



Sociedad Internacional de Derecho del Trabajo y de la Seguridad Social

XXIII Congreso Mundial

7 - 10 de Septiembre de 2021 - Lima, Perú

# RETOS DE LOS SISTEMAS DE LEGISLACIÓN LABORAL Y SEGURIDAD SOCIAL

- Transformación del trabajo: desafíos para el Derecho del Trabajo
- Comercio internacional y trabajo
- Nuevos retos de la Seguridad Social
- Trabajadores migrantes
- Trabajadores atípicos e informales
- Igualdad en el trabajo
- El Estado y las nuevas formas de voz colectiva



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**NUEVOS RETOS DE LA  
SEGURIDAD SOCIAL**

**NEW CHALLENGES OF  
SOCIAL SECURITY**

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# **ROLE OF LABOUR LAW IN COOPERATION WITH SOCIAL SECURITY LAW IN PANDEMIC OF COVID-19**

**MASAHIKO IWAMURA**

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## PRELIMINARY REMARKS

The theme that general reporters (Professor Kurt Pärli and me) and our research group adopted is “New challenges of social security”. About this theme, we might discuss the various subjects;

- Social security scheme facing demographic evolution in developed countries such as:
  - Sustainability of mandatory retirement pension scheme based on pay-as-you-go financed system;
  - Role of occupational retirement pension scheme based on funding system<sup>1</sup>;
  - Challenge of long-term care scheme for the dependent elderly facing their increase.
  - Challenge of long-term care scheme for the dependent elderly facing their increase.
- Challenge of social security scheme facing evolution of technology and science;
  - Impact of increase of medical costs on medical insurance and health service, for example resulting from new release of extremely expensive medicines.
- Financial difficulty of public mandatory medical insurance resulting from aging society and other factors which might reduce the coverage of public insurance and could extend role of private medical insurance.
- Possibility of closer link of prevention policy of chronic diseases such as diabetes with public medical insurance and health service.

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1 About Lithuanian situation Audrius Bitinas , “ Occupational pensions in Lithuania: regulation and problems “, February 2021.

- Emergence and increase of new types of workers such as freelancers getting their work by crowdsourcing sites and its impact on social insurance schemes (especially Bismarckian model).
- Combating poverty.

During our discussions on the topics to be examined in our general report, we faced with rapid and serious spread of Covid-19 in the world and we recognized that epidemic of Covid-19 arose economic and social difficulties to which employees, the independent workers, families and businesses confronted.

In view of such difficulties, we came up to conclusion that the analysis of the health, economic and social measures taken to fight against the difficulties arising from COVID-19 would allow us to understand the more or less decisive elements determining the success or failure of these measures and therefore to catch the good examples to follow and bad ones to drop in the event of another epidemic caused by an unknown pathogen or virus in the future. This analysis also allows us to identify any gaps and / or inadequacies in social security law in force and to identify possible new challenges for serious discussion.

We found also that these difficulties involve both labour law and social protection law. Sometimes a question asked about labour law could give rise to another preliminary question relating to social protection law. Some of the difficulties faced by people working in the new form such as workers on online platforms are outside the scope of ordinary labour law and are outside the coverage of ordinary social protection<sup>2</sup>. Thus, it seems necessary to us to examine the measures and devices introduced within the framework of the economic and social policy from two points of view, that is to say social protection law and labour law. Issues to be approached from the point of view of the latter are often those preliminary to the analysis on the aspect of the first. So, we set as the main topics to discuss the challenges of social security law and labour law facing with epidemic of Covid-19, and divide our general report into two paper. This paper analyzes the latter.

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2 About comparative analysis on social consequences, Jean-Michel Servais, « Les conséquences sociales du COVID-19 : un regard juridique comparé après un an », numéro spécial de CIEOL 2021, <http://www.cielolaboral.com/fr/las-consecuencias-sociales-del-covid-19-una-mirada-juridica-comparada-despues-de-un-ano/> (in Spanish).

## I. INTRODUCTION

### 1. The rapid and global spread Covid-19 and its effect on countries' economy

According to WHO, the first cases of Covid-19 was reported at Wuhan in China in December 2019<sup>3</sup>. Covid-19 spread very rapidly around the world. The first case of Covid-19 outside China was confirmed in Thai on January 13, 2020 and the second case in Japan 16 January, 2020. On 21 January, 2020, USA announced that the first case was confirmed there. The first cases of Covid-19 in Europe were declared by French authority on 24 January, 2020. On 29 January 2020, Arab Emirates announced the first cases in the region of the East Mediterranean. On January 30, 2020, WHO declared “Public health emergency of international concern”. On 25 February, 2020, the first case was confirmed in Africa (Algeria, yet there was a precedent case in Egypt). WHO estimated that the spread of Covid-19 “could be characterized as a pandemic” on March 11, 2020.

