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Remote Work Regulations in the EU, Poland and Kosovo with Some Considerations from the Perspective of the GDPR

Abstract: The purpose of this article is to conduct a comparative analysis of remote work regulation in the EU, Poland and Kosovo, also with consideration of issues related to the processing of personal data during remote work. The authors aim to assess the specificities, strengths and weaknesses of both regulatory models, from the point of view of actual and future legal developments. Additionally, given the early stage of regulation, they seek to explore the applicability of EU experiences to Kosovo and to identify potential vulnerabilities that may arise under EU regulation. In this context, they aim to determine whether EU solutions should be considered as models for implementation in both Poland and Kosovo, as well as to analyse the risk of overregulation, which could impede certain employees from exercising their rights to remote work and potentially lead to inequalities in employment. The objective of the regulation should be to strike a balance between protecting personal data and ensuring equality in the workplace. Therefore, the authors try to answer the question of whether the protection of personal data could be subject to an abuse of rights by employers, who might use it as a pretext to deny certain groups of employees the opportunity to work remotely, which is particularly pertinent for individuals with special needs.

Keywords: data protection, GDPR, new technologies, remote working

Introduction

The COVID-19 pandemic not only accelerated the process of informatization, but also changed attitudes toward the daily use of modern technological solutions. As a result, the importance of flexibility and adaptability in organizations has been highlighted. This situation demands outside-the-box and non-standard measures, extending beyond traditional methods associated with working at a place designated by the employer, typically the company's headquarters; in fact, computerization initially enabled the development of telework. With the increasing significance of remote work, new challenges for the protection of personal data are systematically emerging and cannot be overlooked in the context of a rapidly changing work environment. Indeed, the protection of personal data during remote work is a key issue aimed at not only effectively ensuring the privacy of employees, but also raising awareness of the need to comply with data protection regulations at both European and national levels.

It is worth noting an emerging interpretive problem in Poland regarding the need to distinguish between the terms 'telework' and 'remote work'. Before the COVID-19 pandemic, these terms were often used interchangeably in the national literature. Currently, it is increasingly emphasized that the two concepts are not the same (Dolot, 2020, p. 36; Krysiński, 2020, pp. 1–174). What is not in doubt is that the common element of both is that the work is performed outside the employer's premises. In the Polish Labour Code (PLC) (1974), the provisions allowing work to be provided outside the employer's premises were introduced in 2007 (Act on Amending the Labour Code and Certain Other Acts 2007). At the time, the legislation emphasized that the determinant premise for telework was electronic communication within the meaning of the Polish Act on the Provision of Services by Electronic Means (art. 67⁵, § 1 of Polish Labour Code), in effect until 2023). According to art. 2, § 5 of the Polish Act on the Provision of Services by Electronic Means (2002), means of electronic communication are technical solutions, including data communication devices and cooperating software tools, which enable individual communication at a distance when performing data transmission between data communication systems, and in particular electronic mail (Wiśniewski, 2014, pp. 83–84). The 2023 Polish legislation defines remote as work that can be performed wholly or partially at the place indicated by the employee and agreed with the employer, including at the employee's home address, using means of direct communication at a distance. For this reason, we assume that the concept of 'remote work' will be conceptually broader compared to 'telework' (Muster, 2022, pp. 33–35). We agree with the thesis that the main difference between remote work and teleworking is that remote work does not require the transmission of work results via electronic communication, and therefore the term can be more widely used than telework (Prasolek & Kielbrałowska, 2020, p. 1; Vartiainen, 2021, p. 1 ff.).

On the other hand, current legislation in Kosovo does not define remote work. The term is used for the first time in Kosovo government decisions related to COVID-19 measures (Republic of Kosovo, 2020). However, forthcoming changes to the Labour Law are expected to regulate remote work, and therefore lessons learned from EU Member States could be applied, with adjustments, to Kosovo's conditions.

Within the context of remote work, this article explores legislative solutions from the EU, Poland and Kosovo on important aspects related to the protection of personal data in remote working environments. We pay attention to both the social and the technological conditions that have influenced the increased risk of privacy violations, as well as the way this issue is regulated in national legal systems. In our opinion, the popularization and increasing prevalence of remote work results in a need to verify, update and sometimes implement solutions to ensure the security of processed personal data. The first impetus in the EU Member States to introduce appropriate solutions at the legislative level was the enactment and subsequent entry into force of the European Regulation on the Protection of Individuals Regarding the Processing of Personal Data and on the Free Flow of Such Data (European Parliament, 2016). It seems that the second critical moment in building and developing awareness of the need to ensure the security of processed personal data was the COVID-19 pandemic, which resulted in increased use of modern methods of remote communication. Analysing the risks accompanying remote work, as well as highlighting practical solutions, can contribute to a better understanding of the challenges faced by both employers and employees. The following research methods have been used while working on this article: interpreting the applicable laws to determine how the principles of the protection of personal data during remote work are governed; the analytical method, applied to the relevant state of knowledge in the body of legal science; and the empirical method, based on the observation and analysis of practical issues arising from the authors' professional experience and their cooperation with Polish and Kosovar organizations dealing with the issue of protection of personal data.

