THE LABOR INSPECTOR SEARCHING FOR ...GODOT: UNDECLARED DISTANCE WORK*

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Abstract: *Undeclared labor has become an increasingly present phenomenon nowadays. Due to the pandemic context, there has been a transition towards working from home or under telework regime. These particular forms of individual labor contracts allow for greater flexibility in terms of the place where a natural person works but, on the downside, they allow the parties to disguise the agreement or to avoid fulfilling the formalities imposed by the Law, such as concluding the contract in a written form and registering its elements in the General Record of Employees. In light of the aforementioned, we aim to identify if the labor inspectors have effective means of identifying the cases of undeclared labor when natural persons are working remotely. Through this paper, in the first section, we discuss the legal background both at the national as well as at the international level, in order to shed light on the concept of undeclared work. The following two sections will be dedicated to analysing if the inspection has any perspective of being an effective mean of identifying the situations of undeclared labor. Finally, several directions of action are contoured – as de lege ferenda proposals – so as to tackle the issue of undeclared work.*

Keywords: *undeclared remote work; labor inspection; telework; work from home; digitalization;*

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1. Introductory notes

The digitalization phenomenon of those activities which are an expression of the constitutional right to labor will be present even after the pandemic will come to an end and shall become persistent over time, integrating itself in the normality of the labor relations. The fourth industrial revolution is forcing a paradigmatical shift of the traditional labor relation model. As the latter is the result of supported efforts, at the national and at the international level, accomplished over several decades, the states have to sustain the process of adapting the labor law legislation, bearing in mind the necessity that the workers' protection does not become illusory.

The “democratic deficit”¹ implied by the labor relation unveils its extreme form in those situations when such a relation is not formalized, and the acute vulnerability

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¹ See, Guy Davidov, *A Purposive Approach to Labor Law*, Oxford University Press, 2016, p. 35; Raluca Dimitriu, *Reclassification of a civil contract as having the legal nature of an employment contract* (original title: Recalificarea unui contract civil ca având natura juridică a unui contract de muncă), *The Law Review* no. 8/2018, p. 63.

of the worker requires an adequate legislative frame and a solid, prompt and efficient intervention of the authorities.

In addition to this, the development of the digital globalized economy has led to the proliferation of more and more complex and heterogenous forms of labor relations. Therefore, the risk of wrongly classifying or disguising the labor relations has increased accordingly.

Particularly, working remotely, by natural persons who have digital skills, through specialized electronic platforms, has become usual. The workers, in the aforementioned situation, are frequently qualified as “partners”, “independent contractors”, “associates”, “experts”, “purveyors”, *etc.* Therefore, the digital workers reveal varied degrees of dependency and vulnerability².

Regarding the efforts of adapting the European legal rules to the changes of the labor market, one has to underline the adoption of the Directive 2019/1152 on transparent and predictable working conditions in the European Union³, which will replace the Directive 91/553/EEC on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship⁴. The Directive 2019/1152 will also be applicable to digital workers, guaranteeing, according to the preamble and the purposes of this normative act, several minimal rights placed under the light of an adequate and effective judicial protection.

2. Considerations on the concept of “non-declared labor”

Undeclared labor, also commonly known as “non-taxed labor”⁵, stands for a concept showing distinct contours, subject to the government we refer to, and the

² For details regarding new forms of employment (*job sharing, labor pooling, interim management, personnel leasing, “zero-hour” contracts, “on-request” contracts*, and others), see Raluca Dimitriu, *Labor Law. Anxieties of the present* (original title: Dreptul muncii. Anxietăți ale prezentului), Rentrop&Straton Publishing House, Bucharest, 2016, pp. 125-140.

³ Directive 2019/1152 of the European Parliament and of the Council on transparent and predictable working conditions in the European Union, as published in the Official Journal of the European Union L 186 on 11th of July 2019, pp. 105-121. Member states have to take the necessary measures to comply with the Directive by 1st of August 2022.

⁴ Directive 91/553/EEC of the Council on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship, as published in the Official Journal of the European Communities L 288 on 18th of October 1991.

