

## Comparative study on remote work regulation in public administration in Romania and France

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Page | 52

### ABSTRACT

Remote working is a topic that has gained momentum in recent years in both the private and public sectors. Even if this concept was not new in the private sector, policies to implement telework have been accelerated in all fields in the context of the epidemiological crisis caused by the SARS-COV-2 virus. The year 2020 has thus therefore brought about a paradigm shift in the global economy in terms of the way employees work, with the effects also visible in public administrations around the world. Remote working, also known as telework, has both advantages and disadvantages. While in the private sector each employer is free to develop its their own policies on telework, public administrations have had to regulate the concept in order to prevent possible negative effects and to ensure fairness, balance and unity across all their bodies. Adapting to new ways of working has been a priority in countries such as France, and the similarity of the administrative systems in the two countries creates the necessary prerequisites for a comparative study based on content analysis. The subject of telework in the public sector is also important from a human rights perspective, as the issue of differential treatment and benefits for employees in the private sector compared to the public sector has been raised, which could also lead to reluctance to take up positions in public administration.

**KEYWORDS:** adaptability of public administration, digital era, legislative changes, new paradigms, telework in public administration.

### 1. Introduction.

Remote working is a topic that has gained momentum in recent years in both the private and public sectors. Even if this concept was not new in the private sector, policies to implement telework have been accelerated in all fields in the context of the epidemiological crisis caused by the SARS-COV-2 virus. The year 2020 has therefore brought about a paradigm shift in the global economy in terms of how employees work, with the effects also visible in public administrations around the world<sup>1</sup>. Studies on the efficiency of public administration are often linked to the idea of satisfying the needs and desires of citizens, and this satisfaction must also be taken into account when addressing issues related to the human resources that make up public administration. From this perspective, the COVID-19 pandemic has led to new needs and expectations of public sector employees, remote working being one of them<sup>2</sup>.

<sup>1</sup> Angela Popovici, Corneliu Popovici, *Remote work in public administration: post-covid perspectives*, Theory and Practice of Public Administration, May 20, 2022, pp. 33-36.

<sup>2</sup> *Idem*.



Remote work, also known as teleworking, involves carrying out job-related tasks outside the space provided by the employer, and not necessarily in the employer's premises (in which case we find the concept of "home working"). Such activities would not be possible without information and communication technologies and the necessary work-related devices, which is why the development of these technologies and tools over the years has also brought to light a different perspective on work in certain fields.<sup>3</sup>

This way of doing business has both advantages and disadvantages. While in the private sector each employer has the possibility to develop its their own policies on telework, public administrations have had to regulate this concept in order to prevent possible negative effects and to ensure fairness, balance and unity among all their bodies. The SARS-COV-2 pandemic has underscored across Europe the imperative of adapting to digital services, particularly in the context of electronic governance services provided by public administrations<sup>4</sup>.

The performance of the service's duties by teleworking is carried out using new communication and information technologies. This replaces the physical movement of employees and gives them the choice of where they work, which has led to more flexible working. At the European level, telework has been defined in the European Framework Agreement on Telework<sup>5</sup> since 2002, and the concept has been taken up by the Member States, even though the regulation has not been transposed into Community law by a directive.<sup>6</sup> Aware of the advantages of this specific form of work organisation, the European Parliament envisaged plans to encourage it, and the Member States of the European Union initially took over the provisions of the Framework Agreement "by adopting laws (Portugal, Hungary, Italy), codes of conduct (England, Ireland) or national or sectoral collective agreements (Sweden, Belgium, France, Denmark)"<sup>7</sup>.

Adapting to new ways of working has been a priority in countries such as France, and the similarity of the administrative systems in the two countries creates the prerequisites for a comparative study based on content analysis. The subject of telework in the public sector is also important from a human rights perspective, with the issue of differential treatment and benefits for private sector employees compared to the public sector being raised, which could also lead to reluctance to take up positions in public administration.

## 2. Regulation of telework in Romania.

2018 is the year when Romania adopted Law no. 81/2018 on the regulation of the telemunking activity<sup>8</sup>, being the first normative act of its kind. The rules of this law outline the way in which employees' prerogatives can be carried out in teleworking mode, and are intended

<sup>3</sup> *Ibidem*.

<sup>4</sup> Bogdan Berceanu, *Elemente care pot face obiectul unui serviciu de e-guvernare. Analiză asupra evenimentului de viață-Pensionarea*, Curierul Judiciar, nr. 9, Vol. XX, 2021, p. 556.