Indeed, patients and deaths grew very fast, and their cumulative number is huge as the table below shows.

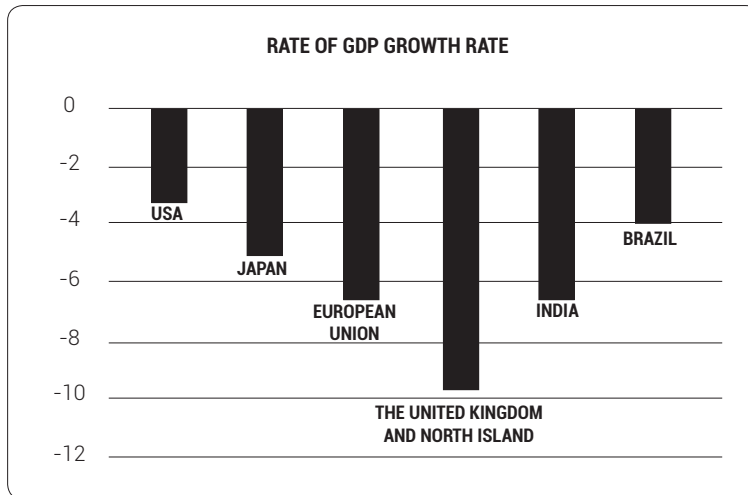
**COVID-10 CONFIRMED CASES AND DEATHS REPORTED IN THE LAST SEVEN DAYS**

	CUMULATIVE CASES	CUMULATIVE DEATHS
<b>Global</b>	175,333,154	3,793,230
<b>South Africa</b>	1,739,425	57,653
<b>Brazil</b>	17,296,118	484,235
<b>USA</b>	33,120,623	594,272
<b>Iran</b>	3,020,522	81911
<b>Russian Federation</b>	5,208,687	126,430
<b>The United Kingdom</b>	4,558,498	127,896
<b>Turkey</b>	5,325,435	48,668
<b>France</b>	5,632,993	109,499
<b>Germany</b>	3,714,969	89,834
<b>Spain</b>	3,729,458	80,465
<b>Italy</b>	4,246,482	126,976
<b>Poland</b>	2,877,469	74,573
<b>India</b>	29,439,989	370,384
<b>Japan</b>	773,822	14,033

WHO Weekly epidemiological update on COVID-19 - June 15, 2021

3 <https://www.who.int/fr/emergencies/diseases/novel-coronavirus-2019> April 19, 2021.

Epidemic of Covid-19 causes negative economic growth especially in countries seriously damaged by it as Graph below.



United Nations, the GDP growth rate in 2020<sup>4</sup>

## 2. Sanitary and preventive measures for fighting against Covid-19 and their effects

The causes of interhuman transmission of Covid-19 are respiratory droplets or physical contact by hand or on surface, so that preventive measures against contamination of Covid-19 are essentially not spread the droplets, avoid them suck, not touch others. Thus, in accordance with advice to the general public set by WHO, preventive measures against the Covid-19 advised to individuals are keeping a distance of at least one meter between themselves and others, wearing a mask correctly, avoiding confined and very crowded spaces (examples mentioned are restaurants, night clubs, the offices etc.).

Sanitary and preventive measures adopted by countries more or less seriously attacked by Covid-19 follow the same vision as WHO's advice above. Indeed, closing schools, lock down, advise or require the public to respect social distancing during daily purchases in shops and boutiques, wear a mask in workplaces and offices, advice or require to employers to allow telework to their

<sup>4</sup> UN, Department of Economics and Social Affairs, "World Economic Situation and Prospects as of mid-2021".

employees working in the office in order to minimize the number of employees feeling to workplaces etc. are main measures implemented by these countries.

The health and preventive measures adopted by countries more or less severely affected by COVID-19 follow the same vision as the WHO advice above. Indeed, these measures are the closure of schools, confinement, advising or requiring the public to respect social distancing during daily purchases in stores and shops, wearing a mask in work premises and offices, advising or requiring employers to “ allow their employees, particularly working in offices, to telework in order to minimize the number of employees arriving at the work premises, etc.

