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## TELEWORK IN POLAND

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## INTRODUCTION

This report assesses the legal framework and practical context of telework in Polish law.<sup>1</sup> Telework refers to the organization or performance of work wherein a person performs work, within the framework of an employment contract or relationship, at home or at any other alternative place other than an employer's premises, through the use of information and communication technologies (ICT).

In Poland, teleworking is currently regulated in the Labour Code (Act of June 26, 1974), under the term "telework."<sup>2</sup> Under these provisions, the teleworker is entitled to many legal protections. However, the Polish legislature intends to remove regulations on "telework" in the Polish Labour Code and replace them with new regulations on "remote work." The understanding of telework has changed dramatically in connection with the pandemic in Poland. The concept of remote work appeared for the first time in Polish labour law in the so-called Covid Act.<sup>3</sup>

The Polish Parliament has been working on the draft act on remote work for over two years. Finally, on June 7, 2022, the draft act on the amendment to the labour code and certain other acts, as adopted by the Council of Ministers on May 24, 2022, was submitted to the Sejm.<sup>4</sup> It is essential to ensure that any reforms are based on the principle of decent work and the protection of workers' rights, as well as respecting the principles of equality and non-discrimination. Trade unions have a pivotal role to play, including ensuring a balance in collective labour relations.<sup>5</sup>

The first part of this paper analyses current provisions on telework from the Labour Code. The second part of the paper discusses the draft provisions on remote work, which are to replace the provisions on teleworking. The new provisions on remote work should not undermine current protections, but should be developed in consultation with unions to ensure that all workers have the right to decent work and social protections.

## RESEARCH QUESTIONS

This report seeks to answer the following research questions:

1. Is telework regulated by a specific telework law, or is it regulated by general labour law?
2. How is telework defined, and do current legal frameworks/judicial decisions make distinctions between telework, remote work, homework, and other work performed away from a primary place of work?
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, equipment and internet connection
  - d. occupational safety and health
  - e. freedom of association and collective bargaining
  - f. non-discrimination, and equal access to training, opportunities and promotion

<sup>1</sup> This 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.

<sup>2</sup> Kodeks Pracy [Labour Code], chapter IIb, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf>, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/45181/91758/F1623906595/The-Labour-Code%20consolidated%201997.pdf> [English].

<sup>3</sup> Ustawa z dnia 2 Marca 2020 r. o Szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych [Act of March 2, 2020, on unique solutions related to the prevention, prevention, and combating of COVID-19, other contagious diseases and crises caused by them], Dziennik Ustaw, 2020, nr. 374 (Pol.), <https://www.dziennikustaw.gov.pl/DU/rok/2020/pozycja/374>.

<sup>4</sup> Rządowy projekt ustawy o zmianie ustawy - Kodeks pracy oraz niektórych innych ustaw [Government bill Amending the Labour Code and Certain Other Acts], Sejm no. 2335, <https://www.sejm.gov.pl/sejm9.nsf/agent.xsp?symbol=RPL&Id=RM-0610-66-22>.

<sup>5</sup> See INTERNATIONAL LABOUR ORGANIZATION, WORKING FROM HOME: FROM INVISIBILITY TO DECENT WORK 13 (2021), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_765806.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_765806.pdf).

- g. Gender-Based Violence and Harassment (GBVH)
4. Which international or regional labour standards are generally applicable to telework, and which rights might have specific application?
  5. Have any aspects of telework been regulated through framework agreements, pronouncements of multilateral or supranational bodies?
  6. What other (non-labour) laws or regulations may impact the performance of telework?
  7. Has labour inspection laws, regulations or practices been adapted or changed to properly protect the rights of workers under general labour 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 and 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, e.g., racial or gendered hierarchies? How are these obstacles being overcome?
  12. What are the specific obstacles to labour inspection, and how are these obstacles being overcome?

## LEGAL FRAMEWORK REGULATING TELEWORK IN POLAND

Teleworking is a response to the contemporary challenges of the world of work and is of great social and economic importance. Teleworking is an important element of European Union employment policy, which gained momentum especially after the outbreak of the global COVID-19 pandemic in 2020.<sup>6</sup> Telework is an essential element in the so-called flexicurity concept,<sup>7</sup> a strategy initiated in the European Union to build both security and flexibility in the labour market. The flexicurity policy is defined by three components: 1. flexible and safe contractual solutions, 2. effective active labour market policy to promote effective implementation, 3. modern social security, which also contributes to good mobility in the labour market. The concept of flexicurity rightly assumes that a high level of social protection is an essential element in the functioning of the labour market, which is characterized by a high degree of flexibility.

Prior to the pandemic, teleworking was relatively rare in Poland. According to Eurostat research in 2018 and 2019, less than 4.6% of professionally active Poles between 15 and 64 years of age worked remotely.<sup>8</sup> However, in 2020 during the COVID-19 pandemic, 8.9% of professionally active Poles worked remotely (including both teleworking and remote work).<sup>9</sup> Not all types of work can be performed in the teleworking system, and telework is primarily associated with specific forms of employment that rely on extensive use of ICT such as technology workers, editors, graphic designers and accountants.<sup>10</sup>

<sup>6</sup> The concept of remote was introduced into the Polish legal system in March 2020, along with regulations on preventing, counteracting and combating COVID-19. This legislation will be presented in Part II of this paper.

<sup>7</sup> Employment, Social Affairs & Inclusion, European Commission, *Flexicurity*, EUROPEAN EMPLOYMENT STRATEGY, <https://ec.europa.eu/social/main.jsp?catId=102> (last visited on Aug. 21. 2022).

<sup>8</sup> Eurostat, European Commission, *How Usual is it to Work From Home?*, PRODUCTS EUROSTAT NEWS (Apr. 24, 2020) <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/ddn-20200424-1>.

<sup>9</sup> *Id.*

<sup>10</sup> Tomasz Zalega, *Praca zdalna – obraz przemian w Polsce i wybranych krajach Unii Europejskiej*, 17 *Master Bus. Admin.* 35, 45 (2009), <https://publisherspanel.com/api/files/view/1398.pdf>. For example, web designer, IT security specialist, software tester, copywriter, virtual assistant, online marketing specialist, teacher, translator, graphic designer, accountant, IT specialist, blogger, vlogger / YouTuber, online lecturer, own online store, or a big data analyst.

The popularity of remote work during the pandemic was and still is geographically diverse in Poland. The share of remote workers in different regions/voivodships was undoubtedly influenced by the dominant sectors and occupations in those regions. Regions dominated by sectors like agriculture or manufacturing saw the lowest rates of remote work. Remote work took place to a minor extent in the Świętokrzyskie region (6.9% in Q1 2021 as compared to 7.3% in Q1 2020), Podlasie (8.1% as compared to 7.3%), Warmińsko-Mazurskie (8.9% compared to 7.4%) and Lubuskie (9% compared to 9.2%)<sup>14</sup>. In turn, the largest share of remote workers (27.2%) was in the Warsaw region (capital city of Poland) in Q1 2021 and the following regions: Małopolska (15.4%), Dolnośląski (14.6%) and Pomeranian (14.5%). The indicated regions are large urban centres, with higher rates of households with internet access.<sup>11</sup> Statistics from the fourth quarter of 2021 reflect which sectors and occupations had the highest rates of remote work. Just over half, 53.3%, of remote employees, were in the information and communication sectors. A high percentage of remotely working people could also be observed in these areas: professional, scientific, and technical activities; education; and financial and insurance activities. The latest research prepared by EY shows that only slightly more than half (51%) of companies in Poland sent office workers during the pandemic to perform their tasks in a remote or hybrid work system. Currently, 72% of those organizations have already experienced a return of all employees to the employers' premises, or will do so in the near future.<sup>12</sup>

## EUROPEAN UNION FRAMEWORK AND POLICIES ON TELEWORK

The EU's policy on telework includes Directive 2003/88 / EC on the organization of working time,<sup>13</sup> Directive 89/391 / EEC on health and safety at the workplace work,<sup>14</sup> Directive (EU) 2019/1152 on transparent and predictable working conditions in the EU<sup>15</sup> and Directive (EU) 2019/1158 on work-life balance.<sup>16</sup>

The most significant piece of legislation on teleworking in the EU is the European Social Partners' Framework Agreement on Telework of 16 July 2002 ("the agreement on teleworking").<sup>17</sup> One of the objectives of the teleworking agreement was not only to deliver on the Lisbon Strategy to promote economic growth across the EU,<sup>18</sup> but also to "establish a general framework at European level for employment conditions for teleworkers and to reconcile the flexibility and security needs shared by employers and employees." It provides teleworkers with the same overall level of protection as workers who work on the employer's premises.<sup>19</sup>

In the introduction to the agreement, social partners indicated that teleworking as a new form of remote work is slowly increasing the flexibility and development of modern enterprises, enabling workers to reconcile work and family life, and ensuring greater participation of women in the labour market. The European Trade Union Confederation rightly pointed out that teleworking is a new form of work, not a separate form of employment contract.<sup>20</sup>

<sup>11</sup> GŁÓWNY URZĄD STATYSTYCZNY (GUS) [POLISH CENTRAL STATISTICAL OFFICE], WPŁYW EPIDEMII COVID-19 NA WYBRANE ELEMENTY RYNKU PRACY (2022), [https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5820/4/8/1/wplyw\\_epidemii\\_covid-19\\_na\\_wybrane\\_elementy\\_ryнку\\_pracy\\_w\\_polsce\\_w\\_czwartym\\_kwartale\\_2021\\_r.pdf](https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5820/4/8/1/wplyw_epidemii_covid-19_na_wybrane_elementy_ryнку_pracy_w_polsce_w_czwartym_kwartale_2021_r.pdf).

