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Telework in Portugal

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1. *Introduction*

The world is currently going through unique times of great uncertainty, experiencing one of the most turbulent periods in world history.

We are witnessing major changes at various levels that lead to confinement, quarantine, social distancing and a change in people' behaviour. Given this situation, countries had to adopt measures – and Portugal made no exception – to emphasise the role of digital technologies-based labour and, thus, telework in the modality of telework from home.

"Going to work" usually means that a worker will physically head to a production unit (the factory, the shop, the office, the bank) owned and managed by someone else, where the worker will spend a few hours a day, fulfilling the obligations arising from the respective contract. In fact, the provision of work typically takes place within a company, where the worker's activity is coordinated with that of his colleagues and where the employer's powers of management, supervision and discipline are exercised. By working in a company that belongs to someone else, the worker is fully aware that he/she is in a professional space-time, a space-time of hetero-availability, which ends when, at the end of the working day, the worker leaves the company and returns home, to his/her own space-time of self-availability, privacy and intimacy.

However, this is not always the case. In fact, more and more workers are providing their activity outside the company, including from their own home. And this phenomenon has progressively been intensified in the post-industrial societies in which we live (the so-called "information society") – marked by strong scientific and technological progress – through the so-called telework. It is often referred to as a virtual society.

Right now, in the era of pandemic, more and more people is working from home, is teleworking. And Portugal was not an exception in this scenario.

Telework is regulated under the Labour Code as an atypical and marginal Labour Law contractual modality, and is distinguished from the typical work, which implies a delimited space-time, located somewhere else outside one's home[1]. This new modality started to be used in all activities and functions compatible with it as a strategy to face the spread of Covid-19 virus, and as a way to prevent contagion. It became the new normal for many employees.

In fact, 2020 was the year of the big remote work shift and Covid-19 pandemic marked a before and an after for Remote Work.

The adoption of remote work had been already growing at a fast pace in the last few years and the Covid pandemic lockdown restrictions worldwide ended up highly accelerating its adoption via "work from home" policies set forth in record time across companies of all types and industries all over the world.

We think that, although many people will return to the workplace as economies will reopen, several employers share the idea that hybrid models of remote work for some employees can continue to apply.

The virus has disrupted cultural and technological barriers that prevented remote work from spreading in the past, thus setting in motion a structural shift in where work takes place, at least for some people.

The experience of these last months of widespread practice of telework has shown that Portuguese law, which already contained very relevant principles on this matter, needed to be reviewed and strenghtened, drawing some

[1] In 2014, according to data from *Green Book of the Employment Market* of the Portuguese Ministry of Labour (Dray et al., *Livro Verde sobre as Relações Laborais*, Gabinete de Estratégia e Planejamento do Ministério do Trabalho, Solidariedade e Segurança Social, 2016), only 0,05% of the Portuguese population was working under the telework regime, which compares with the EU average of 8%.

lessons from the pandemic. And this is precisely what the legislator did with Law 83/2021 of 6th December, which came into force on 1st January 2022. Based on our personal opinion, that was a good option, since we have always maintained that the time for change was now. We do not think that this is a biased vision of reality, because if it is true that telework got accentuated in a time of pandemic, it is also true that it is deemed to stay relevant, although in different ways in the future. Therefore, it is clear that the main challenge is to increase the existing advantages of telework and reduce its disadvantages. And we think that this Law is a good way to go in this direction.

The Portuguese legal regime on telework changed under many aspects. This Law introduces several changes in telework regime, in the form of amendments and additions to the Labour Code, as well as to Law 98/2009 of 4th September – the law that regulates accidents at work and occupational illnesses.

The major issues raised in Portugal by the fruitful experience of compulsory telework during the pandemic can, in our view, be condensed around the following topics, which constituted the different challenges for the legislator and that were dealt with in Law 83/2021 of 6th December:

i) Solving problems of a conceptual nature, namely regarding the definition of telework within the broader framework of distance work. Teleworking seems to be profiled as one of the possible types of distance work (teleworking = distance work + ICT) and, within teleworking, its provision from the worker's home is the most common type, but not the only one;

ii) Clarifying the possible sources of telework, by reiterating that, in principle, it requires the mutual agreement between the parties, without prejudice to the fact that there are cases in which the law recognises the right of the worker to telework, namely in the context of parenthood. On the contrary, under no circumstances may telework be imposed by the employer to the worker, supposedly based on his/her management powers;