The governments of countries hit by COVID-19 naturally predicted that these health and preventive measures would profoundly disrupt the professional and family life of employees and self-employed workers (auto or micro-entrepreneurs without employees) as well as businesses, and that these measures would bring down employees, self-employed workers and companies in serious economic difficulties. For example, an employee parent would be obliged to stay at home to look after his child or children whose school is closed and to be absent from his work, thus he would be exposed to the risk of not to receive his wage; companies and auto-entrepreneurs with or without employees would be advised or more or less imposed on the total or partial suspension of their business, and these measures would have side effects; First, businesses and auto-entrepreneurs would suffer the total or partial loss of business and thus face the risk of business suspension and, at worst, the risk of permanent termination or bankruptcy; then their employees could, according to the legislative and / or regulatory provisions in the matter of each country, possibly lose their job or not receive all or part of their wage as a result of the termination or suspension of their employment contract on the grounds of the termination, suspension or bankruptcy of their employer’s business.

### **3. Roles of the legislator, the government and the social partners**

It should also be remarked that the measures taken in the economic and social policy against COVID-19 were developed, adopted and put into force very quickly to respond effectively to the extremely rapid development of the COVID-19 epidemic and to the state of health, economic and social emergen-

cy<sup>5</sup>. In this process of developing, adopting and implementing measures, the legislative and executive powers carried out their own mission in accordance with the fundamental standards on the separation of powers, yet it seems to us that the immediate reactions against the COVID-19 epidemic and its economic and social impacts being strongly demanded in the emergency situation, it is often the executive power that played more prominent role than the legislative power. On the other hand, the role of social partners in drawing up social policy is also major, especially in Europe.

We also find that the methods adopted by the competent authorities to achieve the objectives of measures against COVID-19 are diverse. One of the methods often adopted is to impose by legislative or regulatory means on a person or a company concerned one or more duties (including prohibition) possibly under penalty of criminal or administrative sanction in the event of an infringement. Another is to stimulate a target person or company to follow an orientation, for example given by the administrative instruction or by a subsidy.

The preventive, health, economic and social measures to fight COVID-19 are diverse; as we mentioned above, they are either binding or only incentive; they are taken by the legislator or by the executive power (the government or the ministries concerned). However, such measures against COVID-19 cannot be taken only at the national level, because, to be effective, the measures must be based on scientific evidence approved at the international level and above all they must be recommended by the international competent authority since the COVID-19 epidemic is global. Thus, we first examine the activities of international organizations, i.e. World Health Organization and International Labour Organization (II.).

The majority of health, economic and social measures recommended by the competent international organizations and adopted at the national level involve a lot of problems in labour law. These are work stoppages resulting from the closure of businesses, the need to care for children or for family members staying at home due to the closure of schools or due to the infection of COVID-19, redundancy, lay off, total or partial unemployment, etc. They are also closely linked to questions relating to social protection, thus they will be examined in another paper by Professor Kurt Pärli. However, among these measures, telework,

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5 Luka Mišič & Sara Bagari, "Covid-19 related measures in the field of social law adopted in Slovenia", April 2021, p.1.

one of the very effective measures for the prevention of COVID-19, would be worth the specific analysis because even if it is very often considered as the subject of labour law, it has a connection with questions of social protection (III.).

## II. INTERNATIONAL ORGANIZATIONS ACTIONS

COVID-19 is causing health, economic and social hardship including labour and employment issues in all countries facing the COVID-19 epidemic. Recognizing that the spread of COVID-19 is extremely rapid and global, international organizations reacted very quickly. Thus, it is very useful for us to examine the activities of the relevant international organizations, namely WHO (1.) and ILO (2.). and, thus, they will be discussed in the third part of this report. So here we are looking at telework which is also a very important topic to discuss in the context of the COVID-19 epidemic (2.).

### 1. World Health Organization

First, the World Health Organization (WHO) specifies the elements to consider relating to public health measures because its essential missions are the advice, recommendation and development of global public health policies. What particularly catches our attention here is that it also indicates the elements to take in consideration concerning social measures in the workplace which are important from a public health policy point of view.

It indicates the preventive measures to be applied in all workplaces as follows;

- Hand hygiene (washing your hands with soap and water or rubbing your hands with a hydro-alcoholic solution, etc.);
- Respiratory hygiene (develop a mask wearing policy in accordance with national or local guidelines, etc.);
- Physical distance (maintain a distance of at least 1 m, reduce the density of people in the building, reduce the number of in-person meetings using the teleconference service, stagger work schedules, use telework, etc.);
- Reduction and management of work-related travel;
- Regular cleaning and disinfection of the environment;

- Communication, training and awareness of risks, etc.

It also specifies specific measures for workplaces and for medium-risk jobs and those for high-risk jobs. For example, those for medium risk jobs are;

- Reinforce the cleaning and disinfection of objects and surfaces;
- Stagger activities
- Reduce face-to-face contact;
- Install plexiglass barriers etc.

