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THE TRIUMPH OF TELEWORK

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Finally, the telework.

Conceived in the 1970s by Jack Nilles to minimize the commuting in the United States of America, telework took a long time to spread.

In Portugal, it came up with the Labor Code of 2003.

At the time, I had the privilege of being part of the drafting committee of the Code and to drafting the provisions relating to teleworking. Alongside personality rights, telework was at the time innovative and not always well understood. It was even a laughingstock.

The strength of its advantages and the pandemic crisis we are experiencing ultimately, imposed it.

Teleworking brings several advantages.

For the worker, ensures the reduction of commuting, transportation and food expenses; better reconciliation of work and family life; easier demand for employment; and strengthens freedom of work.

As for the employer, it guarantees the reduction of operating costs in facilities and energy; the optimization of available spaces; the increase in the universe of staff recruitment; and greater resistance to external factors, such as strikes, acts of terrorism or natural calamities.

As far the whole communities, the advantages are even more clear: reduction in air pollution levels; decongestion in city centers; reducing disparities between urban and rural centres; and the creation of new jobs, particularly for people with physical disabilities.

Telework is also of great importance to tackle outbreaks, which is why the Portuguese Government, through Decree n.º 2-A/2020 of 20 March, has decreed the obligation to adopt remote working during the covid-19 disease pandemic, whenever the functions in question allow it.

Teleworking may, however, put in risk the privacy of the teleworker.

For this reason, the Portuguese Labor Code contains rules aimed at preventing this risk.

In the light of the Code, the employer must respect the worker's privacy and the rest times of his family (art. 170). Where the telework is carried out at the worker's home, any visits to the workplace should only be allowed to control of the work activity and can only be carried out between 9am and 7pm, with the assistance of the worker or the person indicated by him.

As a result of the massification of telework during the current pandemic, the National Data Protection Commission ("CNPD") also clarified that the rule prohibiting the use of means of remote surveillance, in order to control worker performance, is fully applicable to telework. For this reason, technological



solutions for remote control of worker performance are not allowed. For example, software that logs the visited web pages, the location of the terminal in real time, captures the desktop image, observes and records when access to an application is initiated, controls the document you are working on, and records the time spent on each task, are prohibited. According to the CNPD, these tools collect excess personal data from workers. The work provided from home does not justify a greater compression of personality rights.

On the contrary, the CNPD considers it legitimate to record working time using technological solutions. Such solutions should, however, be limited to recording the start and end of work and the lunch break. Not having such tools, it is legitimate for the employer to fix the obligation to send e-mail, messaging or any other way that allows him to control working times.

The telework came, at last, to stay.

The last quarter of the 20th century announced it.

The current pandemic crisis has imposed it.

Society and the Law must now pay more attention to it to prevent this brave new world from becoming a violation of our privacy.

PS: it is true because I saw it. The Portuguese Employment State Agency ("ACT") has asked a company to learn of the documentation regarding its Lay Off within 2(two!) days, with the warning that, not doing so, incurs in administrative offense and "in the crime of qualified disobedience". The state of emergency justifies several things, but it cannot be an open door to the arrogance and arbitrariness of state inspectors. We must avoid Hayek's "road to serfdom".