<sup>12</sup> Press Release, EY Polska, Badanie EY: Wzrost pandemii polskie firmy niechętnie przechodziły na tryb pracy zdalnej [EY paper: During the pandemic, Polish companies were reluctant to switch to remote work] (May 16, 2022), [https://www.ey.com/pl\\_pl/news/2022/05/ey-pandemia-praca-zdalna](https://www.ey.com/pl_pl/news/2022/05/ey-pandemia-praca-zdalna).

<sup>13</sup> Directive 2003/88/EC, of the European Parliament and of the Council of 4 November 2003 Concerning Certain Aspects of the Organisation of Working Time, 2003 O.J. (L 299) 9, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003L0088>.

<sup>14</sup> 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, 1989 O.J. (L 183) 1, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:31989L0391>.

<sup>15</sup> Directive 2019/1152, of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, 2019 O.J. (L 186), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1152>.

<sup>16</sup> Directive 2019/1158 of the European Parliament and of the Council of 20 June 2019 on Work-Life Balance for Parents and Carers and Repealing Council Directive 2010/18/EU, 2019 O.J. (L 188) 79, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L1158>.

<sup>17</sup> Framework Agreement on Telework, July 16, 2002, <https://resourcecentre.etuc.org/agreement/framework-agreement-telework>

<sup>18</sup> ECON SECRETARIAT, EUROPEAN COMMITTEE OF THE REGIONS, THE LISBON STRATEGY IN SHORT, <https://portal.cor.europa.eu/europe2020/Profiles/Pages/TheLisbonStrategyinshort.aspx> (last visited on Aug. 21, 2022).

<sup>19</sup> Framework Agreement on Telework, July 16, 2002, <https://resourcecentre.etuc.org/agreement/framework-agreement-telework>

<sup>20</sup> EUROPEAN TRADE UNION CONFEDERATION, VOLUNTARY AGREEMENT ON TELEWORK, [https://resourcecentre.etuc.org/sites/default/files/2019-09/Telework\\_ETUC%20interpretation%20guide%20-%20EN.pdf](https://resourcecentre.etuc.org/sites/default/files/2019-09/Telework_ETUC%20interpretation%20guide%20-%20EN.pdf).

The teleworking agreement establishes the concept of telework and teleworker<sup>21</sup> and regulates several important issues related to the specificity of telework, which is to be implemented by the European Union member states. The most important issues concern respect for the right to privacy of teleworkers, ensuring occupational health and safety, liability for providing and maintaining equipment, working time, training, ensuring the security of data processed by the teleworker, and the right to freedom of association and collective bargaining. Member States are to give particular attention to equality and anti-discrimination rules, especially concerning the amount of remuneration for stationary workers. The teleworking agreement was introduced into the law at different times in most member states. In some countries, the provisions of the contract have been implemented through collective agreements. Some countries have introduced teleworking regulations via national legislation, mainly in labour codes, including Poland.<sup>22</sup>

The essential principles of this particular form of work, which are still relevant to the legislation of the European Union Member States, especially in the period of the coronavirus pandemic, are: 1) voluntary nature of telework; 2) written information on employment conditions; 3) permanent employment status; 4) equal employment conditions; 5) respecting the privacy of the employee; 6) protection of the employee's data; 7) equipping the employee with the necessary work equipment; 8) responsibility; 9) health and safety; 10) work organization; 11) training; and 12) rights under collective agreements.<sup>23</sup> Notably, the European Commission uses the term “teleworking models” (remote working models) to prepare this analysis - thus indicating a flexible approach to this form of work.<sup>24</sup>

The right to disconnect is addressed in a resolution of the European Parliament.<sup>25</sup> As a non-binding act, the resolution called on the European Commission to assess the risks of teleworkers not being protected by their employer's demands to be constantly available and to address the impact of telework on workers. A resolution does not constitute an official draft directive, but it puts forward a proposal for discussion on a directive that is binding on the member states. In the European Parliament proposal, workers have a right now to be involved in work-related tasks outside working time. This is also echoed in the European social partners framework agreement on digitalization.<sup>26</sup>

Despite the lack of a directive, this resolution could constitute the impetus for independent action of the member states. Moreover, nothing prevents the relevant regulation from being reflected in the Polish Labour Code now. The current draft amendment to the Polish Labour Code does not impose such an obligation, although it seems that there are no obstacles to introducing such a regulation. The Polish legislators remains passive in this respect.

## POLISH LABOUR CODE REGULATION ON TELEWORK

In Poland, the teleworking regulation was introduced to the labour code under the amendment of August 24, 2007. It added chapter IIb to section II of the Labour Code entitled “Employing employees in the form of teleworking.”<sup>27</sup>

<sup>21</sup> Section 2 of the teleworking agreement states: “[T]elework is voluntary for the worker and the employer concerned. Telework may be required as part of a worker's initial job description or it may be engaged in as a voluntary arrangement subsequently. In both cases, the employer provides the teleworker with relevant written information in accordance with Directive 91/533/EEC.”

<sup>22</sup> EUROPEAN SOCIAL PARTNERS, IMPLEMENTATION OF THE EUROPEAN FRAMEWORK AGREEMENT ON THE TELEWORK (2006), [https://resourcecentre.etc.org/sites/default/files/2019-09/Telework%202006\\_Final%20Joint%20Implementation%20Report%20-%20EN.pdf](https://resourcecentre.etc.org/sites/default/files/2019-09/Telework%202006_Final%20Joint%20Implementation%20Report%20-%20EN.pdf).

<sup>23</sup> EU-ILO PROJECT, TELEWORK: ONLINE TRAINING SERIES INTERNATIONAL AND EU LABOUR STANDARDS BACKGROUND PAPER (2020) [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms\\_753334.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_753334.pdf); Monika Tomaszewska in: Kodeks pracy. Komentarz, tom I, art. 1-113, 5th ed. 2020, art. 67(5).

<sup>24</sup> EUROPEAN COMMISSION, TELEWORK IN THE EU BEFORE AND AFTER THE COVID-19: WHERE WE WERE, WHERE WE HEAD TO (2020), [https://ec.europa.eu/jrc/sites/default/files/jrc120945\\_policy\\_brief\\_-\\_covid\\_and\\_telework\\_final.pdf](https://ec.europa.eu/jrc/sites/default/files/jrc120945_policy_brief_-_covid_and_telework_final.pdf).

<sup>25</sup> European Parliament Resolution of 21 January 2021 With Recommendations to the Commission on the Right to Disconnect, 2019/2181 (INL), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0021\\_EN.html#title1](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0021_EN.html#title1).

<sup>26</sup> Press Release, European Trade Union Confederation, EU social partners reach agreement on digitalization (June 22, 2020), [https://www.ceep.eu/wp-content/uploads/2020/06/Final-22-06-20\\_Agreement-on-Digitalisation-2020.pdf](https://www.ceep.eu/wp-content/uploads/2020/06/Final-22-06-20_Agreement-on-Digitalisation-2020.pdf).

<sup>27</sup> Under Polish law, teleworking was introduced into the Labour Code by Ustawa z dnia 24 sierpnia 2007 r. o zmianie ustawy — Kodeks pracy oraz niektórych innych ustaw [Act of August 24, 2007 amending the Act - Labour Code and certain other acts], Dziennik Ustaw, 2007, nr. 181, późn. 1288, <https://www.dziennikustaw.gov.pl/DU/2007/s/181/1288>.

The Polish legislature was obliged to create a teleworking regulation modelled on the provisions of the EU framework agreement discussed above. In Poland, telework is defined in the Labour Code as work performed outside the employer's premises on a regular basis, at the employee's home or other places where the employee is currently staying, with the use of information technology.<sup>28</sup> It can be performed based on an employment contract, as defined under article two of the Polish Labour Code<sup>29</sup> or a civil law contract, including mandate contracts and for work or civil contracts<sup>30</sup> which are regulated by Civil Code.<sup>31</sup>

In the Polish Labour Code, teleworking is work defined in article 67(5), section 1 as work performed regularly outside the workplace using "information and communications technology in the meaning of the provisions on rendering services by electronic means (telework)." Under article 67(5), section two of the Labour Code, a teleworker is an employee who performs work under the conditions specified in article 67(5), section one of the Labour Code and provides the employer with work product, in particular via electronic means of communication.

The provisions of the Labour Code only apply where an employment relationship exists, as defined in article two. Under article two, an employee is employed based on an employment contract, appointment, election, license, or a cooperative employment contract. It is also permissible to perform telework based on civil law contracts, and in that case the Labour Code will not apply. Teleworkers operating under civil law contracts will not enjoy the rights and benefits enumerated under the Labour Code and therefore may be at higher risk of exploitative practices. The misclassification of employees in order to escape obligations to workers is already a prevalent problem in Poland, as discussed in the section on "Telework Regulatory Framework" later in this report. There is a risk that teleworkers that are in reality employees will be misclassified absent targeted efforts to prevent this practice.