Those for high risk jobs are;

- Assess the possibility of suspending high risk activities;
- Give training to employees about anti-infection practices and the use of personal protective equipment;
- Avoid assigning high-risk tasks to employees with pre-existing medical conditions, to pregnant women or to employees over the age of 60, etc.

WHO stresses the importance of collaboration between, on the one hand, employers, employees and their organizations and, on the other hand, health authorities. It also emphasizes, on the one hand, the essentiality of cooperation between management, employees and their representatives relating to preventive measures in the workplace and, on the other hand, respect the rights and duties of employees and employers with regard to occupational safety and health. Also, according to WHO, in order to prevent and mitigate COVID-19, the development of action plans in the workplace is essential and must be carried out in consultation with employees and their representatives, and the plan thus developed must be informed all employees<sup>6</sup>.

WHO also gives advice on wearing masks for the general public including employees. It advises decision-makers of measures relating to wearing a mask to consider 6 criteria;

- The purpose of wearing the mask;
- The risks of exposure to the COVID-19 virus;
- The vulnerability of the target population;

<sup>6</sup> WHO, « Éléments à prendre en considération concernant les mesures de santé publique et les mesures sociales sur lieu de travail dans le cadre de l'épidémie de COVID-19 », mai 2020.



- The living environment of the target population;
- Feasibility (availability and cost of masks etc.);
- The type of mask (medical or non-medical).

For example, in a context where respect for physical distancing is difficult and the targeted employees are cashiers, restaurant staff etc., the purpose of wearing a mask is to contribute to the fight at the source and the type of mask recommended is the non-medical one<sup>7</sup>.

WHO also indicates the measures to be taken depending on the level of the COVID-19 epidemic situation, mentioning, if necessary, those to be applied in the workplace. If we take the case of level 0 corresponding to a situation without transmission of the COVID-19 virus in the previous 28 days, the measures mentioned for the general public also apply to workplaces without any specific details.

On the other hand, if the situation worsens to level 3 in which the capacity to respond to community transmission is limited and the risk exceeds health services, WHO advises taking workplace measures such as shutting down non-essential businesses or telework as much as possible. It emphasizes also, not particularly for workplaces, hand hygiene, the wearing of masks, physical distancing and the need to avoid confined spaces, crowded places and close contact<sup>8</sup>.

## 2. International Labour Organization

ILO naturally plays the primary role of giving advice on occupational hygiene, safety and health measures against COVID-19<sup>9</sup>.

Its reaction against the global spread of COVID-19 was indeed quick, for example it published “Briefing Note” offering advice and recommendations on the issues in May 2020. In this note, acknowledging that the economic recession is spreading in the world as a result of the COVID-19 epidemic and that preventive

7 WHO, « Conseil sur le port du masque dans le cadre de la COVID-19 », juin 2020.

8 WHO, « Éléments à prendre en considération lors de la mise en œuvre de l’ajustement des mesures de santé publique et des mesures sociales dans le cadre de l’épidémie de COVID-19 », novembre 2020.

9 On ILO’s role in the COVID-19 epidemic, Jean-Michel Servais, “The social consequences of the COVID-19: Which help to be expected from ILO?“, *Rivista Nuova di Diritto del Lavoro*, No.3 2020. On the activities of the ILO Branch in Latin America, José Luis Dodera Cabrera, “The perspectives and responses to the Covid Pandemic -19 seen from ILO Santiago Latin America Southern Cone 3, 2021.

and protective measures at work are considerably important in the fight against COVID-19, ILO evokes 4 issues to be considered for the development of social policy. The first issue is economic and employment policy aimed at stimulating business in order to encourage jobs and social protection.

The second issue concerns support for businesses through financial and tax relief, measures intended to safeguard jobs and income support by making use of the universal right to social protection.

The issue related more directly to work is the third one; this Note first of all emphasizes the strengthening of occupational health and safety measures and the need to promote public health measures in the workplace; it then discusses the adaptation of working methods, in particular telework, and remarks the conditions to be retained for the establishment of the telework system; the prevention of discrimination and exclusion is also the subject of this Note's attention; Finally, it underlines the universal right to health and the extension of the right to sick leave and paid family leave.

Fourth issue is social dialogue between governments, representative organizations of employers and workers to find solutions to the questions raised in the three previous issues. In conclusion, ILO points out the great interests of international standards relating to occupational safety and health, social security, employment etc. which provide guidance on drafting resolutions, and also remarks the importance of a global effort to support developing countries.

Faced with the worldwide spread of COVID-19 steadily in 2021, ILO publishes "Policy brief" entitled "Preventing and mitigating COVID-19 at work" in May 2021. By mentioning the WHO document that we reviewed above, this document provides practical advice to be followed by governments, employers and workers' representatives in implementing the WHO and ILO recommendations on preventing the transmission of COVID-19 at work. In fact, in this Policy brief, ILO gives all the elements to consider and tells us the preventive and health measures to be taken in order to fight effectively against COVID-19.