iii) Densifying and clarifying the limits of the employer's powers of control and surveillance in comparison with the protection of teleworker's privacy. The employment contract is, as we know, a contract featured by the legal subordination of the worker in relation to the employer, who has the power to direct, supervise and control the way in which he/she carries out his/her work; but the law, at the same time, protects the privacy of the teleworker, which raises several questions, starting with the extent and intensity of the employer's control in home teleworking. The home is our space of

greatest privacy and intimacy, being, at the same time, the workplace for many teleworkers. In this context, what type of control and monitoring of the worker may be carried out by the employer? Will it be admissible, for example, to impose on the teleworker to keep the video camera permanently on? According to the National Commission for Data Protection, in a guideline issued right upon the outbreak of pandemic, the answer is no. But the questions, in this regard, are numerous and complex, lacking some specific regulatory framework;

iv) Reviewing the regime of visits to the workplace, when this coincides with the teleworker's home. According to the current law, the visit of the employer must only have the purpose of controlling the work activity and the work tools and may only take place between 9 a.m. and 7 p.m., with the assistance of the employee or of a person appointed by him/her. There are, however, several bills under discussion in the Portuguese parliament, some of which require, in all cases, the indispensable agreement of the employee for this purpose; others allow, in the absence of an agreement, the employer's visit, but only provided that a specific minimum notice period is observed. There are also proposals concerning the inspection of working conditions by the Labour Inspectorate, establishing that inspection actions, which imply visits to the home of the teleworker, must be carried out within the period of 9 to 19 hours, within working hours and with a minimum of 24 hours' notice to the worker;

v) Addressing the issue of the relationship between working time and life time. In fact, teleworking and time have an ambivalent relationship: indeed, does this represent an advantage or a disadvantage of teleworking? Does telework promote and facilitate the conciliation between professional life and the worker's personal and family life? Or, on the contrary, does telework promote confusion between these two parts of the life of a person (especially a woman) who works from home, causing harmful effects? According to the current Labour Code, the teleworker enjoys the same rights and duties as other workers, namely as regards the limits of normal working hours, but the teleworker may be exempted from specific working constraints. The doubt arises as to whether, in telework, people is not working even more. And the challenge of the "right to disconnection" loudly comes back to the fore;

vi) Clarifying the meaning and extent of the principle of equal treatment between teleworkers and presential workers, namely in issues such as

work accidents or the payment or non-payment to the teleworker of certain capital conferement of a non wage-based nature, such as meal or food subsidy;

vii) Regarding the work tools: who has to own them and who is paying for the expenses? According to Portuguese law, the individual telework contract shall specify the ownership of the work tools, as well as who is responsible for their installation and maintenance and for paying the inherent expenses of consumption and use. In the absence of such stipulation in the contract, it shall be presumed that the work tools belong to the employer, who must ensure their installation and pay for the related expenses of use and maintenance. However, this supplementary rule, leaving the matter at the parties' free discretion, has been the object of many criticisms (between the strong and the weak, may this freedom oppress?), requiring a review by the legislator and by collective bargaining, in the sense that teleworking costs must be fully borne by the employer (after all, who's the beneficiary of the work developed, the one who profits from paid teleworking). There are even proposals going in the direction of legally establishing a minimum monthly amount to be paid, compulsorily, by the employer, as compensation for expenses;

viii) Seeking to mitigate the condition of isolation of the teleworker, one of the most serious inconvenience of telework. Indeed, facing the dystopia of a viral world, of human distancing, of virtual relationships, of loneliness, what solidarity is left? Home teleworking reinforces the tendency towards individualisation of the employment relationship, weakens the mesh that binds workers together and constitutes a further, particularly complex, challenge for the structures of collective representation of workers – after all, labour law is a product of solidarity and the solitary man tends to be less keen to solidarity[2]...

2. *The new legal framework*

Changes related to the notion of telework, as made under article 165, providing that, in order for telework to be considered as such, the employer

[2] For more developments, see Leal Amado, Coelho Moreira, *O regime jurídico do contrato de teletrabalho subordinado no ordenamento português*, in *LTR*, 85, 12, 2022, and Coelho Moreira, *Teletrabalho em tempos de pandemia: algumas questões*, in *RIDT*, I, 1, 2021.

is not entitled to predetermine the place where it will be exercised. And the new rules also explicitly recognise mixed or hybrid work arrangements to be considered as telework.

Likewise, with the new regime, some parts of the legal framework under article 165, no. 2, are applicable to workers and not only to employees, where there is not legal subordination but economic dependency.