Due to the place of work, Polish labour law would distinguish teleworking performed in a specially organized unit, for example: 1) telecentre; 2) occasional teleworking (ad hoc teleworking) concerning the implementation of a specific project or task; 3) variable home teleworking (alternating home-based teleworking) performed mostly outside the employer's premises (e.g., four days at home, one day at the employer's office); 4) home-based teleworking, which is performed at the employee's home, without traveling to the employer's office; 5) nomadic teleworking, which is most often concerning sales representatives and insurance agents; and 6) overseas teleworking performed outside the country.<sup>32</sup>

## CONDITIONS OF WORK

In Polish labour law, it is possible to define the conditions for teleworking in different ways. Per article 67(6) of the Labour Code, working conditions can be defined by collective agreement or regulations on the conditions for the use of telework (e.g., arrangements with trade unions operating at the employer's or by the employer itself, when such a union does not operate at the employer's).<sup>33</sup> In the absence of a collective agreement, working conditions will be defined in an individual contract between the teleworker and the employer, referred to in article 67(11), section 2

<sup>28</sup> Kodeks Pracy [Labour Code], art. 67(5), §1, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf>, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/45181/91758/F1623906595/The-Labour-Code%20consolidated%201997.pdf> [English].

<sup>29</sup> *Id.* at art. 2 ("An employee is a person employed under an employment contract, appointment, election, appointment or a cooperative employment contract").

<sup>30</sup> MONIKA JANIEC, TOMASZ CZERNIAK, WOJCIECH KREFT, RADOŚLAW PIONTEK, PROWADZENIE DZIAŁALNOŚCI BIZNESOWEJ Z ZASTOSOWANIEM TELEPRACY - PORADNIK, WARSZAWA 2006, Kodeks cywilny [Civil Code], art. 627 & 734, <https://dziennikustaw.gov.pl/DU/1964/s/16/93>.

<sup>31</sup> Kodeks cywilny [Civil Code], <https://dziennikustaw.gov.pl/DU/1964/s/16/93>.

<sup>32</sup> Ewa Bąk, Elastyczne formy zatrudnienia (2006).

<sup>33</sup> Labour Code, art. 67(6).



of the Labour Code.<sup>34</sup> Working conditions can also be determined in a civil contract, including mandate contracts.

Under article 67(6) of the Labour Code, the employer is obligated to conclude an agreement with enterprise trade unions on the conditions of teleworking. In the event of disagreement, the agreement is first negotiated with representative trade unions within the meaning of article 25(3), sections 1 and 2 of the Act on Trade Unions.<sup>35</sup> The term of the agreement is 30 calendar days.<sup>36</sup>

However, if no agreement is reached within 30 days, the employer is entitled to define the conditions of telework in a regulation, taking into account previous arrangements made in the course of talks with trade unions. It should be recognized that even the presence of a negative joint position by trade unions towards the employer's proposal does not prevent the adoption of the above regulations.<sup>37</sup>

If a given employer does not currently have a trade union organization, the employer may issue telework regulations or otherwise include provisions on teleworking in the work regulations. Article 67, section 4 states that where "no enterprise trade unions acting at the employer, the conditions for applying telework must be set out by the employer in the workplace regulations, after prior consultation with the representatives of employees chosen in the standard method adopted at a given employer."

#### INFORMATION ON CONDITIONS OF WORK

The employee has the right to information about the working conditions in teleworking, based on general provisions of the Labour Code. According to article 67(10), section 2 of the Labour Code, if the worker starts employment in a telework arrangement, the employee must receive information about remuneration, place of work,<sup>38</sup> an indication of where the teleworker is within the organizational structure of the employer and an indication of the person or body responsible for cooperation with the teleworker and authorized to carry out inspections at the place of work. In a situation where teleworking begins when a worker is already employed, the employer must provide the teleworker with this information in writing no later than the day the telework starts. Additional information may be specified in a collective agreement or employer regulations on teleworking.

#### VOLUNTARINESS AND REVERSIBILITY

The most crucial principle of teleworking in Poland is its voluntary nature.<sup>39</sup> According to article 67(7) of the Labour Code, an agreement between the worker and the employer that work will be performed through telework may occur when concluding an employment contract or during employment. According to article 67(9) of the Labour Code, the employee's lack of consent to change the conditions of performing work to telework or to the cessation of

<sup>34</sup> The employer and the teleworker may, in a separate agreement, specify in particular:

- 1) the scope of insurance and the rules for the use by the teleworker of the equipment necessary to perform work in the form of telework, owned by the teleworker, meeting the requirements set out in Chapter IV, Section 10;
- 2) rules of communication between the employer and the teleworker, including the method of confirming the presence of the teleworker at the workplace." *Id.* at art. 67(1), § 2.

<sup>35</sup> Ustawa z dnia 23 maja 1991 r. o związkach zawodowych [Act of May 23, 1991 on trade unions], Dziennik Ustaw, 1991, nr. 55, Poz. 234 (Pol.), <https://dziennikustaw.gov.pl/DU/1991/s/55/234>.

<sup>36</sup> It is worth pointing out that the unionization level in Poland is low and amounts to approx. 9% of all employees. CENTRUM BADAŃ OPINII SPOŁECZNEJ [PUBLIC OPINION RESEARCH CENTER], ZWIĄZKI ZAWODOWE W POLSCE (2019), [https://www.cbos.pl/SPISKOM.POL/2019/K\\_138\\_19.PDF](https://www.cbos.pl/SPISKOM.POL/2019/K_138_19.PDF).

<sup>37</sup> Monika Tomaszewska in: Kodeks pracy. Komentarz, vol. I, art. 1-113, 5th ed. 2020, art. 67(6).

<sup>38</sup> The term "workplace" is understood to mean either a fixed point in the geographical sense, or a certain defined area defined by the boundaries of the administrative division of the country or in another, sufficiently explicit manner, in which the performance of work is to be completed. The workplace does not have to be equipped with social, human and technical facilities. Sąd Najwyższy [Supreme Court] Oct. 6, 2004, I PK 488/03, OSNP 2005/10, item 135.

<sup>39</sup> Labour Code, art. 22(1); Sąd Najwyższy [Supreme Court] Oct. 6, 2004, I PK 488/03, OSNP 2005/10, item 135, <https://www.saos.org.pl/files/judgments/supreme/2004/10/6/cd315761fc3a003113d6ffe8b3162b02.pdf>; Sąd Najwyższy [Supreme Court] Oct. 23, 2006, I PK 113/06, Pr.Pracy 2007/1/35; Sąd Najwyższy [Supreme Court] March 20, 2008, II UK 155/07, LEX No. 465988; Sąd Najwyższy [Supreme Court] June 9, 2008, II PK 330/07, <http://www.sn.pl/sites/orzecznictwo/Orzeczenia1/II%20PK%20330-07-1.pdf>.

telework cannot constitute grounds justifying the termination of the employment contract by the employer.

Article 67(6), section 3 states further that employees may request to telework and that “the employer should, when feasible, comply with the request of the employee.” There are no criteria laid out for what would constitute feasibility, or no enumerated instances where refusal would constitute constructive dismissal. So, it is unclear how strong this protection is in practice. Unions can bargain for more robust protections through collective bargaining.

#### OBLIGATION TO PROVIDE AND MAINTAIN EQUIPMENT

The Polish Labour Code clearly obligates the employer to provide the equipment necessary to perform work in the form of telework and to bear all related costs, including insurance of the equipment supplied by the employer, installation and servicing of the equipment under article 67(11) of the Labour Code. According to Art. 67(11), section one, the employer is further obligated to provide the teleworker with technical assistance and necessary training in the field of teleworking service, unless the parties agree otherwise in a separate agreement. The concept of “equipment necessary to perform work in the form of telework” is not only a computer, telephone, or installation systems, but also equipment, machines, tools, and furniture necessary to perform work in the form of telework (i.e. those without which the provision of work in this form is not possible). The teleworker may be responsible for the equipment provided to him by the employer on general terms or based on liability for entrusted property with the obligation to return or to account for it. The employee’s liability has been regulated in the provisions of the Labour Code from articles 114 to 127.<sup>40</sup>

Teleworking employees can use their own equipment. In that case, they are entitled to a cash equivalent determined in the amount specified in the agreement or regulations referred to in article 67 or in the contract. When determining the amount of the cash equivalent, the equipment consumption norms, its documented market prices, the amount of material used for the employer’s needs and its market prices are taken into account in particular. The employer’s obligations regarding the organization of equipment may be specified in a separate contract with the teleworker.

#### WORKING TIME

Working time for teleworkers is governed by the standard provisions of the Labour Code, section VI. As a rule, the standard of teleworker time is defined by the provisions of article 129, section 1, which states that working time may not exceed eight hours a day and an average of 40 hours in a five-day working week in the adopted settlement period, which is not to exceed four months, subject to section two and articles 135 to 138, 143 and 144. Working outside the employer’s premises will require more effective protection against infringements of the provisions on working time.