Three policies designed to mitigate transmission in the workplace were indicated by this Policy Brief;

- Remote work is seen as a fundamental element;

- Measures in the workplace to stimulate or possibly impose a reduction in human density, social distancing, and the wearing of masks are mentioned;
- The attention of managers on the elements and steps to be taken into consideration for the reopening of workplaces.

This Policy brief also indicates the measures in the workplace that are qualified as strategic; starting with the determination of the risks of occupational exposure to COVID-19, it first underlines the importance of stimulating the transition to remote work and notes the points of intervention to be retained by employers for making their employees to carry out telework safely and efficiently with concern for their health. Among these points we find for example:

- Encourage employees to take short and regular breaks and to keep a regular rhythm between work and the break;
- Take measures to avoid the isolation of employees working remotely through virtual meetings;
- Encourage employees to take care of their mental health.

And this Policy brief does not of course forget the measures intended to prevent the transmission of COVID-19 in the workplace such as ventilation, physical separation, hand hygiene, cleaning and disinfection of surfaces and personal protective equipment. To implement and enforce these measures, the key, according to this Policy Brief, is cooperation between employers and employees, particularly through institutions such as the joint health and safety committee.

The other points mentioned by this Policy brief are the screening of employees at risk and the plan for the gradual and safe reopening of the workplace. Government measures are also the strategic intervention points addressed by this Note. On this subject, she insisted first on the importance of international ILO standards and then on the need for effective monitoring by the competent authorities of safety and health measures. It should be remarked that this Note mentioned the need for the establishment of paid sick leave.

### III. TELEWORK

Telework is one of the priority measures taken in the large number of countries affected by COVID-19, because it has dual purposes; First, telework makes it possible to avoid or at least significantly reduce physical contact in the

workplace and therefore constitutes an effective preventive measure; then, it allows the total or partial continuation of business and thus helps to save not only jobs, but also businesses. This last effect is very important for the national social security system, because the financing of social security is ensured insofar as jobs and business are saved by this modality of work. However, telework involves certain risks for employees in telework. We first look at the roles of ILO (1.) and the European Union (2.) and then analyze telework in some countries (3.).

## 1. ILO's advices

While the ILO has several international conventions relating to working conditions applicable to telework, there is no one that directly regulates it. On the other hand, by remarking that, as we have already mentioned above (1.), remote work, more precisely in the current context, telework is an effective measure intended to mitigate the risk of the spread in the workplace as well as to protect employees against COVID-19, ILO is playing a significant role by publishing the practical guide in December 2020 which provides national and local governments, organizations of employers and employees' representatives with advice and recommendations on the measures to be adopted to ensure the safety and health of teleworkers. This guide, after stating about the dawn of a new era of telework, advises the above organizations to pay close attention to employees' well-being and maintaining productivity during telework. Among the eight issues mentioned in this Guide, the first, the fifth and the eighth issues particularly attract our attention.

The first issues are the control of the duration and the organization of telework; Indeed, this constitutes the key to guaranteeing the safety and health of employees carrying out telework since, according to this Guide, it is known that, in general, telework has an effect of lengthening the working time and increase evening and weekend work. This Guide also underlines that even companies that do not get used to telework are still obliged to use it for a very limited period of time and thus they have difficulties in adapting their work organization to it, in providing IT tools to their employees and to give training to those employees who do not have sufficient professional experience to telework. According to this Guide, the role of supervisory staff is also essential. By mentioning the importance of management methods concerning the setting of priorities, the

workload, the tasks to be accomplished and the deadlines to be respected, this Guide thus recommends to employers the proven methods, in particular;

- “Agree on a system allowing workers to announce the time slots when they can be reached and please ensure that managers and their colleagues respect them”;
- “Encourage workers to voice their concerns if they feel overworked”;  
“communicate with workers on how to perform the work”;
- “Admit that workers sometimes have to disconnect in order to work well”.

Then, the fifth issue concerns occupational safety and health. It is certain that these are very important, on the one hand, because, unlike work carried out in the employer’s premises under his direct supervision, telework carried out at home is outside the direct intervention of the employer on the modalities and environment of telework, and on the other hand, since telework involves psychosocial risks and ergonomic problems which are accentuated by the COVID-19 epidemic. By indicating concretely the risks and problems entailed by full-time telework, this Guide advises the organizations concerned to take measures intended to ensure the safety and health of employees in telework, for example;

- The clarification and updating of the employer’s responsibilities for the protection of employees’ health and safety;
- The clarification of the rights and responsibilities of employees working from home in terms of their health and safety;
- Raising the awareness of executives and teleworking employees to take a sufficient number of breaks during the working day;
- Stimulation of the physical health of teleworkers.