On the other hand, while telework can improve employees' quality of life, it can also constitute a constraint for both the employee or the employer. It is thus crucial that, outside exceptional circumstances such as the Covid-19 lockdowns, telework remains of a voluntary and reversible nature and cannot be forced upon the employee. This was reinforced under articles 166 and 167, which sets forth that teleworking agreements must be fixed in writing, either as a part of the employment contract or as a separate agreement and the duration of the agreements may be indefinite or having a fixed term of up to six months, automatically renewed for the same period. Before these amendments were introduced, agreements required for a fixed duration of up to three years.

The minimum notice period by either party to terminate a fixed agreement is 15 days prior to the end of the term and 60 days for indefinite agreements.

It shall also be noted that, according to article 166, no. 6, in cases in which the proposal is made upon employer's initiative, the employee can challenge it, without the need to justify it, and his/her refusal cannot constitute a ground for the imposition of any sanction, including dismissal.

If the proposal comes from the employee, the employer may also refuse it in some cases, and must do so in writing, by reporting the grounds for refusal. However, according to article 166-A, there are cases where the employer cannot reject the employees' request and those cases – where there is a unilateral right to telework – have also been expanded when compared to the previous regime. Before the introduction of these changes, this possibility existed for employees who were victims of domestic violence or with children under the age of three. Now it was broadened to include employees with children aged between three and eight, provided the company has 10 or more employees and the claimant meets further family status conditions. It is applicable if both parents meet the conditions for telework, by fulfilling other requirements, more precisely they shall exercise this right in sequential periods of equal time and

within a maximum timeframe of 12 months, which means that both parents cannot benefit of the telework at the same time. It is also valid for single-parent families or cases where only one parent meets the conditions for telework. And also, in some cases, for carers, pursuant to number 5 of this article.

All the above appears as being in line with Directive (EU) 2019/1158 of the European Parliament and of the Council from 20th June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

Of course, these last cases are related to work-life balance. Indeed, if telework can make it easier to balance work and private life and reduce the costs of commuting, it can also lead to the blurring of professional and private life, making very difficult to guarantee this conciliation[3].

On the other hand, it can also lead to an increase in the number of hours actually worked and in the intensity of work, along with difficulties in disconnecting from work, thus causing detrimental effects on family time[4].

One of the biggest issues, as previously mentioned, is related to costs and to who pays for the expenses.

In fact, telework raises the issue of the availability and costs of both hardware and software needed for the workers to perform their tasks. It can also stress unequal access to efficient communication networks and can imply additional costs for telework. This all urges for greater clarification about how employers can contribute to expenses linked to working from home. This is precisely what article 168 tried to deal with, though leaving space to several questions that can only be solved by case law and also by collective

[3] See European Economic and Social Committee, *Teleworking and gender equality - conditions so that teleworking does not exacerbate the unequal distribution of unpaid care and domestic work between women and men and for it to be an engine for promoting gender equality*, 2021, and EIGE, *Gender equality and the socio-economic impact of the COVID-19 pandemic*, 2021.

[4] Like the European Parliament stated in *Flash Eurobarometer 2022:Women in times of Covid-19*, the share of women agreeing that because of the pandemic's impact on the job market, they could do less paid work (meaning less work for a salary or wage) than they wanted to, is largest in Portugal – 42%. It is also important to highlight that women in Portugal – 36% – are the most likely to find that school and childcare closures and the need for home-schooling / caring for children at home had a major negative impact on their mental health. And also in all EU "Four in ten respondents (38%) say the pandemic has also had a negative impact on women's income, as well as on their work-life balance (44%) and on the amount of time they allocate to paid work (21%)". Available online: https://data.europa.eu/data/datasets/s2712_null_eng?locale=en.

agreements. We think that in many of these cases collective bargaining can play a major role by setting the rules of collective agreements.

However, we also think that the legislator should have been clearer on this because this article paves the way to several practical problems. It provides that the teleworking agreement should decide who shall acquire the equipment and systems necessary for the performance of the work in this regime and for the interaction between the employee and the employer. Additional documented expenses incurred by the employee as a result of teleworking – which include increased energy and internet costs – should be paid by the employer. These additional expenses may be calculated by comparison with the employee expenses in the same month of the previous year, to the application of this agreement, and are considered, for tax purposes, as costs of the employer and not as income of the employee.

The question that immediately arises is what are the "additional expenses" that can be documented? How can we document them? Simply by comparison with the same month of the previous year? And what if the year in object was a year of pandemic like 2021? Would the costs be the same? It seems to us that the legislator forgot to consider this scenario.