The rationale for the choice of this study's subject is, first of all, the fact that we are dealing with Poland, which has been a Member State of the European Union since 2004 and so is directly obliged to apply the General Data Protection Regulation (GDPR), and Kosovo, which is not an EU Member State but has transposed the GDPR. Moreover, in our opinion, comparing the rules on the possibility of remote work and the protection of personal data in both countries is interesting, because both countries have their own cultural, social and legal contexts, and their comparison in the context of remote work and the protection of personal data can help understand how different societies and legal systems deal with the issues in question. By comparing the regulations in place in the two countries, it is possible to identify differences in priorities, regulations and practices. In addition, a review of the solutions introduced in Poland regarding remote work and issues associated with the pro-

tection of personal data in case of remote work can provide a stimulus to initiate work in identifying patterns and good practices worth implementing in Kosovo's case. A comparison of legislative solutions adopted in the Polish and Kosovar legal systems can lead to increased awareness and an exchange of knowledge of and experience in different approaches, which in turn can be particularly valuable in the context of cooperation and information exchange.

1. The protection of personal data with a focus on remote work: Regulatory perspectives in the EU, Poland and Kosovo

The EU GDPR is the key regulatory framework on the protection of personal data within the EU, and as a regulation is directly applicable by EU Member States, including Poland. The GDPR provides a comprehensive framework to ensure the protection of individuals' personal data and applies to the protection of such data in the process of remote work. Existing obligations for data controllers and processors also apply to remote work, however include additional technical measures and safeguards considering the risks that may arise due to the nature of remote work. By implementing these measures, controllers reduce the risks of data breaches and improve the privacy and security of data and legal compliance, while facilitating remote work arrangements. It is important for controllers to establish comprehensive policies and procedures to protect personal data effectively.

Kosovo has signed a Stabilization and Association Agreement (Council of the European Union, 2015) with the EU and is in an early stage of the EU integration process. At least from the regulatory perspective, Kosovo provides similar protection of personal data as the GDPR does. Its legal framework on Protection of Personal Data (Law on Protection of Personal Data 2019) is harmonized with the GDPR and the Law Enforcement Directive (European Commission, 2022, pp. 31–32). The Kosovo Information and Privacy Agency is mandated to supervise the implementation of a legal framework for the protection of personal data; however, its human resources and other capacities are still too limited to properly supervise and advise on implementation of this modern legal framework.¹ Despite some progress identified in recent years (European Commission, 2022, pp. 31–32), the practical implementation of a legal framework on the protection of personal data is facing various challenges. Employers are obliged to handle personal data in compliance with the requirements of the Law on Protection of Personal Data, which is applicable to remote work too. Art. 31 of the Law provides the same protection as art. 32 of the GDPR regarding the security of processing personal data. The data controller

1 Statement from the commissioner in a public presentation with Civil Society Organisations and businesses representatives in Peja, 27.07.2023, organized by Platforma CIVIKOS.

or processor shall undertake all necessary risk assessments and implement measures based on its nature and risks to maintain data security and to prevent infringement of personal data. Among these measures is the confidentiality of data, which may be secured by encryption (Law on Protection of Personal Data, art. 31). Furthermore, data controllers and processors shall have internal data protection policies in place that include cybersecurity, and proper instruction to employees to keep personal data safe (art. 23, § 2). Since teleworking and remote work includes ICT, some aspects of the protection of personal data on electronic communications are also covered by the Law on Electronic Communications (2012).

2. EU trends on regulating teleworking and remote work

The principal reference for telework regulation at the European Union level remains the 2002 Framework Agreement on Telework (European Trade Union Confederation, 2002), which was established through collaboration among cross-industry social partners in Europe. The agreement aimed to grant teleworkers equal legal protections while defining telework parameters within the workplace, aligning with the needs of both employers and employees (Social Dialogue Committee, 2006, p. 4). According to this agreement, 'telework is form of organising and/or performing work, using information technology, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis' (European Trade Union Confederation, 2002, art. 2, pp. 50–51). According to a 2008 European Commission report on the implementation of Framework Agreement on Telework, the majority of national regulations had already adopted key principles, such as defining telework, equal treatment for teleworkers, determining employee status, the voluntary nature of telework, the employer's responsibility for equipment and associated expenses, and the employer's obligation to ensure teleworkers' health and safety, data protection and privacy rights (European Commission, 2008, pp. 50–51). Notably, several aspects covered by this agreement, such as the protection of personal data, have been improved at EU level since then, especially related to the GDPR. According to Eurofound (the European Foundation for the Improvement of Living and Working Conditions), there are five main elements of telework, deriving from the EU Framework Agreement on Telework: 1) telework is understood as a work arrangement instead of a labour contract, and only employees with an employment contract are covered; 2) telework entails the use of ICT for the purpose of work; 3) only telework that is carried out on a regular basis is covered; 4) telework is exclusively understood as ICT-enabled, covering only those stationary jobs that could also be performed at the employers' premises; and 5) telework may include several alternative workplaces to the employer's premises (Eurofound, 2022, p. 17). The increase in telework during COVID-19 compared

to preexisting trends had a direct impact on new legislative initiatives among many EU Member States, introducing reforms in their national legislation (Eurofound, 2022, p. 11). These legislative initiatives were focused, among other things, on increasing flexibility in work arrangements, defining teleworking, defining the rights and obligations of parties in the new working environment including telework, the organization of work and working time, compensation for the cost of telework, and employment conditions; issues related to the digitalization of work and, to some extent, the protection of personal data, privacy and surveillance were among the core issues of these legislative initiatives (Eurofound, 2022, p. 12). EU member countries have used different terminology to define various aspects of working remotely; however, the term 'telework' is most widely used, before and during COVID-19 (Eurofound, 2022, p. 6).