⁵ See, Felicia Roșioru, *Individual Labor Law* (original title: Dreptul individual al muncii), Universul Juridic Publishing House, Bucharest, 2017, p. 273; Monica Gheorghe, *Considerations related to carrying out the activity in a dissimulated manner – cases, causes, effects, proposals* (original title: Considerații relative la prestarea disimulată a muncii – situații, cauze, efecte, propuneri), in *The Law Review*, No. 12/2013, pp. 222-225; Monica Gheorghe, *Unlawful Labor and its Consequences* (original title: Munca nedeclarată și consecințele acesteia), *The Law Review of the Faculty of Law, Oradea*, No. 1/2008, pp. 100-106. Undeclared labor does not manifest the entirety of its consequences in the area of labor law. Its effects are observable also, at least, in the field of tax law. By breaching the provisions with a protective role in the area of labor law, one can observe the domino effect, as this conduct has consequences in the field of tax law. The policy to tackle this phenomenon is grounded on at least two pillars: the protection of natural persons, as employees, as well as the need to ensure a coherent social security system.

latter's policy in terms of tackling such phenomenon, which is more and more present nowadays⁶. Given that it does not benefit of an express regulation by means of legal instruments of mandatory power at international level, we can refer to the definition found at the European level within the Communication of the Commission to the Council, the European Parliament, the European Economic and Social Committee, and the Regions Committee – *Stepping up the fight against undeclared work*, and that is “any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States”⁷. We notice the laxity of this definition⁸, as well as the fact that it falls under the member states' duty to shape up at internal level, their own line of action regarding the premises that may be classified within the range of such undeclared labor.

If we look at regulations at domestic level, we find that in the Romanian Law, undeclared labor has been expressly regulated by the provisions of the Government Emergency Ordinance No. 53/2017⁹, with the latter's amendments¹⁰, brought by virtue of Law No. 88/2018¹¹. Thus, within Art. 15¹ of the Labor Code, in one exhaustive enumeration, there are listed the premises when labor provided by any given natural person to an employer's benefit may be classified within the range of undeclared labor.

The first case which is subject to our exegesis gets its substance from the first premise of Art. 15¹ of the Labor Code and refers to “receiving an individual to provide labor, without concluding the individual labor contract in written form, at the latest on the day prior to him commencing his activity”¹². Subsumed to this first

⁶ See (although the statistics capture only the dynamics of this phenomenon before the COVID-19 pandemic), *The Report. Undeclared work in the European Union*, Special Eurobarometer 498, February 2020, available at <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/89504>, accessed on February 23rd 2021.

⁷ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Stepping up the fight against undeclared work*, COM(2007) 628 final, Brussels, 24 October 2007, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0628&from=EN>, accessed on February 23rd 2021. This definition is still valid, being used in the Decision (EU) 2016/344 of the European Parliament and of the Council of 9th of March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work, published in the Official Journal of the European Union L 65/12, on 11th of March 2016.

⁸ It has been pointed that the European definition is phrased, primarily, from a tax law perspective (see, Ion Traian Ștefănescu, *Theoretical and practical treatise of Labor law* (original title: *Tratat teoretic și practic de drept al muncii*), 4th edition revised and updated, Universul Juridic Publishing House, Bucharest, 2017, p. 286).

⁹ Government Emergency Ordinance no. 53/2017 amending and supplementing Law no. 53/2003 – Labor Code, as published in the Official Journal of Romania no. 644 as of August 7th 2017.

¹⁰ The amendments brought to article 15¹ of the Labor Code had the purpose to eliminate the logical incongruencies and to ensure the legal correctness of the regulation.

¹¹ Law no. 88/2018 regarding the approval of the Government Emergency Ordinance no. 53/2017 amending and supplementing Law no. 53/2003 – Labor Code, as published in the Official Journal of Romania no. 315 as of April 10th 2018.

¹² Statistically, the activity reports of the Labor Inspectorate prove that this is the most frequently encountered form of undeclared work. See, The Labor Inspection, *Activity Report for 2019*, available at <https://www.inspectiamuncii.ro/documents/66402/187655/Raport+de+activitate+al+Inspectiei+Muncii+pentru+anul+2019.pdf/63b1590f-c84e-478e-930a-27f4a2f2c6cf>, accessed on March 5th 2021.

disposition, one may discover two premises, both of practical relevance for what undeclared labor represents.

On the one hand, letter a) of art. 15¹ of the Labor Code, qualifies as undeclared labor, any employer's act of receiving an employee to provide labor, while breaching upon the imperative rule established under art. 16 paragraph (1) of the Labor Code. In effect, the legal provision integrates the case when there is no written contract to substantiate the legal relation between the parties, while it shows the necessary physiognomy key elements, as required, in order to be qualified as legal labor relation, grounded on an individual labor contract¹³. There is no inter-conditioning between the valid existence of the labor agreement, and the written contract substantializing the latter. This statement is sustained upon consideration of the applicability of the principle of consensualism regarding the individual labor contract¹⁴. Actually, art. 16 paragraph 1 of the Labor Code establishes only the obligation to fulfill a formality required *ad probationem*¹⁵. This way, the existence of an agreement as *negotium* would be sustained in terms of evidence, by the existence of proof, under the form of a written contract.