In many cases applying this comparison can lead to the increase in costs being residual or null. And there will be cases in which the calculation will be even more difficult, for example in the case of two or more workers from different companies, teleworking.

Employees engaged in telework should have equal access to training and continuing professional development and the same opportunities for promotion and professional advancement.

It is vital, that equal pay and treatment are guaranteed, and there should be no difference in terms of wages or contracts between those teleworking and those working physically in the office, nor prejudice when it comes to promotion of workers.

This principle of equality between teleworkers and employees is set forth under art. 169, establishing that they have the same rights and duties of the other employees with the same category or performing an identical activity, including training, career promotion, limits on working time, rest periods, paid leave, health and safety protection at work, compensation for accidents at work and occupational illnesses, and access to information from workers' representative structures.

We shall also not forget that freedom of association and collective bar-

gaining rights are fundamental and must be guaranteed also in a remote work setting – including employers putting all tools at the trade unions' disposal to be able to organise and communicate with workers also in this working mode.

Bearing this in mind, art. 465, no. 2, recognises the right to the workers' representative structures to post, in a place made available on the company's internal portal, notices, communications, information or other texts relating to trade union life and to the socio-professional interests of workers, as well as proceed to circulate them via an electronic mailing list to all employees in teleworking regime[5-6].

Very welcomed, at least in our view, is one of the biggest changes introduced by the law and related to the right to privacy, especially if telework is performed from home[7]. Besides, because it is performed mainly via ICTs, telework brings new challenges in terms of data protection. Remote working may imply the use of monitoring and tracking systems which breach the employee's privacy and liberty. The use of surveillance tools to monitor remote workers and store their data can create excessive control. This is the reason why art. 170 is so important. It establishes the right to privacy and, specifically, it forbids the capture and use of images, sound, writing and the computers' history. Also, it strengthens the principle of transparency and pro-

[5] This is very important because as noted by the European Economic and Social Committee "the EESC takes the view that the concept of equal treatment among comparable workers in the same company applies to conditions for health and safety at work, to organising work in such a way as to ensure that the workload is comparable and to the right for trade unions/workers' representatives to access the place where telework is carried out within the limits set by national laws and collective bargaining agreements". European Economic and Social Committee, *Challenges of teleworking: organisation of working time, work-life balance and the right to disconnect*, 2021, p. 10.

[6] This is also pointed out in the *European Social Partners Framework Agreement on Digitalisation* "Providing workers representatives with facilities and (digital) tools, e.g. digital notice boards, to fulfil their duties in a digital era". *Framework agreement on Digitalisation*, signed on 22 June 2020 by BusinessEUrope, SMEunited, CEEP, ETUC and EUROCADRES/CEC, available online: https://www.etuc.org/system/files/document/file2020-06/Final%2022%2006%2020_-Agreement%20on%20Digitalisation%202020.pdf.

[7] Like the European Economic and Social Committee, *Challenges of teleworking*, cit., p. 4, pointed out "The EESC believes that the methods of monitoring and recording working time should be strictly geared to this objective. They should be known to workers, be non-intrusive and avoid breaching workers' privacy, while taking into account the applicable data protection principles".

portionality by clarifying that covert surveillance is totally forbidden. It also establishes under article 169-A, nos. 4 and 5, and under art. 169-B, no. 1, par. a), that work must be controlled by means of communication and information equipment and systems dedicated to employees' activity, following procedures that the employee is aware of and that are compatible with the respect for privacy.

And, yet, even complying with the principle of transparency, not all forms of control are allowed because it is fundamental to assess its proportionality.

Now therefore, what set forth under art. 169-A, no. 5, where it is "forbidden to impose a permanent connection, during working hours, by means of image or sound" is totally acceptable.

Telework shall not end up being an invasion of the employee's privacy. Thus, it shall be verified that the place where telework is performed does not undergo a degree of control greater than necessary.

The question that may arise is how to control the employee, who is in a telework regime, since we are dealing with a subordinate employment contract and the employer has the power to control how the activity is being provided. However, in this modality, as in others, the question is not related to the existence or non-existence of this power, that is essential, but to the establishment of limits to its exercise. Also considering that, the employer may control, *inter alia*, by setting goals and objectives to be met by the employee and reported daily through e-mails, calls, as well as scheduling meetings via teleconference to monitor the work. These are also ways to avoid social isolation that is one of the great disadvantages associated with this type of telework, always respecting the limits enshrined in art. 169-A, no. 5.

