied by IT companies (e.g., Fin-tech companies working with banks and other financial institutions). Such companies operate not only with personal data but also with banking data, credit history, etc., and they ensure the highest level of data protection in general.<sup>87</sup> NCTU also considers the aspects regarding personal data protection as one of the most important features which need to be clarified in relation to remote employment.<sup>88</sup>

## 5.0 STATE LABOUR INSPECTION AND THE CONTROL FUNCTION IN THE CONTEXT OF REMOTE WORK

Regarding individual petitions and complaints addressed by the workers, MHLSP mentions that no petitions were registered within the Ministry nor within the State Labor Inspectorate (SLI) regarding the implementation of regulations on remote work. A small number of employers requested telephone consultations on how to complete the individual employment contracts and / or the supplementary annex to it and how to organize and ensure occupational safety and health in such cases.<sup>89</sup>

Regarding the activity of SLI in relation to remote work, the biggest obstacle is the fact that the control functions of the Inspectorate in the OSH field were withdrawn until recently. This occurred starting in 27.10.2017, when Law No. 185<sup>90</sup> amended national laws on health and security at work<sup>91</sup> and the State Labor Inspectorate.<sup>92</sup> From that period another mechanism of control was established which was widely viewed as ineffective by the research done on this topic.<sup>93</sup> As described by the International Labor Organization:

In 2017, at the recommendation of the World Bank Group, the Moldovan government undertook a major reform to

<sup>84</sup> CENTRUL NAȚIONAL PENTRU PROTECȚIA DATELOR CU CARACTER PERSONAL AL REPUBLICII MOLDOVA, PRELUCRAREA DATELOR CU CARACTER PERSONAL ÎN CONTEXTUL PANDEMIEI DE COVID-19 ÎN REPUBLICA MOLDOVA (n.d.), <https://datepersonale.md/prelucrarea-datelor-cu-caracter-personal-in-contextul-pandemiei-de-covid-19-in-republica-moldova/>.

<sup>85</sup> Grosu & Chirica, *supra* note 21.

<sup>86</sup> Interview with the National Confederation of Employers of Republic of Moldova (Sep. 29, 2021).

<sup>87</sup> Interview with a representative of the Moldovan Association of ICT Companies (Oct. 19, 2021).

<sup>88</sup> Interview with the National Confederation of Trade Unions from Moldova (Sep. 2, 2021).

<sup>89</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

<sup>90</sup> Lege 21 septembrie 2017, n.185, in Monitorul Oficial Oct. 27, 2017, n.371-82, art. 632 (Mold.), [https://www.legis.md/cautare/getResults?doc\\_id=101154&lang=ro](https://www.legis.md/cautare/getResults?doc_id=101154&lang=ro).

<sup>91</sup> *Supra* note 63.

<sup>92</sup> Lege 10 mai 2001, n.140, in Monitorul Oficial June 29, 2001, n.68-71, art. 774, [https://www.legis.md/cautare/getResults?doc\\_id=110520&lang=ro](https://www.legis.md/cautare/getResults?doc_id=110520&lang=ro).

<sup>93</sup> International Labour Organization, *Reform of the Reform in the Republic of Moldova: New Law Puts State Labour Inspectorate Back in Charge of Occupational Safety and Health*, CENT. & EASTERN EUR: WHAT'S NEW (Jan. 12, 2021), [https://www.ilo.org/budapest/whats-new/WCMS\\_766135/lang--en/index.htm](https://www.ilo.org/budapest/whats-new/WCMS_766135/lang--en/index.htm).