The Polish Labour Code introduces several work systems, including a basic working time system or task-based working time, which gives the teleworker the possibility to organize their working time independently. The Polish Labour Code in article 129, section one establishes the duration of standard working hours. Work performed above that standard is considered overtime work under article 151. There is also a task-based working time system under Polish legislation. Teleworking falls under these regulations, which allows teleworkers to organize their working time independently. Teleworkers in particular need protections to ensure that their working hours are kept to a reasonable limit, without the clear delineation of time spent at a worksite. Teleworkers often wish to arrange their work in a flexible manner, but must be protected to ensure they can enjoy their right to leisure and maximum working hours. A teleworker has autonomy in shaping their working time, provided the duties performed by him or

<sup>40</sup> Sąd Najwyższy [Judgement of Supreme Court] Jan. 26, 2011, II PK 159/10, <http://www.sn.pl/sites/orzecznictwo/Orzeczenia1/II%20PK%20159-10-1.pdf>; Sąd Apelacyjny w Krakowie [Court of Appeals - Kraków] May 12, 2015, III APa 24/14, Lex No. 1765952.

her commissioned by the employer are similar to those prevailing in the task system.<sup>41</sup>

Polish jurisprudence has grappled with overtime in a task-based system, where engaging in work outside of what is considered “normal” working hours in and of itself does not indicate overtime. An important judgment for teleworkers in Poland was the judgment of the Supreme Court of the Republic of Poland of September 4, 2019.<sup>42</sup> The Supreme Court held that in a dispute “the employer is obliged to prove that he entrusted the employee with tasks that can be performed within the normal working time” laid out in an agreement.<sup>43</sup> Placing the burden on the employer to demonstrate that it is possible to complete assigned work within a normal amount of working hours is a critical protection for teleworkers, particularly those in task-based systems. Earlier court cases, for example VI P 341/14 - Judgment of the District Court Gdańsk-Południe in Gdańsk, have held that an employee completing tasks “at night, on Saturdays, Sundays and public holidays” are not necessarily dispositive, when the worker organizes their own time in a task-based system.<sup>44</sup> In 2016, the Supreme Court found that employees should prove that they worked in the interest and at least with the implied acceptance of the employer for a specific and verifiable number of overtime hours, which the employer may argue against with evidence that such a need did not arise because the employee could and should have performed these tasks within normal working hours.<sup>45</sup> However, this most recent ruling from the Supreme Court emphasizes that the workload must be possible to complete within standard working time, and places the burden of proof on the employer to show that assigned tasks can be performed within the limits of standard working time.

In the light of the proposals presented by Eurofound, the European Parliament and the Council of the European Union, there is a “right to disconnect” in the legal space of the European Union. The employee has the right to refrain from work-related activities and from communicating with the employer during their free time without incurring any negative consequences.<sup>46</sup> It can be particularly difficult for teleworkers to exercise this right in practice.

The Polish Labour Code does not currently contain any regulations that would explicitly protect the teleworkers’ right to disconnect, nor are any included in the proposed amendments to the Labour Code regarding remote work.<sup>47</sup> However, labour courts and the Supreme Court have found that “as a rule, an employee has no obligation to answer the phone or respond to email after working hours or when on holiday.”<sup>48</sup> A 2018 case from the District Court of Lublin<sup>49</sup> found that contacting employees after working hours, at night, during holidays, or illness may be interpreted

<sup>41</sup> Sąd Najwyższy [Judgement of Supreme Court] July 5, 2017, II PK 202/16, <http://www.sn.pl/sites/orzecznictwo/orzeczenia3/ii%20pk%20202-16-1.pdf>.

<sup>42</sup> Sąd Najwyższy [Judgement of Supreme Court] June 25, 2019, II PK 172/18, <http://www.sn.pl/sprawy/SitePages/e-Sprawa.aspx?ItemSID=7224-423b5ec2-0369-4fea-95ed-4acac77d0ed0&ListName=esprawa2018&Search=II%20PK%20172/18>.

<sup>43</sup> *Id.*

<sup>44</sup> Sąd Rejonowy Gdańsk-Południe w Gdańsku [District Court Gdańsk-Południe] Sept. 30, 2016, VI P 341/14, [http://orzeczenia.gdansk-poludnie.sr.gov.pl/details/\\$N/151015050003021\\_VI\\_P\\_000341\\_2014\\_Uz\\_2016-09-30\\_002](http://orzeczenia.gdansk-poludnie.sr.gov.pl/details/$N/151015050003021_VI_P_000341_2014_Uz_2016-09-30_002).

<sup>45</sup> Sąd Najwyższy [Judgement of Supreme Court] Jan. 19, 2016, I PK 24/15, <http://www.sn.pl/sprawy/SitePages/e-Sprawa.aspx?ItemSID=7224-423b5ec2-0369-4fea-95ed-4acac77d0ed0&ListName=esprawa2018&Search=II%20PK%20172/18>. See also, Sąd Najwyższego [Supreme Court] Mar. 15, 2006, II PK 165/05, OSNP 2007, no. 5-6, item 69; Sąd Najwyższego [Supreme Court] Feb. 5, 2008, II PK 148/07, OSNP 2010, no. 2, item 22.

<sup>46</sup> Tina Weber & Oscar Vargas Llave, Eurofound, Right to disconnect: Exploring Company Practices (2021), <https://www.eurofound.europa.eu/publications/report/2021/right-to-disconnect-exploring-company-practices>; European Parliament Resolution of 21 January 2021 With Recommendations to the Commission on the Right to Disconnect, art 2, §1, 2019/2181 (INL), [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0021\\_EN.html#title1](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0021_EN.html#title1).

<sup>47</sup> See Part II.

<sup>48</sup> Katarzyna Magnuska & Agnieszka Lisiecka, Wardinski Partners, Remote work: Privilege or challenge? in 2021 Yearbook 38 (2021), <https://wardynski.com.pl/upload/wordpress/2021/03/2021-Yearbook.pdf>.

<sup>49</sup> Sąd Okręgowy w Lublinie [District Court of Lublin] June 20, 2018, VIII Pa 86/18, [http://orzeczenia.lublin.so.gov.pl/details/\\$0022VIII\\$0020Pa\\$002086\\$002f18\\$0022/15300500004021\\_VIII\\_Pa\\_000086\\_2018\\_Uz\\_2018-06-20\\_001](http://orzeczenia.lublin.so.gov.pl/details/$0022VIII$0020Pa$002086$002f18$0022/15300500004021_VIII_Pa_000086_2018_Uz_2018-06-20_001).

as mobbing, which is prohibited under article 94(3) of the Labour Code.<sup>50</sup>

## OCCUPATIONAL SAFETY AND HEALTH

The Polish regulation of teleworking includes an absolute obligation of the employer to ensure the teleworker's safe and hygienic working conditions. Article 67(17) of the Labour Code refers to the provisions of section X of the Labour Code regulating occupational health and safety, although there are some provisions of this section that are not applied to teleworkers under 67(17). Specifically, those relating to the construction and reconstruction of buildings with work premises,<sup>51</sup> care for the safe and hygienic condition of work premises (Article 212 (4) of the Labour Code) and ensuring appropriate hygiene and sanitary facilities (Article 233 of the Labour Code).

The employers' core obligation to ensure safe and hygienic working conditions is outlined in article 207 of the Labour Code. Article 207 applies to all employees within the meaning of the code, including teleworkers on employment contracts. Under article 207, section two, "the employer is obliged to protect the health and life of employees by ensuring conditions of health and safety at work," including organizing work in a manner to ensure health and safety, ensuring the principles and provisions of health and safety are followed, adopting and enforcing policies and measures to promote health and safety, and reacting to needs and adopting measures to improve the current level of health and safety. The provisions of chapter X and chapter IX of the Labour Code, regulating the issues related to personal protective equipment and work clothing and footwear, will apply to a limited extent to home teleworking.

Currently, Polish legislation related to accidents at work does not contain provisions specifically relating to accidents at work in a place other than at the employer's premises, particularly in the employee's home. Therefore, general provisions from the Act of October 30, 2002 on social insurance against accidents at work and occupational diseases will apply.<sup>52</sup> According to this act, an "accident at work" is understood to mean a sudden event caused by an external cause, causing injury or death, occurring in connection with work:

1. during or in connection with the performance by the employee of ordinary activities or orders of his superiors;
2. during or in connection with the performance by the employee of activities for the employer, even without an instruction;
3. the employee is at the disposal of the employer on the way between the employer's seat and the place of performance of the obligation resulting from the employment relationship.<sup>53</sup>

In theory, under this test an accident that occurs while a teleworker is teleworking at home or engaged in tasks

<sup>50</sup> "§1. The employer is obliged to counteract mobbing.

§ 2. Mobbing means actions or behaviors concerning an employee or directed against the employee, consisting of persistent and long-term ones harassing or intimidating an employee, causing him to underperform professional suitability, causing or intended to humiliate or ridicule employee, isolating him or her from the team of colleagues.

§ 3. An employee in whom mobbing has caused a health disorder may be subjected to from the employer an appropriate amount as a pecuniary compensation for the sustained person harm.

§ 4. An employee who has suffered mobbing or has terminated the contract as a result of mobbing for employment, has the right to claim compensation from the employer in the amount not lower than the minimum remuneration for work, determined on the basis of separate regulations."

Kodeks Pracy [Labour Code], art. 94(3), <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf>, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/45181/91758/F1623906595/The-Labour-Code%20consolidated%201997.pdf> [English]

<sup>51</sup> Labour Code, ch. III, § 10.

<sup>52</sup> Ustawa z dnia 30 października 2002 r. o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych [Act of Oct. 30, 2002 on Social Insurance Against Accidents at Work and Occupational Diseases], Dziennik Ustaw, 2002, nr. 199, póź. 1673, <https://dziennikustaw.gov.pl/DU/2002/s/199/1673>.