<sup>5</sup> European Framework Agreement on Telework S/2002/206.01.02

<sup>6</sup> Melis Emin, *From the original employment contract to the telework contract in the context of the European Framework Agreement on Telework from Brussels*, International Conference on Law, European Studies and International Relations, IV: 157-162, 2016.

<sup>7</sup> *Idem*.

<sup>8</sup> Law no. 81/2018 on the regulation of the telemune activity, published in the Official Gazette, Part I, no. 296 of 02 April 2018, with subsequent additions and amendments.

for areas of activity which allow such an approach. For the purposes of the act, telework is defined in Article 2(a) as "a form of work organisation whereby the employee, on a regular and voluntary basis, performs the duties specific to his or her function, occupation or trade at a place other than the workplace organised by the employer, using information and communication technology". The performance of work under a teleworking scheme would not be possible without the will of the parties and an act, either by the individual employment contract or by an additional act to it<sup>9</sup>, with an emphasis on the use of information and communication technologies as opposed to other forms of work.

The evolution of society in relation to new technological trends has led to a wide range of activities that can be carried out predominantly in such a form, which is why Romania has also had to adapt its legislation in this regard. This need arose mainly from practice, with the increasing presence of international companies in Romania which already had such internal policies, but also from the permanent transformation of the working environment in line with the new trends. Regulating this type of activity allows employers to check the activity of teleworkers and avoid possible fraud on their part, and employees to enjoy rights that provide them with protection, security and optimum performance of their work without incurring additional costs. Thus, even in teleworking, Article 6(1) of the above-mentioned legislation states that employees "shall enjoy all the rights recognised by law, internal regulations and collective agreements applicable to employees working at the employer's place of business or domicile"<sup>10</sup>. Prior to the adoption of this law, only the possibility of working remotely at home was regulated, as provided for by Law No 53/2003 on the Labour Code<sup>11</sup>. Teleworking and homeworking are distinguished by the specifics of where the work is carried out (teleworking does not exclude the possibility of being at home to carry out the work, whereas homeworking cannot be carried out in any other place) and how the working hours are set (in current teleworking legislation the hours are agreed, whereas homeworking requires employees to set their own working hours), but both require an agreement between the parties on the contractual conditions.

With regards to the public sector, even though the introduction of the Administrative Code<sup>12</sup> established as an element of novelty clarifications concerning home working in the public administration, the beneficiaries of the possibility to work in such a regime were only those classified as contractual staff, the subject of teleworking and the performance of the activity of civil servants in another type of regime remained unregulated.

The lack of such regulations in Romania was felt with the crisis caused by the COVID-19 pandemic. In view of the imminent danger, urgent regulation was necessary. Thus, by Decree No 195/2020 establishing a state of emergency<sup>13</sup> in the field of labour and social protection, it has

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<sup>9</sup> *Idem*.

<sup>10</sup> *Ibidem*, art.6, alin (1).

<sup>11</sup> Law No 53/2003 on the Labour Code, published in the Official Gazette, Part I, No 72 of 5 February 2003, as subsequently amended and supplemented, republished in the Official Gazette, Part I, No 345 of 18 May 2011.

<sup>12</sup> Emergency Ordinance 57/2019 of 3 July 2019 on the Administrative Code, as amended and supplemented, published in the Official Gazette, No 555 of 5 July 2019.

<sup>13</sup> Decree of the President of Romania no. 195/2020 regarding the establishment of the state of emergency on the territory of Romania, published in the Official Monitor no. 212 of March 16, 2020.

been provided that "central and local public institutions and authorities, autonomous administrative authorities, autonomous companies, national companies and companies in which the State or an administrative-territorial unit is the sole or majority shareholder, companies with private capital shall introduce, where possible, during a state of emergency, home-working or teleworking, by unilateral act of the employer"<sup>14</sup>, but it was a temporary regulation which was maintained only during the state of emergency, the introduction of the state of alert only made it possible for the public sector, where there were more than 50 employees, to establish different work schedules so as to delay their possibility of interaction.<sup>15</sup>

Telecommuting was an element of resilience during the COVID-19 pandemic<sup>16</sup>, and in October 2020 the National Institute of Administration (INA)<sup>17</sup> launch two questionnaires identifying the perspectives of human resources in public administration on the organisation of working time in public administration, but also on home working and teleworking. Although this should have been a factor in speeding up the adoption of measures in Romania to allow civil servants to work in such a regime, legislative changes have been slow paced. The amendment of the Administrative Code to this effect took place on 13 November 2022<sup>18</sup> and provided public servants with the possibility to exercise their employment relationships on teleworking, as regulated by the Administrative Code, and the possibility to perform work at home, in accordance with the provisions of Law No 53/2003, mentioned above. Thus, the epidemiological context has helped to dispel the myth that teleworking is not possible at all in the public sector.<sup>19</sup>