restructure the state control system, aiming to create favourable conditions for businesses in the country. As a result, the control function in the field of OSH was transferred from the State Labour Inspectorate to ten sectoral inspection agencies, while overseeing compliance with labour legislation remained with the Labour Inspectorate. The key argument for restructuring was to reduce under desk payments by reducing the number of visits per company. The motivation to curb corruption was reasonable, but the consequences of the new regulation had not been properly thought through. Scattering the OSH function across 10 agencies in a country with 3 million inhabitants meant losing potential for synergies, while the trend of labour inspectorates in all EU countries is to have all functions under one roof. The reform was inefficient and ineffective at the same time. It resulted in the fragmentation of OSH inspection functions and limitations to the role and efficiency of labour inspection. The Moldovan social partners expressed serious concerns with this radical and detrimental reform. For trade unions, reducing the role of labour inspection meant not only a threat to workers' health and safety, but also the undermining of supervision of access to rights and proper monitoring of labour relations.<sup>94</sup>

In a positive move for effective realization of labor rights in Moldova, control functions were returned to SLI through Law No. 191 from 19.11.2020,<sup>95</sup> which re-established a centralized authority to ensure labor inspections and oversight. However, the law has yet to be fully implemented. For example, a Government Decision regarding the adoption of a unitary framework for the analysis of risk criteria in the process of the control of health and labor security at the workplace was approved only recently.<sup>96</sup> Real initiatives for establishing control mechanisms only started recently, and the impact will be observable in the medium to long term.

## 6. PROPOSALS IMPACTING REMOTE WORK

Projects for amending current regulations on remote work are mostly initiated by social dialogue partners, especially the associations of employers. In the interview with MHLSP, the Ministry mentioned that at this moment there are no concepts for new regulations in this field. Also, MHLSP remarks that it does not have official information on the positive or negative impact of current amendments on remote work. At the same time, some supplementary risks encouraging undeclared work and / or paying envelope wages could occur.<sup>97</sup>

Regarding the existing law projects, ATIC promotes the concept of a law project for the remote work of foreign IT specialists in RM. MHLSP also views positively this initiative.<sup>98</sup> These specialists would be registered as employees in Moldovan companies and pay all the corresponding taxes and contributions, while working in their own countries. There appears to have been no consideration of how the right to join unions, organize and bargain collectively would be protected for such workers, and whether they would be permitted to join existing Moldovan unions or form their own. The examination of this project is currently suspended, mainly due to political and administrative changes taking place in the post-election period.<sup>99</sup>

A law amending the Labor Code and other legal acts, adopted on 11.11.2021 (unofficially titled the Law on Digitalisation of the economy), introduced significant changes to the application of QAES in employment relations. Namely, the law introduced new terms in the Labor Code, for example, the term - "written form" which includes

<sup>94</sup> *Id.*

<sup>95</sup> Lege 19 noiembrie 2020, n.191, in Monitorul Oficial Dec. 22, 2020, n.353-57, art. 260 (Mold.), [https://www.legis.md/cautare/get-Results?doc\\_id=124533&lang=ro](https://www.legis.md/cautare/get-Results?doc_id=124533&lang=ro).

<sup>96</sup> Comunicate de presă [Press Release], Ministerul Sănătății al Republicii Moldova. Planificarea controalelor de stat în domeniul securității și sănătății în muncă va fi efectuată în baza unui cadru unitar privind analiza criteriilor de risc (Aug. 19 2021), <https://msmps.gov.md/comunicare/comunicate/planificarea-contrloalelor-de-stat-in-domeniul-securitatii-si-sanatatii-in-munca-va-fi-efectuata-in-baza-unui-cadru-unitar-privind-analiza-criteriilor-de-risc/?fbclid=IwAR1VIR3qd2pRRFIAezZKKQD5O2N2pqRO0jyOMlaFv5ziBbGG1td4tGwNHE>.

<sup>97</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

<sup>98</sup> Interview with representative of the Ministry of Health Labor and Social Protection, (August 11, 2021).

<sup>99</sup> Interview with a representative of the Moldovan Association of ICT Companies (Oct. 19, 2021)

the electronic documents (art.1), while the term - “confirmation of receipt / notification”: includes the option of sending such notifications through e-mail according to the rules for sending and receiving the electronic documents provided by law (art.1). Article 56(3)(b) will also permit the signature of the individual employment contract using the “QAES” electronic signature.