<sup>53</sup> *Id.*

outside the home related to work should be covered. For example, workers may suffer repetitive stress injuries or back issues from spending long hours at a computer or sustain an injury on a trip into the office. However, the reality of accidents while teleworking is complicated and the law is currently untested. So, situations would be considered on a case-by-case basis.

Article 67(14) of the Labour Code gives the employer the right to carry out an inspection in a teleworkers home to inspect “the progress of telework,” for the purpose of inventory, maintenance, service, or repair of the entrusted equipment and its installation, and “within in the scope of health and safety at work.” The Polish Labour Code requires the prior consent of the employee to conduct the inspection and approval in writing or using electronic communication or similar means of individual remote communication.

Academics have raised concerns regarding the actual right of teleworkers to refuse entry to their private residences. A recent article opined that under Polish labour law, employers could argue that a teleworker refusing to allow the employer access to the teleworker’s home could be treated as an unfavourable element of verification, such as overtime work. Employers might attempt to argue that declining an inspection fulfils the criteria of a severe breach of essential employee obligations, which may lead to the employer’s termination of the employment contract without notice.<sup>54</sup> This is particularly problematic given the vague and broad scope of the permission given to employers to access teleworkers’ space to inspect “the progress of telework.”

The labour inspection system and government enforcement is discussed in the following section.

## TELEWORKER COLLECTIVE RIGHTS

The employer is obliged to abide by the general provisions of the Labour Code regarding the collective rights of teleworkers, including respecting the right to engage in collective bargaining and organizing. The provisions of chapter VI of the Labour Code regulating the issue of working time and collective rights, including the act on trade unions, will be analysed. Teleworkers are entitled to the same collective rights as employees working on the workplace premises. In particular, fully active and passive voting rights to staff bodies and employee representative offices, as well as rights under the Act on Resolution of Collective Disputes.<sup>55</sup> Teleworkers may participate in strikes and other forms of industrial action. Teleworkers – including those employed under civil law contracts – have the right to form trade unions and other collective rights such as the right to strike on general terms under the Act on Trade Unions.<sup>56</sup>

## RIGHT TO PRIVACY

The right to privacy for employees is one of the basic principles of labour law in Poland under article 11(1). The privacy of teleworkers is particularly vulnerable to violation in a situation where work is performed at the teleworker’s home, in a situation where the employer wants to introduce forms of monitoring not only the work of the employee, but also the employee himself. It should be emphasized that the performance of control activities must not violate the privacy of the teleworker and his/her family or impede the use of the home. However, there is a need for clear rules to give effect to this right.

Article 67(14) of the Labour Code gives the employer the right to carry out an inspection in a teleworker’s home to inspect “the progress of telework.” What constitutes “progress of telework” is not defined, and as discussed above, this vagueness gives the employer potentially broad latitude to enter teleworkers’ homes.

<sup>54</sup> Tomaszewska, *supra* note 32, art. 67(14).

<sup>55</sup> Ustawa z dnia 23 maja 1991 r. o rozwiązywaniu sporów zbiorowych [Act of May 23, 1991 on resolving collective disputes], Dziennik Ustaw, 1991, nr. 55, póź. 236, <https://dziennikustaw.gov.pl/DU/1991/s/55/236>.

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

In light of the currently applicable provisions of the Labour Code, some monitoring constitutes an interference with the employee's right to privacy.<sup>57</sup> So, as a general rule, webcam instalment at home can be considered as an intrusion in the right to privacy. There are some exceptions based on article 22(2), section one of the Labour Code: "If it is necessary to ensure the safety of employees or property protection or production control or to keep secret information, the disclosure of which could expose the employer to damage, the employer may introduce special supervision over the premises of the workplace or the area around the workplace in the form of technical measures enabling image registration (monitoring)". However, in this case, monitoring webcams can only be installed on workplace premises after the employees have been notified, informed and familiarized with the rules of its use.<sup>58</sup>

The employer may, however, control the employee's email box (i.e., email monitoring), which is allowed under article 22(3), section one of the Labour Code, if it is necessary to ensure work organization enabling full use of working time and proper use of the work tools provided to the employee. "As is clear from [article 22(3), section 22] of the Labour Code, monitoring of email may not violate the secrecy of correspondence and other personal rights of the employee."<sup>59</sup> Violation of the confidentiality of correspondence and other private rights of an employee may trigger protections under the provisions of the Civil Code,<sup>60</sup> since the Labour Code does not contain any regulations in this respect.

According to article 67, section one through two the employer defines the rules for the protection of data provided to the teleworker and conducts, if necessary, instruction and training in this regard. The teleworker confirms in writing that he has read the data protection rules referred to in article 67, section 1, and is obliged to comply with them.

## NON-DISCRIMINATION

### Equal Treatment

Under article 67(15) of the Labour Code, the teleworker cannot be treated less favourably than other employees employed in the same or similar work in terms of establishing and terminating the employment relationship, terms of employment, promotion, and access to training to improve professional qualifications. However, the differences related to the conditions performing teleworking must be accounted for. An employee may not be discriminated against in any way, either directly or indirectly, for undertaking teleworking work, as well as for refusing to undertake such work. Differential treatment that is due to elements of performing work under a telework arrangement does not constitute legal discrimination.<sup>61</sup>

### Non-discrimination

Teleworkers who are deemed to be in employment relationships will also be covered by general provisions regarding non-discrimination in the Labour Code. Article 11(2) of the Labour Code enumerates the principle of "equal rights

<sup>57</sup> See e.g., Katarzyna Syska, *Obowiązki pracodawcy związane z monitoringiem pracowników na gruncie RODO i znowelizowanego kodeksu pracy*, Monitor Prawniczy [MP], no. 22, 2018, at 25. Barbara Gubernat in: *Ustawa o ochronie danych osobowych. Komentarz*, Warszawa 2019.

<sup>58</sup> There are also cases before the European Court of Human Rights holding that workers have a right to privacy and family life, and that employer surveillance such as monitoring email must only be done with the informed consent of workers. See e.g., *Bărbulescu v. Romania*, App. No. 61496/08 (Sept. 5 2017), <https://hudoc.echr.coe.int/fre?i=001-177082>.

<sup>59</sup> Magdalena Kuba [in:] *Kodeks pracy. Komentarz*, tom I, Art. 1-113, 5th ed. 2020, art. 22(3).

<sup>60</sup> *Kodeks cywilny [Civil Code]*, art. 23-24, <https://dziennikustaw.gov.pl/DU/1964/s/16/93>.

<sup>61</sup> The law allows for different treatment when it is justified by the type of work or its conditions. In art. 18 [3b] § 2 of the Labour Code namely, counter arguments to the non-competition clause were formulated. Therefore, in this respect, the employer's refusal to establish an employment relationship with a person of a specific sex, in a situation where there is a justified need to perform work exclusively by persons of a different sex, is not considered a breach of the principle of equal treatment in employment. Whether there is such a need is decided by the employer who is authorized to make such a decision on the basis of the type of work to be performed. *Sąd Najwyższy [Supreme Court]* June 15, 2012, PK 224/11, <https://www.saos.org.pl/judgments/98337>.

in respect of the same performance of the same duties; this applies in particular to the equal treatment of men and women in employment.” Article 11(3) of the Labour Code prohibits “discrimination in employment, direct or indirect, in particular, due to sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, religion, sexual orientation, employment for a fixed or indefinite period, full-time or part-time employment.” A person against whom the employer has violated the principle of equal treatment in employment has the right to compensation in the amount not lower than the minimum remuneration for work, determined based on separate provisions.<sup>62</sup> The burden of proof that there has been no unequal treatment or discrimination lies with the employer.<sup>63</sup> Article 177 of the Labour Code prohibits employers from discriminating against parents and pregnant workers with all types of employment contracts, with the exception of contracts for a trial period not exceeding one month.

### Gender-based Violence and Harassment

Gender-based violence and harassment (GBVH) is violence and harassment directed at a person because of their actual or perceived gender or sex and violence and harassment that causes a disproportionately impacts people of a particular sex or gender.<sup>64</sup> It is inclusive of sexual harassment, as well as abusive conduct that is not sexual but rooted in gendered stereotypes, norms and expectations.<sup>65</sup> The Polish Labour Code would extend existing protections against gender-based violence and harassment to teleworkers deemed to be in an employment relationship. Teleworkers on civil law contracts would have no such protections. Article 18, section (5)(2) prohibits “unwanted conduct with the purpose or effect of violating the dignity of an employee and of creating an intimidating, hostile, degrading, humiliating or offensive atmosphere (harassment).” Article 18, section 67 states that “discrimination on the grounds of sex also includes any form of unwanted conduct of a sexual nature, or in relation to the sex of an employee with the purpose or effect of violating the dignity of an employee, in particular when creating an intimidating, hostile, degrading, humiliating or offensive atmosphere; this conduct may include physical, verbal or non-verbal elements (sexual harassment). The submission of an employee to harassment or sexual harassment, as well as his conduct in order to reject harassment or sexual harassment, cannot inflict any negative consequences toward the employee.”