It can be seen that the civil service regulations in Romania are moving slowly, affecting the predictability of the measures. Even though the end of 2020 marked the first discussions on the "Draft Strategy for the Civil Service for the period 2021-2027", and this "was submitted to the President of the National Agency for Civil Servants (ANFP) in October 2021"<sup>20</sup>, and the draft legislation was put out to public consultation only in November 2022<sup>21</sup>, referring to a strategy for the period 2022-2027 (which included the regulation of telework in the public sector in the second half of 2022, as previously iterated that it was adopted). However, as of today, early 2023, no

<sup>14</sup> *Idem*, art. 33.

<sup>15</sup> Law No 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, published in the Official Gazette No 396 of 15 May 2020.

<sup>16</sup> Angela Popovici, Corneliu Popovici, Remote work in public administration: post-covid perspectives, Theory and Practice of Public Administration, May 20, 2022, pp. 33-36.

<sup>17</sup> National Institute of Administration, Website - Announcements Section - NIA launches two online questionnaires on the assessment of the opportunity of flexibilization of working time and mode in public administration, 05 October 2020, available online at: <https://ina.gov.ro/ina-lanseaza-doua-chestionare-online-privind-evaluarea-opunitatii-flexibilizarii-modului-si-timpului-de-lucru-in-administratie-publica/>.

<sup>18</sup> Law no. 283/2022 for the amendment and completion of Law no. 53/2003 – Labor Code, as well as Government Emergency Ordinance no. 47/2019 regarding the Administrative Code.

<sup>19</sup> Angela Popovici, Corneliu Popovici, Remote work in public administration: post-covid perspectives, Theory and Practice of Public Administration, May 20, 2022, pp. 34.

<sup>20</sup> National Civil Servants Agency, Activity Report of the National Civil Servants Agency for 2021, available online at: <https://www.anfp.gov.ro/R/Doc/2022/Publicatii/Raport%20activitate%20ANFP%202021.pdf>.

<sup>21</sup> Ministry of Development, Public Works and Administration, Draft Government Decision approving the Civil Service Strategy for the period 2022-2027, 10.11.2022, available online at: <https://www.mdpa.ro/pages/proiecthgaprobarestrategiefunctiepublica20222027>.



Government Decision has been adopted to approve this strategy. This document, in the form submitted for consultation, reiterated the need to create a high-performance and attractive working environment in the civil service and the dependence of this desire on the regulations on home/teleworking for civil servants.<sup>22</sup>

### 3. Regulation of telework in France.

In the process of changing labour relations in France, communications and information technology has contributed to the transition from an industrial to a modern, digital society, in line with trends. The transposition of the European Framework Agreement in France led to the regulation of telework in 2005, but at that time only for the private sector through an interprofessional agreement.<sup>23</sup>

Subsequently, France is among the EU countries that offer civil servants the option of flexible working arrangements.<sup>24</sup> The regulatory framework for telework in the public sector in France is Decree 151/2016 of 11 February 2016 on the conditions and procedures for implementing telework in the public service and justice. It was drafted in consultation with all stakeholders, and the result is that teleworking is not imposed on public sector employees, but is intended to enable them to achieve a better work-life balance.<sup>25</sup> At that time, the legal basis for regulating telework for public administration employees was Article 133 of Law 347/2012<sup>26</sup> on the conditions of employment of contract staff in the public service, the fight against discrimination and the establishment of public service provisions. This article introduced into French law the possibility for civil servants to carry out their duties also on teleworking in conjunction with the provisions of the French Labour Code<sup>27</sup>, article L1222-9. From this point of view, even though the necessary premises had been laid down for the development of a framework for the implementation of teleworking, we can see that the French system has been working in this direction for a long period of almost four years (from 2012 to 2016). Telework took off in the French public administration following Decree 151/2016, and the evolution of digital communication tools and the epidemiological context in 2020 favoured the development of this concept and the identification of shortcomings that had to be regulated subsequently, making it a priority topic on the public agenda in recent years. The distinction made in French regulations between teleworking and other forms of telework is important, but regardless of the context, distance does not remove

<sup>22</sup> *Idem*.