These changes are very important. They make viable many new options for the functionality of the remote work process. Employees can now sign employment contracts with the QAES system, even without meeting the employer physically, and the law permits other processes to be completed remotely, including signing and sending leave requests, receiving wage payment confirmation, signing and receiving various orders issued by the employer. According to the new amendments, these interactions have to take place under the conditions for sending and receiving the electronic documents. In this context, the Law Nr. 91/2014 on the electronic signature and the electronic document, defines at Article 2 the term electronic document as “information in electronic form, created, structured, processed, stored and / or transmitted by computer or other electronic devices, signed with electronic signature in accordance with this law.”<sup>100</sup> Therefore any document exchange, including through e-mail must be realized through the electronic signature as it is defined currently by law. This requirement contributes not only to the securing of the document exchange, but also makes possible the monitoring of the fact that the messages were received.

Opinions regarding the need for further amendments of the regulations on remote work differ significantly. As previously mentioned, MHLSP is not working on any law projects at the moment. NCERM prefers to keep the current approach of brief regulation. According to NCERM draft amendments, these regulations will also depend a lot on the implementation of the proposals on the digitalisation of labor relations.<sup>101</sup>

At the same time, NCTU has been actively proposing amendments to current regulations on remote work, especially on the following topics, including, but not limited to keeping records of hours actually worked by the employee; compliance by the employee with working time and rest time; and best practices for ensuring control and supervision by the relevant administrative agencies in order to comply with remote-work safety and health regulations. NCTU mentioned that CNSM submitted several proposals related to the above topics, but in the final stages of examining the draft law amending the Labor Code, these proposals, for the most part, were not considered. The Confederation suggested that reforms should be examined by the tripartite working group in the light of domestic and international law procedures for the regulation of remote work to the relevant authorities.<sup>102</sup>

All of the above research supports the idea of applying a human rights approach during the law-making process. Certain safeguards and rights need to be included and regulated in the current legislation, including OSH, personal data protection, supplementary rights for remote workers, control, and monitoring requirements for remote work, etc. This legal framework needs to be formulated in a way that ensures decent work for everyone through efficient social dialogue, where the interests of social partners will be brought closer to each other and workers and union voices are heard and considered sufficiently.

## CONCLUSION AND RECOMMENDATIONS

The growth of telework requires a rights-based approach to ensure that teleworkers can fully exercise their fundamental labor rights and to ensure decent, safe working conditions for all. The fact that telework’s growth came

<sup>100</sup> Privind semnătura electronică și documentul electronic, Lege 27 iunie 2014, n.91, in Monitorul Oficial July 4, 2014, n.174-77, art. 397 (Mold.), [https://www.legis.md/cautare/getResults?doc\\_id=112497&lang=ro](https://www.legis.md/cautare/getResults?doc_id=112497&lang=ro).

<sup>101</sup> The regulations were adopted after the interview with NCERM, see above the amendments to the Labor Code from 11.11.2021. Interview with the National Confederation of Employers of Republic of Moldova (Sep. 29, 2021).

<sup>102</sup> Interview with the National Confederation of Trade Unions from Moldova (Sep. 2, 2021)



amidst a global crisis complicates the intervention of SLI, which does not have established procedures for this new type of work arrangement. Current national regulations on remote work need to be supplemented. Some of the important approaches and proposals can be taken from the EU Framework Agreement on Telework. This includes establishing telework as voluntary and reversible and creating effective OSH regulations. It also requires a functional system of oversight and enforcement.