This seems precisely the meaning that shall be given to the provisions of art. 169-A, par. 4, when it states that "the powers of direction and control of the provision of work at telework are exercised preferably by means of the equipment and communication and information systems allocated to the activity of the worker, according to procedures previously known by him and compatible with respect for his privacy". Here it seems to us that the legislator decided to enshrine the possibility of controlling the professional performance of the teleworker through the work instrument itself because, given the characteristics of this type of work, it is often the only way to do so. However, it sets limits that seem correct to us: respect for privacy and transparency.

The wording of this article allows for a remote control of the employee's performance through the work instruments themselves, insofar as there is no other possibility of control and subordinated to the requirements that are provided by this article.

Precisely concerning this power of control and the obligation of its transparency, the provision under art. 169-B, no. 1, par. a) expressly sets forth the duty of the employer to inform the employee, whenever necessary, about the characteristics and the way how to use all devices, programs and systems adopted to remotely monitor his/her activity. This article is very interesting, both because it underlines, once again, the importance of compliance with the duty of transparency and the prohibition of covert control, and because this duty is understood in a broad sense, as it covers all information on the devices used, including their characteristics and the way they are used. It is a duty of the employers and a right of the employees to receive this information, and, if violated, it constitutes a serious administrative offence, under the terms of paragraph 4 of this article.

It is also established under art. 170 that any visit of the employer to the telework location, requires at least 24 hours notice, as well as to receive the agreement of the employee.

In the new wording of this article, the legislator consecrated in the first place the obligation of prior notice for the visit, which will have to be of 24 hours, as well as the reference to the working hours. This clarification is deemed positive by us, especially because it was one of the aspects that was still lacking under the previous regime.

The visit shall also be subject to the agreement of the employee. However, although we totally understand this need for an agreement, given the very personal nature of the place where the work is carried out, we have some doubts as to the necessity of such agreement. And even more doubtful is concerning the need for an agreement, what could the employer do in case of refusal by the employee. He/she cannot sanction this latter, because this is a right he/she enjoys under the terms of art. 170, no. 2, final part. Can he/she be held liable for the misuse of work equipment? We cannot fail to notice the difference in the wording of this article compared to art. 170-A, no. 4, concerning the visit of professionals designated by the employer for the evaluation and control of safety and health conditions at work, which states that "the employee gives access to the place where he carries out his work". Here it seems to us that the employee, despite still having a certain

freedom, should allow access: the option given by the legislator is here quite clear, which is also understandable considering the duties on matters of safety and health at work to which the employer and even the employee are bound.

The compliance with these rules should be inspected by the Authority for Working Conditions, whose visits to the home of the employees should be communicated at least 48 hours in advance and authorised by it, according to art. 171.

One of the major disadvantages of teleworking from home is the risk of isolation, for this reason the amendment introduced under art. 169-B, no. 1, par. c), requires the arrangement of face-to-face contacts with the employees and it is the employer's duty to ensure this, based on the frequency convened in the agreement, which cannot exceed two months.

Art. 169-A, no. 1 and 2, provides for the obligation of the employee to attend, even with 24 hours' notice, by heading to the company or other designated location for meetings, training sessions and other situations requiring physical presence.

Another controversial issue is the notion of accident at work and there was an amendment also in art. 8, no. 2, par. c), of Law 98/2009, establishing that in the case of teleworking or distance working, the place of work is considered to be the one specified in the telework agreement and the one where the employee usually carries out the activity. And the working time is considered to be all the hours when he/she is performing his/her work for the employer.

However, again, there are some very difficult questions – e.g. if the employee goes away for a few days to work in another place, or if he/she has two homes, there can be some problems in determining the workplace that can only be solved on a case-by-case basis, according with the circumstances of the case. But if the employer is unaware of this situation, can it be considered an accident at work? Our idea is that the employees should promptly warn the employee about this change.

Another very sensitive point is the right to disconnect. Conflicting views exist as of the introduction of a right to disconnect in European Member States.

At European level, the Framework Agreement on Digitalisation signed in June 2020, includes, *inter alia*, the arrangements for exercising the right to disconnect, the compliance with the working time arrangements in the legislation and collective agreements, as well as other contractual arrangements,

and it makes sure the worker is not required to be reachable by their employer outside working hours.