The reconciliation of work and private life is the eighth issue noted by this Guide. its consideration is quite correct as the line between telework and private life is becoming more ambiguous than usual due to the COVID-19 epidemic. Like the other issues, this Guide indicates several points to remember to achieve the best reconciliation between telework and personal life which are; make it easier to manage the boundaries between work and private life by setting specific goals for telework; provide teleworkers with information on what time off work is permitted for rest and privacy; stimulate communication between teleworkers and supervisory staff relating to the range of work hours and availability; pay

special attention to teleworkers with young children or other family responsibilities. Finally, it should be noted that this Guide mentions the importance of the gender dimension in telework during the COVID-19 epidemic

## 2. European Union

We start to point out that in terms of labour law, the Treaty on the Functioning of the European Union stipulates, in Article 153, that working conditions are the area it supports and complements the action of Member countries. Thus, like the fields of social security, workers' social protection and health policy<sup>10</sup>, these are the Member countries that hold the main competent authority over working conditions. Telework is positively accepted by employers and employees, while this way of working poses the challenges to be retained, including the safety and health of teleworkers<sup>11</sup>. However, the European Union does not have a directive providing European legal framework directly aimed at telework.

On the other hand, the European social partners already reacted to the increase in telework before the COVID-19 epidemic. They concluded a framework agreement on telework on July 16, 2002. This framework agreement is not binding, yet it provides the guidelines to be followed, while introducing telework and during its implementation, about voluntary nature of telework, working conditions of teleworkers, respect for the field of private life, the health and safety of telework, their work organization and others.

On the other hand, taking into account, not only the relevant European directives and regulations as well as the considerable expansion of telework and its occupational risks of the safety and health of teleworkers (the permanent connection, the ambiguous border between the duration of work and private life etc.), but also of the COVID-19 epidemic, the European Parliament adopted a resolution containing recommendations to the European Commission on the right to disconnect on January 21, 2021<sup>12</sup>. In this resolution, the European Parliament calls on the Commission to;

10 Yves Jorens and Grega Strban, "Contemporary Legal and Social Challenges; Inventions of Social Protection with the spotlight on COVID-19: How did Europe react? », March 2021, p.2.

11 Yves Jorens and Grega Strban, *op.cit.*, supra note 10, p.7.

12 Yves Jorens and Grega Strban, *op.cit.*, supra note 10, p.10.

- Assess and examine the risks of non-protection of the right to disconnect;
- Include the right to disconnect in the Commission's strategy on health and safety at work;
- Submit a proposal for a directive on the right to disconnect with the aim of requiring Member countries to take measures intended to (a) ensure that teleworkers do not engage in work-related activities or communications by means of digital tools outside working hours, (b) allow teleworkers to request and obtain the recording of their working time, (c) ensure that employers respect working conditions such as the practical procedures for disconnecting digital tools, health and safety assessments including those of psychosocial risks etc., (d) protect teleworkers against unfavorable treatment and guarantee them the right to appeal.

The purpose of this resolution is to protect teleworkers against the risks arising from telework by means of guaranteeing the right to disconnect. We will see the next step.

### **3. Measures taken with regard to telework in certain countries**

The author of this part has only limited access to papers and documents on telework, the countries covered here are not numerous. Despite this, we are able to obtain the useful information.

#### **(a) Latin America**

In Uruguay, Decree No. 94/2020 encourages employers to implement and promote, as far as possible, telework. Because this is considered to be one of the measures to support employment and maintain the income of the employees and businesses concerned. To set up and implement telework, the employer must inform the General Labour Inspectorate and provide teleworking employees with the equipment necessary to carry out telework.

In Chile, Law No. 21220 was promulgated in March 2020 which amended the provisions of the Labour Code on remote work, regulated telework. This law also grants employees in telework the right to disconnect and provides the

elements of individual protection and the procedures for managing occupational risks<sup>13</sup>. The opinions of the Superintendence of Social Security complete the criteria for applying workers' compensation insurance for employees in telework<sup>14</sup>. Labour Directorate offers alternative working arrangements to ensure the health of an employee's family members, and among those arrangements, we find telework.

In Paraguay, first, the resolution of the Ministry of Labour authorizes telework during the duration of the health emergency, and it establishes duties of the employer for this modality of work<sup>15</sup>. The new law on telework was adopted in June 2021. It defines telework, refers to the regulations and working conditions applicable to this modality of work as well as to those on occupational safety and health. This law also requires a written agreement between management and the teleworker, and mentions the voluntary nature of this working method<sup>16</sup>.