Under Art. 18 (3a) of the Labour Code, harassment at work is undesirable behaviour the purpose or effect of which is to violate the dignity of an employee and create an intimidating, hostile, degrading, humiliating or offensive atmosphere towards him, while sexual harassment is any unwanted conduct of a sexual nature or relating to the sex of an employee with the purpose or effect of violating the employee’s dignity, in particular creating an intimidating, hostile, degrading, humiliating or offensive environment for him; this behaviour may consist of physical, verbal or non-verbal elements.

Supervision and control of compliance with the labour law, including protections against discrimination, is carried out by the National Labour Inspectorate.<sup>66</sup> When there is a report of harassment at work to the National Labour Inspectorate, the employer should conduct a control procedure, and the control procedure should result in issuing an appropriate decision, obligating the employer, for example, to pay/adjust remuneration in a proper amount.<sup>67</sup>

<sup>62</sup> Kodeks Pracy [Labour Code], art. 18(3d), <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf>, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/45181/91758/F1623906595/The-Labour-Code%20consolidated%201997.pdf> [English].

<sup>63</sup> See e.g., Sąd Najwyższy [Supreme Court] Feb. 13, 2018, II PK 345/16, LEX No. 2488644, <http://www.sn.pl/sprawy/SitePages/e-Sprawa.aspx?ItemSID=10746-350d6c73-8c3c-46fe-8bdc-f1a3e551ad56&ListName=esprawa2016&Search=II%20PK%20345/16.1>

<sup>64</sup> Violence and Harassment Convention, n. 190, June 21, 2019, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_ILO\\_CODE:C190.Article.1](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C190.Article.1)

<sup>65</sup> CASSANDRA WATERS & ROBIN RUNGE, 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/wp-content/uploads/2021/02/Gender.Publications.Made-for-this-Moment.12.20.pdf>.

<sup>66</sup> Labour Code, art. 18(4).

<sup>67</sup> Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy [Act of 13 April 2007 on the National Labour Inspectorate], Dziennik Ustaw, 2007, nr. 89, póż 589, <https://www.dziennikustaw.gov.pl/DU/2007/s/89/589>.

Pursuant to article 218, section 1a of the Penal Code,<sup>68</sup> an employer who maliciously or persistently violates the employee's rights under the employment relationship (which includes the right to equal treatment in employment) shall be subject to a fine, restriction of liberty or imprisonment for up to 2 years. Sexual harassment at the workplace by the employer may constitute a prohibited act specified in the Penal Code. An employer who, by abusing a dependency relationship, causes an employee to have sexual intercourse or to undergo another sexual activity or to perform such an activity is subject to imprisonment for up to 3 years.<sup>69</sup>

Poland has not yet ratified International Labour Organization Convention 190 (C190) on the elimination of violence and harassment in the world of work, and its accompanying Recommendation 206 (R206). C190 provides critical guidance on how governments can meet their fundamental obligation to address and prevent violence and harassment, including GBVH in the world of work. Currently, protections in Poland only apply to employees, whereas C190 deliberately adopted an expansive scope of protection that explicitly extended not just to employees under national law, but all workers regardless of their contractual status, as well as jobseekers, job applicants, interns, apprentices, trainees and those terminated from employment.<sup>70</sup> This broader scope recognizes that marginalized workers in precarious work arrangements are often the most vulnerable to abuse and require coverage under national law.

C190 and R206 further place proactive obligations on both governments<sup>71</sup> and employers<sup>72</sup> to take measures to prevent violence and harassment by addressing root causes including discrimination, stereotypes and norms; addressing precarious work and power relationships; and creating safe, effective complaints mechanisms and victim-centric remedies. Victim-centric remedies focus on addressing the harm caused to victim, including access to psychosocial support and compensatory damages, as well as measures ensuring that employers are obligated to take affirmative steps to address the underlying risk factors that cause violence and harassment in specific jobsites, sectors and occupations to prevent recurrence. Currently, Polish law does not reflect these affirmative obligations or contain provisions to ensure systemic approaches.

Instead, Poland appears to be backing away from its commitment to tackle GBVH and gender inequality. In 2015, Poland ratified the Convention on preventing and combating violence against women and domestic violence (the so-called Istanbul Convention) developed by the Council of Europe to prevent and combat violence and promote equality between women and men.<sup>73</sup> The Preamble states that violence against women is "structural" and constitutes a major obstacle to the achievement of equality between women and men." This document also calls on states to look at the root causes of GBVH within society, including in the workplace, and fully complying with its requirements. Such compliance would include more robust measures to ensure gender equality at work. It was also noted that women and girls are particularly vulnerable to acts of violence, including domestic violence. As it has already been emphasized, Poland occasionally considers abandoning the convention.<sup>74</sup>

Gender-based violence and harassment in the world of work includes the impact of domestic violence on the world

<sup>68</sup> Kodeks karny [Penal Code], art. 218, §1a, <https://www.dziennikustaw.gov.pl/DU/1997/s/88/553>.

<sup>69</sup> Penal Code, art. 199.

<sup>70</sup> Violence and Harassment Convention, *supra* note 58, art. 2.

<sup>71</sup> *Id.* art. 4 & 10.

<sup>72</sup> *Id.* art. 9.

<sup>73</sup> The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), May 11, 2011, 3010 U.N.T.S. 107, <https://www.coe.int/en/web/gender-matters/council-of-europe-convention-on-preventing-and-combating-violence-against-women-and-domestic-violence>.

<sup>74</sup> Elżbieta Szyszlak, Tureckie pożegnanie z Konwencją stambulską (Res. Gate, 2020), [https://www.researchgate.net/publication/356442032\\_Tureckie\\_pozegnanie\\_z\\_Konwencja\\_stambulska](https://www.researchgate.net/publication/356442032_Tureckie_pozegnanie_z_Konwencja_stambulska).



of work.<sup>75</sup> During the pandemic in Poland, there was an increase in the number of victims of domestic violence.<sup>76</sup> Poland currently has criminal prohibitions on domestic violence, but no mechanisms to provide support to remain employed while seeking safety.

Under article 11a of the Act of July 29, 2005 on Counteracting Domestic Violence, a person affected by domestic violence may obtain a court order forcing an abusive family member to leave a jointly occupied home.<sup>77</sup> The Polish criminal code defines physical and mental abuse in the context of a relationship as a crime punishable by imprisonment from 3 months to 5 years.<sup>78</sup> While criminal prohibitions are important, measures to ensure that victims of domestic violence can remain in employment while seeking safety are also crucial. Many victims are fired or suffer adverse job consequences as a result of abuse.<sup>79</sup> To guard against such retaliation, many jurisdictions have adopted measures that prevent discrimination against workers for their actual or perceived status as a victim of domestic violence. This will be particularly critical for teleworkers working from home.

Teleworkers facing domestic violence may require specific accommodations, 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 telework, 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. The general provisions state that the employers should grant requests. 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 victims' decision to leave their abusers, and too often victims face retaliation at work related to the abuse. 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 counselling, including by offering guidance to employers on how to issue referrals to available services in their community.

Issues related to discrimination, violence and harassment, including GBVH and the impact of domestic work, are entirely absent in the new draft act on remote work. Critical measures are needed to ensure the safety of teleworkers.

## STATE Labour INSPECTION & TELEWORK

The duties of the National Labour Inspectorate in Poland are of a control and supervisory nature.<sup>80</sup> The tasks of the National Labour Inspectorate include supervision and control of compliance with labour law, in particular the provisions and principles of health and safety at work, provisions on the employment relationship, remuneration for work and other benefits resulting from the employment relationship, working time, leaves, rights of employees related to parenthood, employment of young people and people with disabilities.

The Labour Inspectorate may:<sup>81</sup>

<sup>75</sup> Violence and Harassment Convention, *supra* note 58, art. 18.

<sup>76</sup> Anna Krzyżanowska, Przemoc domowa - jakie są statystyki, PRAWO, Aug. 19, 2020, <https://www.rp.pl/prawo-karne/art568481-przemoc-domowa-jakie-sa-statystyki>.

<sup>77</sup> Ustawa z dnia 29 lipca 2005 r. o przeciwdziałaniu przemocy w rodzinie [Act of July 29, 2005 on Com-batting Domestic Violence], Dziennik Ustaw, 2005, nr. 199, póż 1673, <https://dziennikustaw.gov.pl/DU/2002/s/199/1673>.

<sup>78</sup> Kodeks karny [Penal Code], art. 207, §1, <https://www.dziennikustaw.gov.pl/DU/1997/s/88/553>.

<sup>79</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>80</sup> Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy [Act of 13 April 2007 on the National Labour Inspectorate], Dziennik Ustaw, 2007, nr. 89, póż 589, <https://www.dziennikustaw.gov.pl/DU/2007/s/89/589>.

<sup>81</sup> *Id.*

1. order employers to pay remuneration due for work, as well as other benefits due to the employee (orders in these matters are subject to immediate execution);
2. order the employer to remove the identified infringements other than those mentioned above;
3. apply or issue an order regarding the payment of remuneration in the amount resulting from the amount of the minimum hourly rate;
4. impose a fine through penalty notices and referral to courts for punishment;
5. notify the police, the prosecutor's office, the tax office and the social insurance institution about the violations.