In Portugal, we think that a very important article, directly related to this, is art. 199-A, that establishes the duty to "refrain from contact" by the employer in all cases and not only in the telework contract. This duty goes beyond the right to disconnect, because it imposes over employers the duty to avoid disturbing the employees during their rest period, outside their normal working hours. It has also been defined as discriminatory any unfavourable treatment – namely in terms of working conditions or career progress – reserved to an employee exercising this right. This means that employers should not contact the employee outside working hours, except for reasons of *force majeure*. We shall admit that this article has a major relevance but, again, it raises a few issues. One of these issues concerns what *force majeure* is, because it is not defined under the law. Based on the classical definition of Civil Law, it is an unforeseen and urgent situation, such as fires, accidents, or similar circumstances. But we believe that *force majeure*, a classic undetermined concept, should be interpreted here with some flexibility, in order to cover perhaps situations such as those provided for under Labour Code, in paragraph 2 of the art. 227, regarding overtime work. Not only traditional cases of *force majeure* or fortuitous events (fire, earthquake, flood, etc.), but all those that cannot be postponed, in which immediate contact proves to be "essential to prevent or repair serious damage to the company or its viability".

Another aspect that the new law also fails to clarify is how this duty to refrain from contact will apply to professionals who are not subjected to any working schedule constraint or others who, by nature of their job, work with teams operating in different time zones.

Of course, "the devil is always in the details... but also in the implementation". But, in the end, although some controversial issues are still open, the conclusion that we draw from this article is a very positive one, being it a big step in the recognition of a real "right to disconnect" and in a modality that really allows it. Indeed, this article can only exist, if the burden is on the employer's side and not on the employee's side.

3. *Telework and collective agreements*

Telework did not experience any major development in 2020, considering the decrease in the number of provisions in collective bargaining.

The regulation of telework appears in only 7 conventions – 12 in 2019, which is in line with the decrease in activity based on collective autonomy.

In this context, there are collective agreements that regulate the concept of telework, equal treatment of teleworkers, form and content of the telework contract, both internal and external, and the responsibility for the tools involved in the the activity of telework and they are limited to the regulation of the shift to telework for a worker previously linked/subordinated to the employer and the duration of this situation.

In Public Administration, basically, most of the collective agreements regulate the duration and organisation of working time, health and safety at work and the parity/equity commission. There are also conventions that develop further these matters, including telework, rights and duties, individual protection equipment, professional training, the representation and participation of workers[8].

However, we think that collective agreements could regulate many of the aspects of telework. Portuguese law establishes in article 3, no. 3, that all these collective agreements can only regulate for the better, not for the worse, in relation to employees that have a contract of telework, but also, under article 492, no. 2, par. i), that the content of these agreements should set the "conditions of work in telework".

However, we also think that it could be more ambitious and setting forth for example, that, in the cases of control established under art. 169-A, no. 4 and 5, the workers' representative shall be involved.

If we remember article 88 of the GDPR, social partners can set up more specific rules to ensure the protection of the rights and freedom with regards to the processing of personal data of employees in the context of employment relationships. So, in case of telework, like pointed out in the European Social Partners Framework Agreement on Digitalisation, one of the measures might be to enable workers' representatives to address issues related to data, consent, privacy protection and surveillance.

[8] All this in Centro de Relações Laborais, *Relatório Anual sobre a Evolução da Negociação Coletiva em 2020*, 2021.

4. *Conclusion*

We think that this new legislation provided Portugal with a better legal framework in relation to telework and, specifically, as for the organisation of working time, the risks to health and safety at work, work-life balance, the right to disconnect and the effectiveness of labour rights when teleworking.

We also recognise that further effort is needed, specifically concerning some points that we already highlighted, and that, in some cases, it is going to be the jurisprudence in a case-by-case analysis to make the way.

However, we also think that the participation and involvement of the social partners at all levels, including through collective bargaining, can probably represent the key to finding balanced, decent and fair solutions.

Social partners can play a significant role in advancing teleworking in a way that contributes to gender equality, promotion of well-being at work and productivity, e.g., through collective bargaining. In some cases, bearing in mind the wide variety of workplaces, the best results can be achieved with measures tailored at enterprise and workplace level.

Abstract

The outbreak of Covid-19 pandemic turned teleworking into the "new normal" in work relationships. Our idea is that even after the pandemic this centrality of teleworking will not disappear with it. The Portuguese labour law has already introduced some rules for the provision of telework, and this legislation was recently even revised and strengthened by Law No. 83/2021 of 6th December. This text aims at providing the reader with a general overview of the major novelties introduced by the new law, in terms of teleworking and the right to disconnect.

Keywords

Telework, control and surveillance, right to disconnect, privacy, new employer's duties and obligations.