On the other hand, the legal provision may also be construed from another perspective, when, despite the fact that the legal relation between the parties shows the specific features of a work relation based on an individual labor contract, such relation is qualified (due to various different reasons, be them even tax related

¹³ The additional stipulation regarding the conclusion of the individual labor agreement shows relevance, upon consideration of the extensive meaning of the concept of labor relation, this being a social relation regulated by labor law normative standards, or by administrative or constitutional law normative standards. Of all these categories of *legal labor relations*, the ones based on individual labor agreements stand for the subject matter of labor law, Ion Traian Ștefănescu (coordinator), *Labor Law Dictionary* (original title: Dicționar de drept al muncii), Universul Juridic Publishing House, Bucharest, 2014, p. 292.

¹⁴ One has waived the solemn form of the individual labor agreement upon the amendment of art. 16 of the Labor Code, by virtue of Law no. 88/2018. It seems that the establishment of *ad validitatem* form of the individual labor agreement – with one of the declared purposes, namely that of fighting the undeclared labor phenomenon –, has failed to achieve its goal. See, point 53 of the Supreme Courts' Decision no. 37/2016 regarding the examination of the notice filed by the Court of Appeal in Iasi – Labor Litigations and Social Insurances Section, as published in the Official Journal of Romania no. 114 from February 10th 2017; Ion Traian Ștefănescu, *Theoretical and practical treatise on labor law* (original title: Tratat teoretic și practice de drept al muncii), Universul Juridic Publishing House, Bucharest, 2010, pp. 252-253, for explanations regarding the form required *ad probationem* which maintain their validity, as related to the governing legislation in force nowadays.

¹⁵ The form *ad probationem* shall be imperatively complied with. However, it has been pointed out that breaching upon the obligation does not prejudice in any way the validity of the legal agreement, yet it leads to the impossibility of proving such legal agreement by another means of evidence, Carmen Tamara Ungureanu, Ionuț-Alexandru Toader, *Civil Law. General Part. Persons* (original title: Drept civil. Partea generală. Persoanele), 4th Edition, revised and adjusted, Hamangiu Publishing House, Bucharest, 2019, p. 232. See also, Gabriel Boroi, Carla Alexandra Angheliescu, *Civil Law course. General Part* (original title: Curs de drept civil. Partea generală), 2nd Edition, revised and adjusted, Hamangiu Publishing House, Bucharest, 2012, p. 182; Ion Traian Ștefănescu, *op. cit.*, p. 280; Alexandru Țiclea (coord.), *Legislative, jurisprudential and doctrine-related news regarding labor relations* (original title: Noutăți legislative, jurisprudențiale și doctrinare privind raporturile de muncă), Universul Juridic Publishing House, Bucharest, 2018, p. 8; Alexandru Țiclea, Laura Georgescu, *Labor Law* (original title: Dreptul muncii), 6th Edition, revised and adjusted, Universul Juridic Publishing House, Bucharest, 2019, p. 285; Constantin Hamangiu, Alexandru Băicoianu, I. Rosetti Bălănescu, *Romanian Civil Law Treatise* (original title: Tratat de drept civil român), Volume I, All Publishing House, Bucharest, 1996, p. 95.

reasons), within the range of a distinct branch of the Law, such as the Civil Law. In the legal literature¹⁶, a distinction has been made between the case when the parties would erroneously name the agreement and the case when they would use simulation, however, the consequence would be the same, namely, the contract reclassification. We find that we would still be in the same situation as the one stipulated under art. 15¹ letter a) of the Labor Code, given that one receives an individual to provide labor, while breaching upon the legal obligation regarding the conclusion in written form of the relevant individual labor contract (taking into account also the clauses of the individual labor contract as established by Order no. 64/2003¹⁷).

A second case that we subject to our analysis is the one regulated under art 15¹ letter b) of the Labor Code. From a hands-on perspective, its foundation is represented by the conclusion of an individual labor agreement. As compared to the previous situation, described under letter a) of Art. 15¹ of the Labor Code, this time we find ourselves at a higher “qualitative” level, since we have gone beyond the stage where there was no written agreement – namely the individual labor contract. In this case, formalities additionally required by the Law are not fulfilled, as they concern the registration of the elements of the agreement in the general record of employees.

Based on the corroboration of paragraphs (1) and (2) of art. 16 of the Labor Code, considered also in light of art. 15¹ letters a) and b) of the same normative act, as related to the time of the agreement conclusion, we notice that getting out of the contravention-illegal state can be accomplished by fulfilling two cumulative obligations, both falling under the employer’s duty.