<sup>23</sup> Ministère de la Fonction Publique, *Guide télétravail. Guide d'accompagnement de la mise en œuvre du télétravail dans la fonction publique*, ediția 2016, disponibil online la adresa: [https://www.fonction-publique.gouv.fr/files/files/publications/coll\\_outils\\_de\\_la\\_GRH/guide-teletravail-2016.pdf](https://www.fonction-publique.gouv.fr/files/files/publications/coll_outils_de_la_GRH/guide-teletravail-2016.pdf).

<sup>24</sup> Oleg Solomon, *Telework between option and necessity: analytical reflections*, Journal of Philosophy, Sociology and Political Sciences, no. 1(185), 2021, pp. 88-102.

<sup>25</sup> Ministère de la Fonction Publique, *Op. cit.*

<sup>26</sup> LOI no. 2012-347 du 12 mars 2012 relative à l'accès à l'emploi titulaire et à l'amélioration des conditions d'emploi des agents contractuels dans la fonction publique, à la lutte contre les discriminations et portant diverses dispositions relatives à la fonction publique, JORF no. 0062 du 13 mars 2012.

<sup>27</sup> Légifrance, *Code du travail*, disponibil online la adresa: [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006072050/2023-01-07](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050/2023-01-07).





the rights and obligations of the parties involved in their work.<sup>28</sup> Thus, telework means working away from the employer's premises, on a voluntary basis and by means of information and communication media, and is provided for in the framework of a collective agreement or other documents enabling it to be formalised<sup>29</sup>. In this respect, it is relevant to refer to the French legal texts concerning work in a field in which network or remote working is practised and work which by its nature is carried out away from the employer's premises, which are not forms of work classified as teleworking<sup>30</sup>.

In a broad sense, the regulations on telework, applicable to the private sector, show similarities in Romania and France, but with regards to the situation found in the public administration there are several differences that will be explained in the next sub-chapter.

#### 4. Telework in the public sector in Romania and France.

In the Romanian public administration, telework has been a controversial topic over the years, although this way of organising work can have beneficial effects by reducing costs and boosting productivity and creativity. Teleworking for employees can increase flexibility, reduce stress and travel costs (transport, clothing, food), and for employers it can lead to lower costs for office equipment and office space. Knowing these benefits, telework has also become an option for the public sector, but the degree of work flexibility varied in 2018 by country, sector and occupation between 2% and 40%.<sup>31</sup> After a long process, accelerated by the crisis caused by the COVID-19 pandemic, the possibility of teleworking for civil servants is now provided for in Romania in the Administrative Code, Art. 347 on the exercise of service relationships<sup>32</sup>, seeking to reduce tensions in terms of inequalities between contractual staff in the public administration and civil servants, and between the latter and private employees who are subject to the rules laid down in Law No 81/2018<sup>33</sup> on the regulation of telemonitoring activity.

Romania's legislative framework for telework in the public sector is still at an early stage. Compared to these aspects, the French legislative counterpart is much more developed and is proving to be efficient. A first aspect of comparative law on which we are focusing our attention and which supports the above-mentioned concern is the flexibility of work conferred by the rules in the two countries. From this point of view, we refer to the number of days on which the employment relationship can be carried out on teleworking and alternating with on-site work. By analysing the provisions of Article 374(3)(a) of the EC Treaty, we can see that (7) of the

<sup>28</sup> Légifrance, *Acordul privind implementarea telemuncii în serviciul public*, 04 aprilie 2022, disponibil online la adresa: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000045464407/2023-01-07/>.

<sup>29</sup> Légifrance, *Code du travail*, disponibil online la adresa: [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006072050/2023-01-07](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050/2023-01-07).

<sup>30</sup> Légifrance, *Acordul privind implementarea telemuncii în serviciul public*, 04 aprilie 2022, disponibil online la adresa: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000045464407/2023-01-07/>.

<sup>31</sup> National Institute of Administration, *Telework - a work option implemented in the public sector*, 2020, available online at: <https://ina.gov.ro/telemunca-o-optiune-de-munca-implementata-si-in-sectorul-public/>.

<sup>32</sup> Emergency Ordinance 57/2019 of 3 July 2019 on the Administrative Code, as amended and supplemented, published in the Official Gazette, No 555 of 5 July 2019.

<sup>33</sup> Law no. 81/2018 on the regulation of the telemune activity, published in the Official Gazette, Part I, no. 296 of 02 April 2018, with subsequent additions and amendments.