The process of the computerization of society, which has been progressing for years, creates new conditions and opportunities for action in the economic environment, as well as placing new requirements on all participants in economic transactions. The rules of everyday functioning are changing, which is also noticeable in the labour market. Among other things, the nature of work and its forms are changing. The use of computerization tools and the experience of representatives of areas where modern technology is used regularly reflect the changes in the labour market. New forms of recruitment, the use of cloud technologies and artificial intelligence systems are currently being implemented. Freelancers and gig-workers are replacing full-time employees, while outsourcing, outstaffing and crowdsourcing are replacing departments and divisions of companies (Yashchuk et al., 2021, p. 157). For example, these changes mean that employees have more and more flexibility in scheduling their work and, most importantly, the location from which it is provided. The COVID-19 pandemic has changed the opinions of employers who were quite sceptical about the possibility of remote work by employees before 2020. It is now recognized that the provision of remote work has many benefits – from reducing the employer's costs to optimizing working hours and balancing them with leisure time (Ferdou et al., 2021, pp. 1–21; Sullivan, 2012), while increasing the competitiveness of job offers.

Since 2020, remote work has become very popular. In many companies, this model was also in place before the pandemic. According to a survey by Polish employers, after the outbreak of the COVID-19 pandemic, the percentage of Polish employers with a negative attitude toward performing work duties from home decreased from 27.6% to 11.7%. As many as 92% of entrepreneurs declared that the effectiveness of remote work is good or very good. However, 37% of employers indicated that such a system is detrimental to the integration and cooperation of teams, while 16% of respondents pointed out that the process of recruiting new people is difficult. The October 2021 survey showed that employees had a positive attitude toward this solution; as many as 84% of respondents said that a positive consequence

of working from home was the lack of a commute. The biggest downside of working remotely was considered by 57% of respondents to be the lack of opportunity to meet new people joining the company (Polish Agency for Enterprise Development, 2021, pp. 5–7). An interesting study carried out in 2020 by Jonathan Dingel and Brent Neiman examined the potential for remote work in various occupations; according to this study, 37% of employment positions in the US have the potential to be performed entirely from home, with variations observed across different job categories (Dingel & Neiman, 2020, pp. 1–8). The jobs of managers and educators, computer-related jobs, finance, law and similar positions are largely able to be done from home, while farming, construction, production and similar workers cannot work remotely. According to their analysis, extended to 85 nations, economies with lower incomes tend to have a smaller proportion of jobs suitable for remote work.

The study commissioned by the Polish Agency for Enterprise Development shows that in 2020, the countries with the largest number of workers performing their tasks remotely were Finland (25.1%), Luxembourg (23.1%) and Ireland (21.5%). The fewest remote workers were in Bulgaria (1.2%), Romania (2.5%) and Croatia (3.1%). In Poland, the percentage of people working from home was 8.9%. This result was below the EU average, which was 12% in 2020. According to Eurostat data, in 2020 the percentage of women working remotely in most EU countries was higher than the percentage of men, the difference ranging from -2.1% to 5.8% (Polish Agency for Enterprise Development, 2021, p. 7). This data is provided by way of example to emphasize the need to increase awareness of how to ensure the security of processed personal data when working remotely, which is becoming increasingly popular.

3. The admissibility of remote work in Poland and Kosovo

It is evident that COVID-19 had an impact on the increase in remote work, and at the same time raised numerous inquiries about teleworking worldwide. Among other things, these inquiries are related to the impact of remote work on different categories of employees as well as on issues about the protection of personal data, which are the focus of this paper. Poland and Kosovo are no exceptions, although there are differences between them regarding the regulatory framework, both in defining remote work and the protection of personal data in remote work. Allowing an employee to provide work remotely provides employers with employment opportunities for people from groups characterized by a certain isolation from society, for example people with disabilities, single parents caring for young children or people living at a great distance from the main centres of professional and social life. For such people, the development of information and communication technologies is extremely important for social integration. Employing such people with the possibility

of remote work *de facto* opens up the possibility of working from any place where there is access to the Internet (Isäilä, 2012, pp. 1006–1009; Yashchuk et al., 2021, p. 159).

In Poland, the possibility of remote work existed in practice in a few areas. Although remote work had been gaining popularity in recent years, before the pandemic, it remained rare for most workers. Only 1.9% of respondents worked remotely 100% of the time (5 days a week), while 4% of respondents did it most of the time (3–4 days a week). For 1–2 days a week, 16.8% of respondents worked remotely, and 43.4% sporadically (single days a month), with as many as 33.9% not working from home at all (Dolot, 2020, p. 36). Due to the fact that as of 20 March 2020, a state of epidemic was in effect in Poland in connection with COVID virus infections, announced by the decree of the Minister of Health (Ordinance of the Minister of Health on Declaring an Epidemic State in the Territory of the Republic of Poland 2020), we had a *de facto* lockdown.

Ad hoc changes due to the pandemic naturally generated the need for an immediate response by employers. In order to eliminate the threat of the spread of the pandemic, an increasing number of employees provided work from their places of residence. This was possible because functioning technological solutions and the appropriate competence of the workforce very quickly allowed a transition from the ‘traditional’ work model to a remote model (Muster, 2022, p. 30). Further factors supporting a willingness to provide remote work were, on the one hand, the fear of losing one’s job and, on the other, the fear of contagion.

In Poland, until July 2023, the possibility of providing work off-site existed *de facto* in three regimes. First, since September 2007, it was telework, as was mentioned above. The permissibility of its performance was conditioned on the use of electronic means of communication clearly defined by Polish legislation. The realization of telework did not *de facto* apply to situations where an employee worked remotely only from time to time; as a rule, telework was permanent, not incidental. The terms and conditions of such work were established in agreements between the employer and the company’s trade union, or, if there was no such organization at the workplace, in the telework regulations.