- 1) Current NBS research examines, at least partially, data on work from home/remote work, but offers fragmented and conflicting information, complicating the comparative analysis of data. NBS should start collecting and publishing standardized and comparable statistical indicators on remote work. NBS needs to separate the data on remote work from the data regarding work from home. This research should continue to include consistent data on gender, age and other social categories.
- 2) Clear control competencies and a control mechanism must be established for the State Labor Inspectorate. The insufficient regulation of control mechanisms for the State Labor Inspectorate in relation to remote work contributes to the impossibility of involvement of the SLI in the monitoring and control of this type of work arrangement. The absence of any complaints regarding remote work mentioned by MHLSP could reflect an ineffective or practically nonexistent control mechanism. A clear regulation will also better inform workers and enable them to defend their rights by filing complaints. Workers should have the option to file a complaint to the SLI for the purposes of vindicating their rights including the ability to request an investigation of the OSH aspects of remote work or address labor rights violations. The SLI should have procedures in place to conduct both physical and/or virtual assessments at the employers' premises, if specific risks are identified during the controls at the workers' workplace.
- 3) The labor code should regulate mixed forms of remote work, which would combine work in the employer's premises for a part of the week with remote work. Existing research shows that this form of work may be used more than remote work in its classical form, and thus basic concepts of such a form of employment must be included in the Labor Code.
- 4) Regarding freedom of association and collective bargaining, currently remote work is not included in any collective agreements. Capacity building and supplementary information of national trade unions must take place to ensure efficient inclusion and regulation of aspects related to remote work in these normative acts. Regulations regarding remote workers working outside of Moldova must include measures to ensure they have equal access to labor rights, including the ability to form and join trade unions of their choosing.
- 5) Current regulation on remote work should be amended in the light of the recommendations of the EU Framework Agreement on Telework to ensure core worker rights:
  - a. Control and monitoring - The Labor Code should stipulate that the monitoring of remote work must be realized with respect for the worker's privacy. Before the employer introduces any mechanisms or methods to oversee work involving surveillance technology or other measures that could potentially lead to an invasion of privacy, workers, and trade union representatives where they exist, should be informed and consulted. Employers should be obligated to prioritize the use of non-invasive surveillance tools. Surveillance systems and monitoring, particularly the use of video or audio recording outside of normal work duties for the specific purpose of supervision, should only be implemented where they are necessary to achieve a legitimate objective that cannot be achieved through other, less invasive means. All workers impacted should be informed of surveillance systems in place and understand the implications for their privacy in advance of their use. Surveillance tools that enable the use of

digital transmission and/or recording of audio or videos of workers without informed consent, and surveillance tools that collect information on workers outside work hours without informed consent, should be prohibited.

- b. The right to reversibility - The Labor Code should clearly state that issues regarding reversibility of remote work can be included in collective agreements. If the transfer to remote work occurred because of an extraordinary situation, the worker should have the right to return to work in the physical premises of the employer after the expiration of these events.
  - c. The issue of voluntariness - The Labor Code should stipulate that the employer does not have the right to terminate employment if a worker refuses to be transferred to remote employment during the occurrence of an extraordinary situation. Workers should also have the right to request a transfer to remote work, which the employer should be required to grant unless there are justifiable reasons why remote work would interfere with business operations. This is especially the case of workers which have to reconcile work and family life, but should not be restricted to only this reason. Where an employer refuses an employee's request to work remotely, the refusal should be explained in writing and include an explanation of how remote work would interfere with business operations.
- 6) The right to disconnect should be regulated in the Labor Code, establishing clear limits on working time for remote workers. This right could be accomplished by, for example, limiting employers' right to require performance of work after the workers' set working hours, or in conditions of flexible employment schedule, between the hours 19:00 - 08:00. These limitations could also apply to the timing of employer communications with workers.
- 7) OSH issues regarding remote work must be resolved based on discussion under the tripartite social partnership format. Trade unions and workers must be involved in the design and implementation of any new OSH regulations to ensure teleworkers enjoy the right to safe, healthy working conditions, while also respecting their right to privacy. Through the tripartite process, the government should adopt clear regulations and mechanisms to outline the employer's core responsibility to ensure worker safety with respect to OSH issues for remote workers.
- a) The employer must retain clear responsibility for the health and safety regarding remote workers including:
    - i) Being responsible for the safety of all work equipment, and the provision of proper working equipment, taking in mind ergonomics and other safety issues
    - ii) Employers shall not access the private homes of remote workers for any purpose. However, employers should be obligated to develop general risk assessment tools and virtual reviews to identify health and safety risks and hazards at alternative location(s) and train workers on OSH issues related to telework. This shall include the working environment, equipment, ergonomics, work organization, and psychosocial risks. These assessments and reviews should include an analysis of the distribution of the working day, expectations - both explicit and implicit - about availability, access to appropriate accommodations, guarantee of breaks and disconnections, and risks posed by working in isolation, including increased vulnerability to discrimination, violence and/or harassment. The employer, working with the trade union or health and safety representatives where no union exists, should identify and implement measures to mitigate identified risks and hazards.