The National Labour Inspectorate does not have the right to enter the private residence of the teleworker. Article 23, paragraph one, point one of the Act on the National Labour Inspectorate provides for the right of an inspector to access the premises of the inspected entity, but not an employee.<sup>82</sup> The Labour Code stipulates that employers may access the teleworkers home with consent,<sup>83</sup> but there is no corresponding provision with respect to inspectors from the National Labour Inspectorate. Further, Labour Ministry officials have issued public statements that labour inspectors should not carry out inspections in private apartments or houses, respecting the constitutional principle of ownership and home protection and privacy.<sup>84</sup>

However, the National Labour Inspectorate should take steps to ensure that teleworkers can exercise their full rights, and to ensure that violations are identified and rectified. This could include conducting inspections at the employers' premises and conducting virtual interviews with teleworkers. This should also include integration of telework within broader efforts to address misuse of civil law contracts.

As discussed above, Polish law allows remote work on the basis of civil law contracts, (e.g., mandate contracts).<sup>85</sup> Polish labour law has been dominated by the problem of the abuse of mandate contracts in place of employment contracts, which is contrary to article 22, section one of the Labour Code. When the provisions on employing workers in the form of telework were introduced into the Labour Code in 2007, there was already a severe problem of replacing employment contracts with civil law contracts.<sup>86</sup> The cause of this problem was the willingness of employers to reduce labour costs. The purpose of applying for a civil law contract is to relieve employers of expenses related to, for example, social burdens, such as maternity, paternity, and parental leave.<sup>87</sup>

A person performing work under a civil law contract is not an employee within the meaning of the Labour Code and thus is not entitled to numerous employee rights, e.g. remuneration for overtime work or vacation leave. Article 22 § 1 of the Labour Code states that "an employee undertakes to perform work of a specified type for the benefit of an employer and under his supervision, in a place and at the times specified by the employer; the employer undertakes to employ the employee in return for remuneration." Per Article § 1(1) employment that meets these conditions is considered an employment relationship "regardless of the name of the contract concluded between the parties."

According to the fundamental principle of civil law in force in the Polish Civil Code, regarding the freedom of

<sup>82</sup> Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy [Act of 13 April 2007 on the National Labour Inspectorate], Dziennik Ustaw, 2007, nr. 89, póż 589, <https://www.dziennikustaw.gov.pl/DU/2007/s/89/589>.

<sup>83</sup> Kodeks Pracy [Labour Code], art. 67(14), <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf>, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/45181/91758/F1623906595/The-Labour-Code%20consolidated%201997.pdf> [English].

<sup>84</sup> Juliusz Głuski, press spokesman of the Chief Labour Inspectorate, June 18, 2021 <https://www.prawo.pl/kadry/praca-zdal-na-kto-bedzie-mogl-skontrolowac-wykonywanie-pracy,508911.html>

<sup>85</sup> Kodeks cywilny [Civil Code], art. 734-51, <https://dziennikustaw.gov.pl/DU/1964/s/16/93>.

<sup>86</sup> Krzysztof Rączka, Praca w godzinach nadliczbowych w znowelizowanym kodeksie pracy, 1996 PRACA I ZABEZPIECZENIE SPOŁECZNE [PiZS] 39 (Pol.); Judgment of the Supreme Court of 2 September 1998, I PKN 293/98, OSNAPiUS 1999 No. 18, item 582.

<sup>87</sup> Krzysztof Rączka, Stosunek pracy a cywilnoprawne umowy o świadczenie pracy, Praca i Zabezpieczenie Społeczne 1996 No. 11, p. 39; Sąd Najwyższy [Supreme Court] Sept 2, 1998, OSNAPiUS 1999 No. 18, item 582.

contracts, work may be performed under civil law contracts and an employment relationship.<sup>88</sup> The Supreme Court has held that “employment does not have to be of an employee nature. Therefore, the parties may freely shape the legal relationship on the basis of which the work will be performed, provided that its correct classification is maintained.”<sup>89</sup> At this point, it would be justified to conclude that the problem of employers deliberately replacing employment contracts with civil law contracts to avoid legal obligations to and protections for workers, even assuming the replacement of teleworking in the Labour Code with remote work, will remain urgent.<sup>90</sup>

Currently there are several options to combat misclassification of workers under Polish law. Under article 281, point one of the Labour Code, the inspector may find that the civil law contract was concluded under the conditions specified in article 22, section one and issue a ticket or apply to the court for punishment for an offense against the employee’s rights. If a worker on a civil contract suspects that the work performed does not differ in any way from work performed under an employment contract, they may file a claim with the Court to establish the existence of an employment relationship pursuant to article 189 of the Code of Civil Procedure. If the court accepts the employee’s claim, it can order the employer to provide the employee with all the privileges contained in the Labour Code, such as making the remuneration equal to the minimum remuneration or paying for overtime work. Currently, a labour inspector cannot transform a civil law contract unilaterally under which teleworking is performed into an employment contract.

Workers under civil law contracts may sue to establish that the work was in actuality performed under the terms of an employment contract. However, pursuing individual cases can be onerous on workers, who may not possess legal knowledge or resources. The legislature introduced the minimum hourly rate for civil law contracts in 2017.<sup>91</sup> This was an important step towards addressing unequal treatment, one that should be bolstered by further efforts to extend the same rights to contractors as are available to employees. After the amendment to the Act on Trade Unions in 2019, workers under civil law contracts gained the right to form unions, which opened the door to the possibility of being covered by special employment protection. However, organizing in this sector can be challenging. Organizing teleworkers on civil contracts could be particularly daunting given their isolation. More efforts are needed by the government to ensure that teleworkers are not misclassified, and that they enjoy all their rights under law.

## ANALYZING DRAFT PROVISIONS OF REMOTE WORK IN POLISH LABOUR LAW<sup>92</sup>

The concept of “remote work” was adopted by the Polish legal system by the Act of March 2, 2020 on unique solutions related to the prevention and combating of COVID-19, other infectious diseases and those caused by the

<sup>88</sup> Sąd Najwyższy [Supreme Court] Sept 2, 1998, OSNAPiUS 1999 No. 18, item 582.

<sup>89</sup> *Id.*

<sup>90</sup> In 2019, the estimated number of people who worked under a civil contract or a specific task contract, and who were not employed anywhere on the basis of an employment relationship, amounted to 1.2 million; a decrease by approx. 8% compared to the previous year. GŁÓWNY URZĄD STATYSTYCZNY (GUS), WYBRANE ZAGADNIENIA RYNKU PRACY (LICZBA OSÓB Z MINIMALNYM WYNAGRODZENIEM, SAMOZATRUDNIENI, UMOWY ZLECENIA, O DZIEŁO): DANE ZA 2016 ROK (2018), <https://stat.gov.pl/obszary-tematyczne/rynek-pracy/pracujacy-zatrudnieni-wynagrodzenia-koszty-pracy/wybrane-zagadnienia-ryнку-pracy-liczba-osob-z-minimalnym-wynagrodzeniem-samo zatrudnieni-umowy-zlecenia-o-dzie-lo-dane-za-2016-rok,9,5.html>.

<sup>91</sup> From January 1, 2017, under the Act of July 22, 2016, Ustawa z dnia 22 lipca 2016 r. o zmianie ustawy o minimalnym wynagrodzeniu za pracę oraz niektórych innych ustaw, Dziennik Ustaw, 2016, poz. 1265, <https://dziennikustaw.gov.pl/DU/rok/2016/pozycja/1265>, the minimum hourly rate for persons performing work on the basis of specific mandate contracts (Article 734 Of the Civil Code) and contracts for the provision of services to which the provisions on mandate apply (Article 750 of the Civil Code). The introduced regulation is aimed at limiting the abuse of civil law contracts and protection of the low-est paid persons. The guarantee of receiving the minimum hourly rate covers natural persons who do not conduct business activity, as well as the so-called “self-employed,” i.e., natural persons performing business activity, not employing employees or not concluding contracts with contractors, whose activity has been registered in the Republic of Poland or in a country which is not a member state of the Euro-pean Union or a country of the European Economic Area. MINISTERSTWO RODZINY, PRACY I POLITYKI SPOŁECZNEJ ZAKŁAD UBEZPIECZEŃ SPOŁECZNYCH, PAŃSTWOWA INSPEKCJA PRACY, MINIMALNA STAWKA GODZI-NOWA DLA UMÓW CYWILNOPRAWNYCH - INFORMATOR (2017), <https://archiwum.mriips.gov.pl/prawo-pracy/minimalna-stawka-godzinowa/minimalna-stawka-godzinowa---informator/>.

<sup>92</sup> The concept of remote work was introduced into the Polish legal system in March 2020, along with the statutes on preventing, counteracting and combating COVID-19. So far, the text of the draft amend-ments to the Labour Code in the field of remote work have not been adopted.

crises. This act entered into force on March 8, 2020 (“Anti-Covid law”).<sup>93</sup> Article three of the Anti-Covid law allows the employer to order an employee to work remotely during the period of a pandemic threat or pandemic state announced due to COVID-19, and within three months after the order’s cancellation. While under the teleworking regulations, the employer must provide the necessary equipment to perform telework, under the Anti-Covid law. Provisions on remote work allow a deviation from this rule when the employee has the technical and local skills and equipment to perform such work and the type of work allows it.