Second, it was possible to work remotely under the provisions of the so-called ‘anti-crisis shield’. After the outbreak of the pandemic, the Polish legislature decided to introduce provisions on remote work performed at the behest of the employer. According to the original wording of art. 3 of the Act on Special Solutions Related to the Prevention, Counteraction and Suppression of COVID-19, Other Infectious Diseases and Emergencies Caused by Them 2020 (the so-called ‘anti-crisis shield’), in order to counter COVID-19, an employer could instruct an employee to perform the work specified in the employment contract for a specified period of time outside the place of its permanent performance. On 31 March 2020, the indicated wording was amended by specifying that the employer’s authorization covered not

only the period of the state of epidemic emergency or the state of epidemic declared due to COVID-19 but was also valid for a period of three months after their revocation. However, this regulation was repealed by the Labour Code Amendment Act (Act on Amending the Labour Code Act and Certain Other Laws 2022), which came into effect on 7 April 2023. The premise for such remote work was that the employer could, by unilateral agreement, instruct the employee to work in such a way, which is different from other types of remote work, in which the employee's explicit consent is required. An example was the possibility of remote work for those in quarantine. With the Anti-Crisis Shield Amendment Law (Act on Amending Certain Laws in Connection with Countering COVID-19 Emergencies 2020), art. 4(h) was added, so that as of 29 November 2020, during a period of a declaration of an epidemic emergency or a state of epidemic, employees under mandatory quarantine could, with the consent of their employer, perform the work specified in the agreement remotely and receive remuneration for it.

Third, in the period up to 7 April 2023, several questions were raised about the performance of remote work outside the two indicated regimes for reasons other than to counter COVID-19. The art. 22, § 1 of the PLC specifies that through the establishment of an employment relationship, the employee undertakes to perform work of a certain type for the employer, under his/her direction and at a place and time designated by the employer, and the employer undertakes to employ the employee for remuneration. This means that the employer may have agreed either at the conclusion of the employment contract or during employment (in the form of an amendment to the terms and conditions of the contract) that the work will be performed at a specific location that is not the employer's premises. In fact, until the pandemic, the implementation of a so-called 'home office' was not the rule but rather the exception. In practice, it meant that the employer agreed that work could be performed from location agreed upon with the employer for several days a week or a month.

For this reason, in 2023 an amendment to the PLC was enacted to make these regulations a permanent part of the Polish legal framework. The provisions related to remote work, among other matters, are affective from 7 April 2023. In the current state of the law in Poland, work may be performed wholly or partially at a place designated by the employee and agreed with the employer on a case-by-case basis, including at the employee's home address, using means of direct communication at a distance (art. 67, § 18 PLC). At the same time, the legislation specifies that remote work may be performed on an occasional basis, at the request of the employee submitted on paper or electronically, for not more than 24 days in a calendar year (so-called occasional remote work). In addition to the general rule, the Polish legislation stipulates in section 3 that remote work may be performed at the direction of the employer during a state of emergency or a state of epidemic emergency, and for a period of three months after their cancellation, or during a period in which

it is temporarily impossible for the employer to provide safe and hygienic working conditions at the employee's current place of work due to force majeure. However, this is conditional on the employee making a paper or electronic statement immediately prior to the order that s/he has the premises and technical conditions to work remotely. This statement is important, because if the premises and technical conditions change, making it impossible to work remotely, the employee shall immediately inform the employer; the employer then immediately revokes the order to work remotely. In this situation (i.e. working remotely on instruction), the employer may at any time revoke the instruction to work remotely, with at least two days' notice.

The PLC has set out in great detail the rules for remote work, including occasional remote work (art. 67, § 20 and § 33), the rules for filing a request to stop remote work and restore previous working conditions (art. 67, § 22), the employer's obligations and the employee's rights in the case of remote work (art. 67, § 24 and § 30), the rules for conducting inspections at the place of remote work (art. 67, § 28) and rules on occupational health and safety (art. 67, § 31). Detailed rules on the possibility of remote work are set out in an agreement between the employer and the company's trade union or unions. However, if there are no company trade unions at a given employer, the employer shall determine the rules for performing remote work in the regulations after consultation with employee representatives selected in accordance with the procedure adopted by the employer.

The regulation of the possibility of remote work in Poland was undoubtedly the result of the regulations introduced incidentally during the COVID-19 pandemic. Consequently, after the amendment of the PLC, we are dealing with three types of remote work: a) total, which is the solution most similar to existing telework; b) partial, which is the equivalent of remote work introduced during COVID-19 and the various forms of hybrid work that have appeared on the labour market in recent years; c) occasional, which is the equivalent of the so-called home office benefit used in some companies, i.e. work provided from home at the request of the employee in connection with his/her private need. It should be clearly emphasized that an employee may not start performing remote work arbitrarily; this constitutes a violation of the employee's duties and may result in consequences against the employee.

The Kosovo Labour Law of 2010 does not regulate remote work, therefore no definition of remote work is provided under the Kosovo legal framework. A draft labour law prepared in 2018 provides a definition of remote work and some basic provisions on regulating it, but it is still under discussion by the government. Although not specifically tailored to remote work, the provisions of the current labour law have to be implemented accordingly to remote work situations. In practice, many companies in Kosovo provide the possibility of remote work to some employees, such as those providing online services, including call centres, ICT services, etc. In many cases remote work is also provided for companies outside the country. The COVID-19 emergency raised the issue of remote work when the government

of Kosovo introduced COVID-19 measures in March 2020, among others ordering public-sector employees and private companies to work from home when possible. During this emergency only a limited percentage of businesses and public institutions carried out their activity on their premises, and only for specific activities.