In Argentina, the Law No. 27555 on Legal Regime of the Telework Contract was adopted in August 2020. Regulatory Decree No. 27/2021 for implementing this Law was taken in January 2021. This Law defines telework and requires a written agreement between an employer and a teleworker in order to ensure the voluntary character of telework. Reversibility of this agreement (teleworker is allowed to ask to his employer to stop telework and return to a workplace whenever he wants) is required by this Law. It also stipulates equal treatment about rights and wages. According to this Law, teleworker's working time has to be previously fixed in a written employment contract conforming to legal and conventional regulations<sup>17</sup>. Privacy of a teleworker has to be respected. It has to be mentioned the implementation of telework was recommended by the Government in order to avoid workers' concentration in the workplace<sup>18</sup>.

13 José Luis Dodera Cabrera, *op.cit.*, supra note 9, p.13; Pablo Arellano Ortiz, Andrés Ahumada Salvo, Natalia Astudillo Sanhueza, « COVID-19 and Labour Law: Chile », pp.4-5, *Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020)*.

14 Pablo Arellano Ortiz, Andrés Ahumada Salvo, Natalia Astudillo Sanhueza, *op.cit.*, note 18.

15 José Luis Dodera Cabrera, *op.cit.*, supra note 9, p.15.

16 Roxana Maurizio (ILO), « Labour Overview Series Latin America and the Caribbean 2021; Technical note Challenges and opportunities of teleworking in Latin America and the Caribbean », July 2021, pp.20-21.

17 Newsletter, «Argentina introduces a law on telework », *Industrial Relations and Labour Law*, April 2021; <https://ioewec.newsletter.ioe-emp.org/industrial-relations-and-labour-law-april-2021-1/news/article/argentina-introduces-a-law-on-telework>.

18 Facundo Martin Chiuffo, « COVID-19 and Labour Law: Argentina », p.4, *Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020)*.



## (b) Europe

Estonia implemented restrictions leading to a high degree of telework. The main problem of telework from home is how the authority and employers ensure the health and safety of employees in telework because their homes are not under the employer's control. As Estonia has the rules on the employer's right to unilaterally change employment contract, its application is also important about this issue<sup>19</sup>.

Belgium adopted a rigorous labour policy to combat the rapid and significant spread of COVID-19. The Ministerial Decree of March 18, 2020 stimulating the confinement also imposes telework at home on companies in all sectors of activity for the tasks likely to be performed by this working method, except for the essential services listed by the above Decree. The author of the article to which we referred remarks that compulsory telework constitutes a derogation from the usual Belgian labour regulations, because collective agreement No. 85 on telework stipulates that a written agreement is compulsory for telework<sup>20</sup>. Since June 27, 2021, telework is no longer compulsory, although this working method remains strongly recommended<sup>21</sup>.

In France, telework is regulated by the Labour Code since 2012. This provides a definition of telework and teleworking employees and sets out the conditions for the implementation of telework. It also points out that (a) the conditions for switching to telework and returning to work in company premises, (b) the conditions for the employee's acceptance of the conditions for implementing telework, time control working hours (the employer must respect the maximum working hours and rest periods), (c) the determination of the time slots in which the employer can contact the employee in telework and (d) the other conditions must be specified by collective agreement or the charter drawn up by the employer on telework. "The National Protocol to ensure the health and safety of company employees in the face of the COVID-19 epidemic"<sup>22</sup>

19 Merle Erikson, « COVID-19 and Labour Law: Estonia », Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020).

20 Alexander De Becker, « COVID-19 and Labour Law: Belgium », pp.2-3, Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020).

21 Radio Télévision Belge Francophone, « Info ; Comité de concertation : dès le 27 juin, le télétravail n'est plus obligatoire mais il reste recommandé », juin 2021 ; [https://www.rtb.be/info/societe/detail\\_comite-de-concertation-des-le-27-juin-le-teletravail-n-est-plus-obligatoire-mais-il-reste-recommande?id=10786675](https://www.rtb.be/info/societe/detail_comite-de-concertation-des-le-27-juin-le-teletravail-n-est-plus-obligatoire-mais-il-reste-recommande?id=10786675).

22 <https://travail-emploi.gouv.fr/IMG/pdf/protocole-nationale-sante-securite-en-entreprise.pdf>.

also mentions telework; in particular, it recommends the need to maintain links within the work group and the prevention of risks associated with the isolation of teleworking employees.

What particularly catches our attention is that the Labour Code stipulates that in the event of an epidemic threat, the employer can implement telework. Indeed, during confinement, telework was compulsory for all employees who could work telework<sup>23</sup>. However, this regulation on telework has just relaxed since June 9, 2021, it suffices for employers to set, within the framework of local social dialogue, a minimum number of teleworking days per week, for the activities which allow it<sup>24</sup>.