Pursuant to article four, point one and article 13, point one of the Act of July 24, 2020 amending the Act on the posting of employees as part of the provision of services and certain other acts, from September 5, 2020, the use of remote work has been extended for the entire period of the pandemic threat or pandemic state announced due to COVID-19, and within 3 months after their cancellation.<sup>94</sup>

Discussion on replacing the current teleworking rules started in 2020. Subjects of disagreement between the social partners included the definition of remote work and health and safety at work. The first draft amendment to replace the current teleworking regulations appeared on May 19, 2021 and immediately caused much controversy. On May 19, 2021, the Ministry of Labour and Development contacted social partners for both public and private consultations.<sup>95</sup>

According to the accepted version of the legislative proposal of May 2, 2022 under the proposed Art. 67 (18) remote work is defined as work wholly or partially in a place indicated by the employee and agreed with the employer in each case, including at the employee’s residence address, in particular with the use of means of direct remote communication.<sup>96</sup> It follows from this definition that remote work is performed outside the employer’s seat, including the employee’s place of residence.<sup>97</sup> Further provisions indicate that remote work may be performed on the basis of an agreement between the parties to the employment contract: 1) when concluding an employment contract or 2) during the period of employment. The new regulations do not introduce an obligation to work remotely in every case. The employee must have the premises and technical conditions.

Remote work may be performed at the request of the employer under the following terms: 1) during a state of emergency, state of epidemic threat or state of epidemic and within three months after their cancellation or 2) during a period in which it is temporarily impossible for the employer to ensure safe and healthy working conditions at the employee’s current workplace due to force majeure or 3) occasional remote work 24 days a year. If a change in the premises and technical conditions makes it impossible to perform remote work, the employee is obliged to immediately inform the employer about it. In this case, the employer immediately withdraws the order to perform remote work.

The new draft act introduced an obligation for the employer to grant an employee’s application for remote work where the employee is raising a child until the age of 4 or caring for a member of their immediate family or household

<sup>93</sup> Ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych [Act of March 2, 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them], 2020, póż 374, <https://dziennikustaw.gov.pl/DU/rok/2020/pozycja/374>.

<sup>94</sup> Ustawa z dnia 24 lipca 2020 r. o zmianie ustawy o delegowaniu pracowników w ramach świadczenia usług oraz niektórych innych ustaw [Act of 24 July 2020 Amending the Act on the Posting of Workers as Part of the Provision of Services and Certain Other Acts], Dziennik Ustaw, 2020, póż 1423, <https://dziennikustaw.gov.pl/DU/rok/2020/pozycja/1423>.

<sup>95</sup> Projekt ustawy o zmianie ustawy – Kodeks pracy oraz niektórych innych ustaw [Draft act amending the act - Labour Code], May 18, 2021, <https://legislacja.rcl.gov.pl/docs//2/12346911/12789150/12789151/dokument503604.pdf>.

<sup>96</sup> Projekt ustawy o zmianie ustawy – Kodeks pracy oraz niektórych1 innych ustaw [Draft act amending the act - Labour Code], May 2, 2022, <https://legislacja.rcl.gov.pl/docs//2/12354104/12835646/dokument553294.DOCX>.

<sup>97</sup> This solution was supported by the Employers of the Republic of Poland. Letter from Andrzej Mali-nowski, President, Emps. Republic Pol., to Jaroslaw Gowin, V.P. Ministers’ Council, Minister Dev., Lab. & Tech. (June 18, 2021), <https://legislacja.rcl.gov.pl/docs//2/12346911/12789150/12789153/dokument516591.pdf>.

with a certificate of disability or a certificate of moderate or severe disability, unless it is not possible due to the organization of work or the type of work performed by the employee.

The definition of remote work proposed by the legislature allows for a much broader scope of remote work, as it only introduces the problem of disqualification “in particular with the use of direct remote communication (remote work).” Current definitions of teleworking, which include using ICT as a requirement, usually limit the scope of work performance to computer-based work.

In the draft, the legislature failed to require a minimum lump sum to cover costs related to the installation, service, operation and maintenance of work tools, including technical devices necessary for remote work, electricity costs and access to telecommunications connections, as well as the costs of equipment necessary for remote work. Article 67(24) generally indicates the employer’s obligation to 1) provide the employee performing remote work with materials and work tools, including technical devices, necessary to perform remote work; 2) provide installation, service, maintenance of work tools, including technical devices necessary to perform remote work or cover the necessary costs related to the installation, service, operation and maintenance of work tools, including technical devices, necessary to perform remote work, as well as cover the costs of electricity and telecommunications services necessary to perform remote work. Thus, according to the draft law, if the employer has not issued any general regulations covering the rules for remote work, the employer must specify these rules in the agreement concluded with the employee.

This is a priority for trade unions, which saw the risk that employers would pass on the costs of remote work to their employees. Unfortunately, the vague language in the current draft – “the parties can make the rules” – does not protect teleworkers adequately.

## RECOMMENDATIONS

Regulations regarding telework or remote work must ensure that workers can fully exercise their fundamental labour rights. The presented analysis led to the following conclusions:

1. The discussion in Poland on replacing the existing provisions on teleworking with new provisions on remote work, which still allows teleworking under a civil law contract or employment contract, without the provisions on incorrect classification, requires attention. The remote work bill completely ignores the huge problems identified in this analysis of misclassification in civil law contracts in order to avoid obligations to full-time employees. This issue is urgent and needs to be addressed to ensure that workers are not imprisoned in conditions of exploitation. Parliament should consider the possibility of banning remote work on the basis of civil law contracts due to abuses in this regard in the Polish legal space. Alternatively, Parliament should consider introducing regulations restricting its use. In this respect, in particular, the role of trade unions should be increased at the stage of consultation of the new law. Parliament could also consider including in the Labour Code specific provisions on the misclassification of teleworkers and / or remote workers, which stipulates that all teleworkers and remote workers are considered employees irrespective of the contract and that the burden is on the employer to demonstrate that this is truly a civil law contract. A more detailed obligation to carry out misclassification checks, in particular systematic misclassification with heavy fines acting as a deterrent, could also be imposed on the Ministry.
2. Trade unions and workers should be at the forefront of discussions to change the Labour Code with regards to telework/remote work language. Measures should be taken to strengthen the role of unions in implementing protections.

3. Currently there are insufficient mechanisms to address systemic discrimination, violence and harassment in the world of work against teleworkers and/or remote workers. This includes a lack of measures to address specific risks of GBVH against teleworkers such as the use of ICT to engage in invasive forms of harassment and cyberbullying, and measures to address the impact of domestic violence on the world of telework.
  - (a) Provisions on non-discrimination should apply to all workers, including workers on civil law contracts. Measures should ensure that all forms violence and harassment, including gender-based violence and harassment, are prohibited. Furthermore, employers should have an affirmative obligation to prevent GBVH by identifying risks, adopting policies and training all workers, in consultation with teleworkers and unions. The government should ensure access to safe, gender-responsive, effective complaints mechanisms and ensure that inspections identify and remedy risks associated with violence and harassment, including by examining work arrangements, exposure to third parties, power relationships and social and cultural norms that support violence and harassment. Unions can and should organize to win protections in collective agreements on this issue.
  - (b) Both the government and trade unions should ensure that there are protections in place to allow victims of domestic violence to remain employed while seeking safety. This should include paid leave to address the impact of domestic violence, and accommodations to ensure the safety of the worker and their co-workers. This might include the use of telework on a short-term basis where the victim requests it, either at home or in a different temporary location. There should also be provisions to request an emergency revocation of telework without adhering to prior notice requirements, so that workers can quickly transfer back to the employer's premises. Unions can press for better protections in collective agreements.
4. Another problematic issue is the lack of definition in the Polish provisions on teleworking and the draft act to verify overtime work. This problem concerns especially remote work, which is very often accounted for within the task-related working time. In the case of remote work, specific provisions on the recording of working time by teleworkers should be presented. Relying on general provisions of labour law or leaving this task to the employer may lead to abuses in the scope of imposing on the teleworker tasks that are impossible to perform during standard working hours. Unclear verification of overtime work can lead to fraud in this regard. A straightforward procedure is needed for recording working time to exclude any possible inaccuracies during the employer's control, by labour inspectors.
5. OHS provisions must ensure the fundamental right to safe, healthy workspaces for all workers. The current telework provisions would benefit from greater specificity, and remote work must maintain the clear obligation on employers to provide a safe working place. If remote work has a broader definition that excludes the requirement to use ICT to complete work, it opens the door for dangerous work to be conducted in private homes. Measures such as banning the handling or storage of hazardous materials outside an employer's premises may be appropriate to ensure the safety of workers and the public, and prevent employers from shifting the risks of hazardous activities onto individual workers and communities. Due care should be given to the impact of a broader definition of remote work.
6. The right to privacy for teleworkers should include freedom from intrusive monitoring and oversight mechanisms, as well as protection of their personal data. Monitoring and oversight should be implemented only with the knowledge and consent of workers, in consultation with trade unions. Intrusive surveillance must be limited to where it is absolutely necessary, and the use of monitoring without knowledge and consent should be banned

7. Create a more affirmative obligation to negotiate conditions of work in good faith. Currently, if no agreement is reached within 30 days, the employer is entitled to define the conditions of telework in a regulation, taking into account previous arrangements made in the course of talks with trade unions. Even the presence of a negative joint position by trade unions towards the employer's proposal, does not prevent adopting regulations.
8. Limit the scope of the employer's ability to access a teleworkers' space to inspections to ensure occupational safety and health with the consent of the worker, removing broader, vague permissions to do so to monitor work progress. Ensure that teleworkers have the right to decline employer entry to private residences without consequence in all circumstances.

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