Although businesses and employees were not prepared for an immediate change to remote work, there is great potential for it (Fetoshi, 2021, p. 57). According to several UNDP studies on the socio-economic impact of COVID-19 in Kosovo, conducted in 2020 (UNDP Kosovo, 2020) and 2021 (UNDP Kosovo, 2021), only a limited percentage of businesses allowed their workers to work remotely, and the percentage decreased as COVID-19 measures gradually eased. In March 2021, around 6% of respondent businesses declared that all their employees were working from home, while only 3% reported that some employees were working from home. Household surveys in the same study reiterate these results, with about 2% reporting working part or full time from home (3% of women, 1% of men). Remote workers faced challenges, including higher workloads, simultaneous caregiving for family members and multitasking. Women experienced more difficulty, with 54% having increased workloads and caregiving, compared to about 40% of men. At the same time, about 35% of women more commonly suffered from a lack of a suitable space for a home office, compared to 19% of men facing the same challenge. It is also interesting to read that most remote workers (54%) expressed a preference to not continue working from home after COVID-19. A larger percentage of women (38%) compared to men (22%) would prefer to continue working remotely (UNDP Kosovo, 2021).

The Kosovo Government approved a concept document on regulating the field of employment relationships in 2018 (Government of Republic of Kosovo, 2018). This was the first time a Kosovo government policy included regulation of telework, which was proposed to be regulated based on the ILO Convention (Government of Republic of Kosovo, 2018, p. 19). Based on this concept document, a draft of the Labour Law has been under preparation in government since 2018, which for the first time provides a definition of remote work and some basic provisions on regulating it. The draft provides two definitions, of 'home work' and of 'telework'; the main difference between these definitions is related to the use of information technology in the case of telework (Government of Republic of Kosovo, 2018, art. 3). Based on the draft, an employer is required to implement several measures to support telework effectively, including: a) providing, installing and regularly maintaining the necessary hardware and software for telework; b) ensuring the security and protection of data used in telework, particularly concerning software applications; c) informing the employee of any restrictions on the use of hardware and software, as well as outlining the consequences for any violations of these restrictions; and d) undertaking proactive steps to prevent isolation among employees engaged in home work or telework, and making sure that working conditions for such employees do not place them at a disadvantage when compared to their counterparts

working at the employer's physical premises. However, some provisions look discriminatory to remote workers, such as provisions on the modification of weekly working time and the daily and weekly rest periods that do not apply to remote workers (art. 30, para. 1.1), and provisions providing that remote workers shall not be entitled to allowances for night work or for working during weekends and national holidays (art. 30, para. 1.3).

4. Instruments for the protection of personal data relevant in the process of remote work

When it comes to legal instruments, the GDPR is the primary legal instrument on the protection of personal data applicable directly by all EU Member States, including Poland, and is also transposed and is applicable in Kosovo (Law on Protection of Personal Data, art. 1, § 2). Art. 24 of the GDPR outlines the responsibilities of data controllers to ensure that they implement appropriate technical and organizational measures to maintain the security of the personal data they process. In this context, the GDPR promotes data security and accountability among controllers by requiring measures such as pseudonymization, encryption, regular evaluation of data-processing effectiveness, and ensuring personnel are trained and aware of their obligations. Therefore, data controllers must be proactive and making continuous assessment of the privacy impact of technology (Hendrickx, 2022, p. 39). This includes adoption of internal policies and implementing measures which in particular meet the principles of data protection by design and data protection by default (GDPR, Preamble, par. 78). Analysing the principles of remote work, it should be noted that in practice, the employer and the employee communicate using tools that enable remote communication, which include business email, telephones, electronic systems or instant messaging (in particular Microsoft Teams, Skype and Zoom), as well as the company intranet. These methods of communication are usually equivalent to each other, and the employer has the right to require the employee to turn on their camera when contact is made using instant messaging. With the replacement of the traditional model of performing employee duties with remote work, the use of technologies that enable the identification of individuals based on their individual physical, physiological or behavioural characteristics is increasingly observed (Kupiec, 2020, p. 90). Biometrics, however, are most often used to ensure security at a university by, for example, controlling access to premises where personal data is processed (Kupiec, 2020, p. 91; Lewandowski, 2017, p. 159). The primary obligation of the employer is to make the employee aware that, when performing remote work, s/he should use personal data from the contents of the documents only for the purpose for which it would be used at the employer's premises. In addition to the obligations arising directly from the type and nature of the work, the employee is also obliged to take care

of the equipment entrusted to him/her, including protecting it from destruction, loss or access by third parties, and s/he is also obliged to ensure safe conditions for the processing of personal data and other information of the employer. This necessitates attention to raising employee awareness, as failure to do so can significantly jeopardize information security (Riberio, 2021, p. 245). In this regard, the provisions of the applicable national legislation, as well as regulations internally adopted by the employer, are updated. Crucial here are the provisions of art. 32 of the GDPR, according to which the controller and the processor shall implement appropriate technical and organizational measures to ensure a degree of security corresponding to the risk. In this regard, it is important to properly conduct a risk analysis and assessment procedure. It is incumbent on the employer to ensure that appropriate tools are in place to ensure security when processing data in a remote environment. It is crucial that internal security procedures do not differentiate in terms of importance between the principles of protecting data processed during work in employer's premises and remote work (Riberio, 2021, p. 248).