In Switzerland, Covid-19 Regulation was adopted in April 2020 for reconciling the various interests. Namely, employers have to allow vulnerable employees at risk (those over 65 years of age and those having illnesses such as high blood pressure, diabetes, cardiovascular diseases, chronic respiratory diseases, etc.) to work from their home and undertake the indispensable organizational and technical measure. Employers have to offer these employees appropriate alternative tasks if it is necessary<sup>25</sup>. In addition, a home office obligation was introduced in principle, however, employer will be exonerated from this duty in the case where the nature of activity does not make possible home office or this one is not able to be implemented even if employer does reasonable effort<sup>26</sup>.

### (c) Asia

In Republic of Korea, telework is the issue mentioned in the guideline published by MEL in order to ensure teleworker's safety and health. This guideline clarifies working time, overtime work and industrial injuries during telework<sup>27</sup>.

23 Le gouvernement français, « Travail - Info Coronavirus », mis à jour le 9 juin 2021, <https://www.gouvernement.fr/info-coronavirus/retour-au-travail>.

24 La Protocole national, op.cit., supra note 22.

25 Kurt Paëli, « COVID-19 and Labour Law: Switzerland », p.4, Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020); Jean-Philippe Dunand et Rémy Wyler, « Mesures d'exception et droit au salaire en Suisse durant la pandémie du COVID-19 », *Droit social*, septembre 2020, p.704.

26 Kurt Pärli, « New challenges of Social Security: The Covid-19-reponse of Switzerland », 2021, p.4.

27 Sion Gil, « COVID-19 and Labour Law: Republic of Korea », p.2, Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020).

Japanese Ministry of Health, Labour and Welfare set up a “Telework Comprehensive Portal Site”. In this site, the Ministry offers information related to telework and to its introduction and utilization, such as a consultation window for telework and Q&A on telework<sup>28</sup>. Telework is subject to the same laws and regulations as work carried out on company premises. There is no specific legislative and regulatory framework applicable to this working method. This Ministry issues administrative instructions about the modalities of the application of the law on working standards and about occupational health and safety at telework in 2004, and more recently it published the guideline on telework in 2018.

This guideline gives the recommendations intended for employers, unions, representatives of the majority of employees engaged in the establishment on the implementation of telework, or organization of telework arrangements, the conditions for the implementation of telework. This guideline shows its concern about the psychological risk, in particular arising from the isolation of an employee working from home. In addition, this Ministry introduced a subsidy intended to cover part of the equipment costs to stimulate small and medium-sized enterprises to set up telework (this subsidy is no longer available). It should be mentioned that the internal regulations drawn up unilaterally by the employer can give him the power to unilaterally fix the place where an employee performs his work, including his domicile, according to business necessity of the company, except in the case where there is a majority union that can consult with management on the establishment of telework and its implementation.

#### IV. CONCLUSIÓN

By brief overview on the documents provided by WHO and ILO in **II.**, we confirm that these two international organizations are very active to face the health, economic and social crises resulting from the global epidemic of COVID-19 and that they fully assume their roles at the global level. The author was not able to analyze in detail the measures implemented by national governments, nevertheless, we recognize strong similarity between measures adopted by national governments and those recommended by these international organizations. It should not be forgotten that above all ILO stresses the importance of economic

28 Qi Zhong, « COVID-19 and Labour Law: Japan, p.2, Italian Labour Law e-Journal Special Issue 1, Vol. 13 (2020).

policy intended to support business and gradually revive the national economy to prepare for the post COVID-19.

A brief overview on telework at international, European and national levels allows us to find some information. First, in dealing with the very rapid spread of COVID-19, some countries resorted to confinement and thus forced employers and employees to telework under certain conditions and reservations. Because telework is almost unanimously considered as one of the effective preventive measures, while it is true that telework is not the miraculous solution because there are many tasks which cannot be adapted to telework because of their nature. Except for telework forced during confinement or under other sanitary conditions, ILO, European Union and certain countries stress the voluntary nature of telework and insist on the right to disconnect. The main concern about telework is its risks for employees in telework, in particular, the psychological one and social isolation. This is the reason why the modality of control of working hours by the employer, the training of executives and line managers and the regular maintenance by management with employees in telework. Author does not analyze question of costs of equipment for telework, but this topic is attracting a lot of attention from ILO and some governments. Finally, some countries already put in place regulations specific to telework through laws or decrees, while the Japanese government is content to let the Ministry of Health, Labour and Welfare to issue the non-binding telework guidelines.