Administrative Code, which provide for the manner in which service relationships are exercised, we note that the maximum number of days on which civil servants may be on teleworking cannot exceed 5 days in a calendar month. With reference to the provisions of the French Agreement on the implementation of teleworking in the public service<sup>34</sup>, we identify a number of 3 days per week for a full time official, with provision made, in exceptional cases, for categories of persons for whom these days may be exceeded. This regulation is intended to make it easier to maintain a community link in the workplace, ensuring a balance in work.

In the French system, civil servants can make a written request for teleworking, which is then examined by management and any refusal must include reasons and be followed by an interview. This emphasises teleworking as an employee right.<sup>35</sup> In Romania, however, the structures, activities and posts for which remote working may be approved are determined by the heads of public authorities and institutions. Thus, working in such a regime is limited and can only be approved for civil servants with children up to the age of 11, who are caring for a relative with whom they live, whose state of health does not allow them to travel, or who fall within the activities established by the management of the authority or institution, as mentioned above.<sup>36</sup> The provision that only applications meeting these criteria can be approved underlines, in fact, a limitation of the access to the teleworking regime that could benefit civil servants in Romania.

The regulatory documents mentioned are very similar in terms of the details relating to the maintenance of the same rights of employees during teleworking, such as at the employer's premises. While the regulations found in the Romanian administrative system place greater emphasis on the obligations of the parties, the French system offers additional rights as a result of working remotely, with civil servants being entitled to compensation. There is a flat-rate allowance of €2.88 per day of remote work, with no minimum threshold, but up to an annual amount of €253.44 per year, paid at the end of each quarter.<sup>37</sup>

## 5. Conclusions and final considerations.

The subject of telework for civil servants has become increasingly important in recent years, both in line with the evolution of society and the new means of communication and information, and as a result of the crisis caused by the COVID-19 pandemic, which has required a necessary adaptation of work in all areas of activity. In the digital age, advances in technology are constantly being made and public administrations cannot remain indifferent to the changes taking place in society.

Legislative changes in the field of telework are at an early stage in Romania, both in the public and private sectors. As we have iterated throughout this paper, at European level the subject

<sup>34</sup> Légifrance, *Acordul privind implementarea telemuncii în serviciul public*, 04 aprilie 2022, disponibil online la adresa: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000045464407/2023-01-07/>.

<sup>35</sup> Légifrance, *Acordul privind implementarea telemuncii în serviciul public*, 04 aprilie 2022, disponibil online la adresa: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000045464407/2023-01-07/>.

<sup>36</sup> Emergency Ordinance 57/2019 of 3 July 2019 on the Administrative Code, as amended and supplemented, published in the Official Gazette, No 555 of 5 July 2019.

<sup>37</sup> Arrêté du 26 août 2021 pris pour l'application du décret no. 2021-1123 du 26 août 2021 relatif au versement de l'allocation forfaitaire de télétravail au bénéfice des agents publics et des magistrats.

of telework has been the subject of a Framework Agreement since 2002, and in France in 2005 an interprofessional agreement was signed on this way of organising work, but Romania joined these European trends only in 2018. At the same time, in France the premises of telework in the public sector were introduced into legislation in 2012, and the first implementing rules laid the foundations for telework in the French public administration in 2016. This delay in the introduction of measures in Romania can be justified by the specific national characteristics of the organisation of work, given the marks left by the communist regime on Romania.

The epidemiological context of 2020 has proven that telework is not impossible in the public sector in Romania, and a paradigm shift in the way work is carried out in all areas is required. In line with Directive (EU) 2019/1152 of the European Parliament and of the Council on transparency and predictability of working conditions in the European Union, concerning the protection of workers' rights and improvement of working conditions, and Directive (EU) 2019/1158 on work-life balance, the year 2022 marked in Romania the regulation of teleworking for civil servants.<sup>38</sup>

Although both countries mention the need for the agreement of the parties for teleworking in the public sector, we can consider that the provisions of the Romanian legislation limit the categories of civil servants who could benefit from this right. While in Romania there are significant differences in the regulations applicable to civil servants compared to private sector workers in terms of these restrictions, the regulations in France are intended to create a framework that is also favourable to flexible working for public sector workers, so as to reduce the differences in terms of the benefits to which they have or do not have access compared to those in the private sector. The interest in this right of civil servants is also reflected in the financial measures adopted in France.

In this context, it is necessary to analyse the impact on telework in public administration in Romania and to identify appropriate measures to improve the regulations in this area, so that they achieve their goals regarding the performance, productivity and flexibility of civil servants.

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<sup>38</sup> Statement of reason - Law no. 283/2022 for the amendment and completion of Law no. 53/2003 – Labor Code, as well as Government Emergency Ordinance no. 47/2019 regarding the Administrative Code.



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