When analysing the technical and organizational safeguards that should be implemented, it should be noted first of all that it is an employee's fundamental duty to protect the data transferred to him/her in accordance with the employer's protection rules. This is because the employee is obliged to secure the data transferred to him/her against access by third parties, which applies to both data processed in electronic form and in the form of traditional documents. All data and information contained on computer media used by the employer may not be collected, reproduced or distributed by the employee without the employer's express consent. Indeed, it is important to emphasize that employee awareness of the need to protect personal data is key to improving security when providing remote work, and a strong technical infrastructure is essential (Borkovich & Skovira, 2020, p. 234). At the same time, the employee should undertake not to copy, share, transmit or process the data without the express consent of the employer. It also seems reasonable to introduce a general prohibition on taking original documents outside the employer's premises, and in the case of defining the need for access to paper documents, the employee should make a request to the employer to be able to copy them and take them to the place of remote work. The rationale for doing so is for the employer to have full control over which documents are off-site; taking them away without permission in writing or in an email not only results in an increased risk of a data security breach, but also directly exposes the employee to liability. It is also good practice for the employee to prepare a summary of the documents after they have been copied, including which documents were copied and in what number. In turn, after the employee has used the copies, it is necessary to destroy them using a shredder provided by the employer. At the same time, employees should be encouraged to automatically save and store their documents and data in a common area rather than on personal

computers. Organizations should have a backup solution and match the frequency of backups to the need for data security (Riberio, 2021, p. 253).

A safeguard that is not only important organizationally but also technically is for employees to limit the number of documents they possess to those that are necessary. At the same time, it is reasonable to introduce internal regulations in which the employee undertakes that when transporting documents to the place where remote work is carried out, s/he will take special care not to lose them. In particular, it should be forbidden to leave documents in the means of transport (such as a car) without adequate protection against their loss or access by outsiders. At the same time, when working remotely, the employee should undertake that s/he will keep the documents only for the period of time necessary for the performance of a specific task, and that s/he will secure the data at the place of remote work (e.g. keeping the documents in locked desk drawers or cabinets, observing the 'clean desk' rule and protecting the documents from being seen by unauthorized third parties, including family members), as well as that s/he will return the provided documents to the headquarters. Indeed, it should be forbidden to throw documents into the waste bin at the remote work place.

From the perspective of data protection, it is also important that the employee clearly and explicitly undertakes to secure equipment and documents from access by third parties during and after remote work. Internal regulations put in place by the employer may boil down to setting specific conditions for the performance of remote work from the perspective of security and the protection of information and personal data (Enisa, 2020). Neither the Polish nor the Kosovar legislation address how this protection is to be implemented. The provisions of both the GDPR and national regulations are general; this in turn makes it incumbent on the employer in each case to individually determine the rules that an employee should be required to follow when processing personal data during remote work.

Taking into account the observations of Polish and Kosovar employers, as well as other entities that process personal data, it is possible to identify examples of solutions that can be successfully applied to secure personal data processed remotely. Among such examples are a prohibition on undertaking remote work in public places, such as cafes, restaurants or shopping malls, where outsiders could hear snippets of business conversations or see pieces of work being performed, a ban on the use of public Internet access points, a prohibition on the use of external data storage media not permitted by the employer, a prohibition on sharing devices and equipment used to work remotely with others, such as household members, a prohibition on installing other programs and applications on the devices by oneself without the prior approval of the employer, a prohibition on using publicly available file transfer and sharing tools (such as Dropbox, weTransfer or Google Drive) without prior approval, an obligation to ensure that household members and other outsiders present at the remote work site do not have access to the work being performed,

in particular by properly positioning the computer screen or smartphone and ensuring that documents are worked on in such a way that their contents cannot be viewed, an obligation to use only business software provided by the employer, an obligation to comply with the information security rules established by the company for the exchange of information outside the company domain, an obligation to ensure the confidentiality of the content of teleconference or videoconference conversations, as well as to obtain permission to record the image or voice of the participants, an obligation to report any occurrence of loss, destruction or theft of equipment, documents or other information carriers to the employer and the Data Protection Officer (Specialist) on the day of the incident, and an obligation to report any suspected breaches of the protection of personal data, such as printouts left unattended, undestroyed documents, keys left in a door, leaving a workstation unsecured, sharing data with an unauthorized person, etc. These examples make it possible to create a catalogue of desirable behaviours during the remote processing of personal data.

From the perspective of the effective implementation of the principles of secure processing of personal data during remote work, it seems reasonable that the employer has the right to control compliance with the principles of information security and the protection of personal data (Newlands et al., 2020, pp. 1–14). This control may manifest itself as a) establishing a video connection in order to verify the manner of organization of the place of remote work in terms of securing the confidentiality of information and personal data; b) taking a photo of the room where remote work is performed in order to verify the manner of organization of the place of remote work in terms of securing the confidentiality of information and personal data; c) periodically checking practical knowledge of the regulations on information security and the protection of personal data; d) using the forms of monitoring specified in the work regulations, adequate to the specifics of the performance of remote work; and e) verifying the security of access used.

Summarizing the above considerations, it should be assumed that in the case of the provision of remote work, the employee has the same obligations to ensure the security of personal data relative to work provided in a workplace. In turn, the employer has a special obligation to equip the employee with the necessary tools, which will have security features at a level appropriate to the personal data processed (Ahmad, 2020, pp. 1–4). A mere instruction to work remotely, while establishing that the employee will carry it out on his/her own private equipment, does not remove the employer's responsibility, because it is important to apply adequate technical and organizational measures that would prevent a breach from occurring. According to art. 32, § 2 of the GDPR, the controller, in assessing whether the degree of security is adequate, shall in particular consider the risks inherent in the processing, in particular those arising from the accidental or unlawful destruction, loss, modification, unauthorized disclosure of or unauthorized access to personal data transmitted, stored or otherwise processed. For this reason, an employer deciding to popularize the possi-

bility of remote work in their enterprise should update their solutions on the protection of personal data, and often should remodel the organization of work.