- iii) Providing training on health and safety hazards, including how to safely use the work equipment provided by the employer. Workers must have the right to refuse to work with the equipment provided if it presents any danger from a work and safety point of view without adverse job consequences.
  - iv) Teleworkers should have the right to request that the company's occupational health services inspect their chosen place of work, but the employer should not have the right to carry out an on-site inspection in the absence of such a request in order to respect worker privacy.
  - v) Creating mechanisms to prevent and address violence and harassment in the workplace against remote workers, including gender-responsive compliance mechanisms and providing information to remote workers about the process for reporting cases.
- b) The Ministry of Labor, under Law 186/2008 on occupational safety and health, should develop a specific training course in the OSH field for the needs of remote workers. Such a course will enable employers and workers to take actions to ensure safe and healthy working conditions.
- c) The burden of proof in litigation cases related to work accidents and professional illness should fall on the employer to prove that all possible actions were undertaken to provide a safe working environment.
- 8) Employers should provide the opportunity for direct contact with coworkers on a regular basis to reduce psychosocial risks related to the isolation of teleworkers
- 9) Current legislation and practice regarding personal data protection needs to be adapted and adjusted to the realities of remote work. These amendments should include permitting the use of verified applications and software which use cloud storage, while ensuring that employers have the obligation to protect workers' data and obtain their informed consent with respect to the processing and storage of data.
- 10) The employer should be responsible for providing all necessary equipment to perform work-related functions, for installing and maintaining said equipment and providing adequate, accessible training necessary for regular telework. Where this is not possible, the employer must compensate accordingly the employee for the use of his personal equipment. The employer should be responsible for maintenance and replacement due to obsolescence, loss, or damage during the performance of work duties. Remote workers who cannot work due to equipment failure, must be compensated according to the regulations on technical unemployment or other relevant regulations from the Labor Code, until the employer makes necessary repairs.
- 11) Current regulations protecting workers from harassment at the workplace must include measures to ensure that teleworkers have access to safe, effective, gender-responsive compliance mechanisms and psychosocial support measures. Regulations should require employers to prevent technology-enabled violence and harassment through the adoption of policies and risk assessment procedures, including mitigating risks from exposure to third parties and risks arising from isolation. Teleworkers and managers must be trained on their rights and how to access gender-responsive, safe compliance mechanisms. Special attention should be given to women teleworkers, LGBTIQ+ teleworkers, racialized teleworkers and others from marginalized social identities who may face additional risks in relation to online exposure, such as sextortion and cyberbullying, and who also may feel more psychosocial vulnerability due to social isolation and distance from colleagues and from their trade union representatives.