Conclusions

Computerization has had a positive impact on breaking down geographical barriers, with key benefits that are of considerable importance from the perspective of the subject of this study. First, the Internet and the use of modern methods of long-distance communication, including the popularization of tools for holding online meetings via video conferencing in real time, make it possible to communicate regardless of distance. As a result, cooperation among those using these solutions has been strengthened. Second, available digital tools (such as cloud computing and collaboration platforms) facilitate the collaboration of several people on a single task, project or document. In such a situation, it is not necessary to meet directly in one place, which results in substantial strengthening of the teams of people working together. This also has a positive effect on increasing the availability of people who are authorities in a particular field. Third, informatization has sectoral effects on specific areas of functioning, which, together with the development of modern technologies and popularization of the use of available solutions, have a positive impact on eliminating accessibility barriers for people at risk of geographical, social or fiscal exclusion.

The comprehensive digitization of society, analysed from the perspective of changes in the labour market, means that there is a gradual overcoming of gender inequality. Among the benefits of implementing such a model of work is the possibility of creating equal opportunities in the labour market for people representing different social groups (Yashchyk, 2021, p. 159). Performing job duties remotely also provides greater accessibility to people who are specialists in a narrow field, who would be less available if they could only provide work in one place with a specific employer. On the other hand, however, employers must ensure balance and equality for employees in accessing remote work opportunities.

Regarding the context in Kosovo, the country will use the advantage of the experience of EU Member States on regulating remote work. While some basic regulation on defining remote work is necessary to strike a balance between promoting flexible work arrangements and protecting the rights and well-being of employees, the government should be careful not to overregulate. Particular attention should be given to non-discrimination towards remote workers regarding their employment rights. Any form of regulation should also be adaptable to changing technology and work trends. A particular focus should be given to the protection of personal data tailored for remote work.

The advent of remote work further underscores the imperative of data security and accountability, necessitating shared responsibility between employers and employees, as well as clear guidelines and monitoring mechanisms. Ultimately, while remote work presents unique challenges, it does not exempt employers from their duty to uphold data-protection standards. Instead, it necessitates a proactive approach to adapt organizational practices and technologies to evolving regulations and the dynamic nature of remote work environments. The GDPR stands as a cornerstone in the protection of personal data within EU Member States and is also applicable within Kosovo's legal framework. Art. 24 of the GDPR delineates the obligations of data controllers, emphasizing the implementation of robust technical and organizational measures such as pseudonymization and encryption. To comply effectively, organizations must align internal regulations with GDPR requirements, particularly focusing on art. 32 to mitigate risks inherent in data processing. On the other hand, employees must also uphold these standards, ensuring the protection of entrusted data and equipment.

REFERENCES

- Act of 26 June 1974 – Labour Code (Journal of Laws of 2023, item 1465).
- Act of 18 July 2002 on the Provision of Services by Electronic Means (Journal of Laws of 2020, item 344).
- Act of 24 August 2007 on Amending the Labour Code and Certain Other Acts (Journal of Laws No. 181, item 1288).
- Act of 2 March 2020 on Special Solutions Related to the Prevention, Counteraction and Suppression of COVID-19, Other Infectious Diseases and Emergencies Caused by Them (Journal of Laws of 2023, item 1327).
- Act of 28 October 2020 on Amending Certain Laws in Connection with Countering COVID-19 Emergencies (Journal of Laws of 202, item 2113).
- Act of 1 December 2022 on Amending the Labour Code Act and Certain Other Laws (Journal of Laws of 2023, item 240).
- Ahmad, T. (2020). *Corona virus (COVID-19) pandemic and work from home: Challenges of cybercrimes and cybersecurity*. <https://ssrn.com/abstract=3568830>
- Borkovich, D. J. & Skovira, R. J. (2020). Praca z domu: cyberbezpieczeństwo w dobie Covid-19. *Zagadnienia systemów informatycznych*, 21(4).
- Council of the European Union. (2015, 2 October). *Stabilization and association agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part*. <http://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf>
- Dingel, J. I. & Neiman, B. (2020). How many jobs can be done at home? *Journal of Public Economics*, 189, 1–8. <https://doi.org/10.1016/j.jpubeco.2020.104235>
- Dolot, A. (2020). Wpływ pandemii COVID-19 na pracę zdalną – perspektywa pracownika, *E-mentor*, 1(83). <https://www.e-mentor.edu.pl/artukul/index/numer/83/id/1456>