- 12) Teleworkers facing domestic violence who work from home should have the right to access accommodations, such as temporarily transferring to work at the employer's premises, flexible scheduling and/or other accommodations to address the violence; and to have the right to paid leave to address abuse. The inclusion of the right for paid leave for all the victims of domestic violence in the Labor Code will permit them to seek safety through activities like moving or acquiring a restraining order or custody of children. The Labor Code should ensure that workers do not face adverse job consequences, including dismissal, for reasons related to their actual or perceived status as a victim of domestic violence. Government regulations should offer assistance in accessing psychosocial support and crisis counseling and offer guidance to employers on how to issue referrals to available services in their community.

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## ANNEX - REGULATIONS ON REMOTE WORK IN REPUBLIC OF MOLDOVA.

**Labor Code of Republic of Moldova Nr. 154 from 28.03.2003****Article 73. Temporary change of place and specifics of work**

(1) In the case of occurring of a situation provided by art.104 paragraph (2) letters a) and b)<sup>103</sup>, the employer may temporarily change, for a period of maximum one month, the place and specifics of the employee's work without his consent and without operation of the respective changes in the individual employment contract.

(2) In case of impossibility for the employee to perform work at the workplace organized by the employer and in order to protect the safety and health of the employee during exceptional situations related to the declaration of a state of emergency, siege and war or the declaration of a state of emergency in public health, the employer, depending on the specifics of the employee's work, may decree, through an argued order (disposition, decision, resolution), the temporary change of the employee's job with the performance of work at home or remotely, without making those changes in the individual employment contract. The order (disposition, decision, resolution) is communicated to the employee in a timely manner, including by electronic means.

**Chapter IX<sup>1</sup> - Remote Work****Article 292<sup>1</sup>. Employees performing remote work**

(1) Remote work is the form of work organization in the fields of activity, through which the employee fulfills his duties specific to the occupation, position or profession he holds in another place than the one organized by the employer, including using means in the field of information technology and communications.

(2) Remote employees are the employees who have concluded an individual employment contract or an additional agreement to the existing contract, which contains remote employment clauses.

**Article 292<sup>2</sup>. Principles of organization of remote work**

(1) The employee involved in remote work enjoys all the rights and guarantees provided by law, the collective employment contract, the individual employment contract or by other normative act at unit level applicable to employees whose workplace is organized by the employer.

(2) The particularities regarding remote work may be provided in the individual employment contract, in the collective employment contract or in the internal regulation of the unit or in another normative act at unit level.

**Article 292<sup>3</sup>. Conclusion, amendment and content of the individual employment contract which stipulates remote employment clauses**

(1) The individual employment contract for remote work is concluded and amended under the conditions provided for in this Code, including through the exchange of electronic documents using the qualified advanced electronic signature.

<sup>103</sup> **Article 104. Supplementary work;** (2) Attracting to supplementary work may be ordered by the employer without the consent of the employee: a) for carrying out the works necessary for the defense of the country, for preventing a production damage or for removing the consequences of a production damage or a natural calamity; b) for carrying out the works necessary to remove situations that could jeopardize the proper functioning of water and electricity supply, sewerage, postal, telecommunications and IT services, traffic routes and of public transport, fuel installations and of medical units.



(2) The individual employment contract regarding remote work must contain, in addition to the clauses provided in art. 49, clauses regarding:

- a) the conditions for performing remote work;
- b) the program within which the employer is entitled to verify the activity of the employee and regarding the manner of performing the control;
- c) the manner of recording the working hours provided by the employee involved in remote work;
- d) the conditions regarding the bearing of expenses related to the activity in remote work regime;
- e) other conditions agreed by the parties.

**Article 292<sup>4</sup>. Organization of occupational safety and health for employees involved in remote work**

The employer organizes the work safety and health of employees involved in remote work in accordance with the provisions of the Law on safety and health at work no. 186/2008, as well as other normative acts in the field of occupational safety and health.

**Article 292<sup>5</sup>. Termination of the individual employment contract regarding remote work**

Termination of the individual employment contract regarding remote work shall take place under the general conditions provided for in this Code, including through the exchange of electronic documents using the qualified advanced electronic signature.

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