- Enisa (European Union Agency for Cybersecurity). (2020). *Press Release: Tips for cybersecurity when working from home. The EU Agency for 61 Cybersecurity shares its top tips for teleworking in times of Covid-19*. <https://www.enisa.europa.eu/tips-for-cybersecurity-when-working-from-home>
- Eurofound. (2022). *Telework in the EU: Regulatory frameworks and recent updates*. Publications Office of the European Union. <https://www.eurofound.europa.eu/system/files/2022-09/ef22032en.pdf>
- European Commission. (2022). *Kosovo 2022 report*. <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf>
- European Parliament. (2016). Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (GDPR).
- European Commission (2008). Report on the implementation of the European social partners' Framework Agreement on Telework {COM(2008) 412 final} <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008SC2178>
- European Trade Union Confederation. (2002). *Framework agreement on telework* https://resourcecentre.etic.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf
- Ferdou, T., Ali, M., & French, E. (2023). Use of flexible work practices and employee outcomes: The role of work-life balance and employee age. *Journal of Management and Organization*, 29(5), 833–853. DOI:10.1017/jmo.2020.44
- Fetoshi, U. (2021). *Emerging from COVID: Online work and its implications for the worker performance in Kosovo* [Unpublished bachelor's thesis]. Rochester Institute of Technology.
- Government of Republic of Kosovo. (2018). Draft Law on Labour. <https://konsultimet.rks-gov.net/Storage/Consultations/12-11-50-04102018/Drafti%20fillistar%20i%20Porjektligjit%20te%20Punes%20ANGL03.10.2018.docx>
- Government of Republic of Kosovo. (2018). *Initial draft of the concept document on regulating the field of the employment relationship*. <https://konsultimet.rks-gov.net/Storage/Consultations/14-50-59-20032018/ANGL%20Preliminary%20Draft%20of%20Concept%20Paper%20on%20regulating%20the%20field%20on%20labour%20relations.docx>
- Government of Republic of Kosovo. (2020, 17 June). Decision No. 02/06. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=62904&langid=1>
- Hendrickx, F. (2022). *Protection of workers' personal data: General principles* [ILO Working paper 62]. International Labour Organization. <https://doi.org/10.54394/VBKR9991>
- Isäilä, N. (2012). Social inclusion in the context of informational society. *Procedia – Social and Behavioral Sciences*, 46, 1006–1009. DOI:10.1016/j.sbspro.2012.05.239
- Krysiński, D. (2020). *Raport z badania: Możliwości zastosowania pracy zdalnej w przedsiębiorstwach i instytucjach publicznych*. Instytut Badawczy IPC–Openfield–EDBAD 2020.
- Kupiec, M. (2020). Ochrona danych osobowych studentów w dobie rozwoju technologii biometrycznych wyzwaniem dla polskich uczelni. *Białostockie Studia Prawnicze*, 25(4). DOI: 10.15290/bsp.2020.25.04.06
- Law No. 04/L-109 of 9 November 2012 on Electronic Communications (Official Gazette of the Republic of Kosova, no. 30).

- Law No. 06/L-082 of 25 February 2019 on Protection of Personal Data (Official Gazette of the Republic of Kosovo, no. 6).
- Lewandowski, R. (2017). Biometria – nowe zastosowania. *Przegląd Bezpieczeństwa Wewnętrznego*, 17, 152–166.
- Muster, R. (2022). Pandemia COVID-19 a zmiana modelu pracy. Polska na tle krajów Unii Europejskiej. *Acta Universitatis Lodzianensis. Folia Sociologica*, 81, 29–44.
- Newlands, G., Lutz, C., Tamò-Larrieux, A., Villaronga, E. F., Harasgama, R., & Scheitlin, G. (2020). Innovation under pressure: Implications for data privacy during the Covid-19 pandemic. *Big Data & Society*, 7(2).
- Ordinance of the Minister of Health of 20 March 2020 on Declaring an Epidemic State in the Territory of the Republic of Poland (Journal of Laws of 2020, item 491, as amended).
- Polish Agency for Enterprise Development. (2021). *Thematic report: Aspects of remote work from the perspective of the employee, the employer and the economy*. https://www.parp.gov.pl/storage/publications/pdf/Praca_zdalna_last.pdf
- Prasołek, Ł. & Kiełbratowska, A. (2020). *Praca zdalna w praktyce. Zagadnienia prawa pracy i RODO*. C. H. Beck.
- Riberio, S. (2021). *Remote work and data protection: How do organisations secure personal data protection compliance from home?* Bobcatsss 2021: Digital Transformation, 246–320. DOI: <https://doi.org/10.34630/bobcatsss.vi.4983>
- Social Dialogue Committee. (2006). *Implementation of the European Framework Agreement on Telework: Report by the European Social Partners*. <http://erc-online.eu/wp-content/uploads/2014/04/2006-01429-EN.pdf>
- Sullivan, C. (2012). Remote working and work–life balance. In N. Reilly, M. J. Sirgy, and C. A. Gorman (Eds.), *Work and Quality of Life: Ethical Practices in Organizations* (pp. 275–290). Springer.
- UNDP Kosovo. (2020, June). *Rapid socio-economic impact assessment of COVID-19 in Kosovo*. <https://www.undp.org/kosovo/publications/rapid-socio-economic-impact-assessment-covid-19-kosovo#>
- UNDP Kosovo. (2021). *Rapid socio-economic impact assessment of COVID-19 in Kosovo*. https://www.undp.org/sites/g/files/zskgke326/files/migration/ks/SEIA3_final_report_eng.pdf
- Vartiainen, M. (2021, 29 October). Telework and remote work. *Oxford Research Encyclopedia of Psychology*. <https://doi.org/10.1093/acrefore/9780190236557.013.850>
- Wiśniewski, J. (2014). Istota telepracy. *Studia z Zakresu Prawa, Administracji i Zarządzania Uniwersytetu Kazimierza Wielkiego w Bydgoszczy*, 5, 75–90.
- Yashchik, O., Shevchenko, V., Kiprenko, V., Razumova, O., Khilchevska, I., & Yermolaieva, M. (2021). The impact of the informatization of society on the labor market. *Postmodern Openings*, 12(3Sup1), 155–167 <https://doi.org/10.18662/po/12.3Sup1/357>.