We do not subject to our analysis letters c) and d) of art. 15¹ of the Labor Code, however we draw attention on a distinct case, quite relevant for our study, namely the premise where, subsequent to one’s having fulfilled the obligations stipulated under art. 16, paragraphs (1) and paragraph (2) of the Labor Code, the individual labor agreement, within the process of it being performed, shall undergo various amendments becoming a home-based labor agreement or one such agreement including the telework specific clause¹⁸. No such scenario can be classified within the undeclared labor range, given the following grounds:

(a) Art. 15¹ letter b) of the Labor Code refers to “receiving an individual to provide labor (...)” and such reference is made in terms of the “the day prior to him

¹⁶ See, Raluca Dimitriu, *Reclassification...*, pp. 65-66.

¹⁷ Order no. 64/2003 regarding the approval of the framework for the individual labor contract, as published in the Official Journal of Romania no. 139 as of March 4th 2003.

¹⁸ See, *The Guide concerning the carrying out the activity in the regime of work from home/telework/individualized labor schedule* (original title: *Ghidul privind desfășurarea activității în regim de muncă la domiciliu/ telemuncă/ program individualizat de muncă*), developed by the Labor Inspection, November 6th 2020, available at https://www.inspectiamuncii.ro/documents/66402/201782/GHID+PRIVIND+MUNCA+LA+DOMICILIU+_I+TEL+EMUNCA_Legislatie_OperareRevisal_Final3.pdf/9e271cd3-1fd7-43bd-ab37-03648dee1740, accessed on February 23rd 2021.

commencing his activity”. In the previously described situation, the person continues to work while essential elements of the contract are amended.

(b) If we consider the treatment from a sanctioning perspective, then the failure of the employer to fulfil the obligation to register the amendment in the general record of employees, shall trigger the contraventional liability by virtue of art. 8 of Government Decision no. 905/2017¹⁹. Out of the due corroboration of art. 3 letter e) with art. 4 paragraph (2) and art. 8 paragraph (2) letter e) of the previously mentioned normative act, it follows that the employer’s contraventional liability shall be governed by normative standards which are not regulated by the Labor Code in terms of undeclared work.

Based on the previously shaped cases of undeclared labor, it is our aim that in the following section we shall analyse the method as per which, from a legal perspective, the labor inspectors may act within the process of conducting their control, in view of identifying such undeclared labor incidents. We shall consider the particularities triggered by the shifting, especially given the pandemic background, to the provision of labor either at the employee’s home residence, or in any distinct place agreed with the employer, different from the place of work mentioned under art. 16¹ paragraph (1) of the Labor Code²⁰. Within the process of shaping up this last solution, we consider the fact that labor provision under telework regime entails that, within the relevant agreement, one shall explicitly mention the “place/places of such telework activity, *as agreed upon by the parties* [emphasis added]”²¹. We take into account also the obligation that the teleworker shall fulfill his specific attributions outside the place of work, as organized by the employer²², at least for one day per month.

3. Searching for... Godot?

Due to many reasons which are primarily related to protecting people’s health, the pandemic context has triggered the increasing use of particular legal figures,

¹⁹ The Government Decision no. 905/2017 regarding the General Registry of Employees, as published in the Official Journal of Romania no. 1005 as of December 19th 2017.

²⁰ Art. 16¹ paragraph (1) of the Labor Code: *Within the meaning of art. 16 paragraph (4), a place of work stands for the place where the employee conducts the latter’s business activity, being located within the area provided by the employer, either natural person or legal entity, at the latter’s main head office or other branches, representative offices, agencies, or work facilities belonging to such employer.*

²¹ Art. 5 paragraph (2) letter c) of the Law no. 81/2018 regarding telework, as published in the Official Journal of Romania no. 296 as of April 2nd 2018. There is an initiative to repeal this provision, taking into account point 3 of the Legislative proposal to modify Law no. 81/2018 regarding telework (L99/2021), available at <https://www.senat.ro/legis/PDF/2021/21L099FG.pdf>, accessed on May 5th 2021.

²² Art. 2 letter a) of the Law no. 81/2018. See, Laura Georgescu, *Solutions with respect to employment relations in the context of their digitalization and flexibilization* (original title: Soluții privind desfășurarea raporturilor de muncă în contextul digitalizării și flexibilizării lor), Romanian Labor Law Review no. 3/2020, p. 29. There is an initiative to eliminate the reference “at least one day per month” from the aforementioned article, taking into account point 1 of the Legislative proposal to modify Law no. 81/2018 regarding telework (L99/2021).

namely those involving a high degree of flexibility in connection with the place where labor is to be provided²³. To this end, we focus on the home-based labor agreement and the one regarding telework²⁴. Given this particular trend, we aim at identifying how an inspection is to be conducted, as well as how one may find any undeclared labor incidents given that there are such legal labor relations that are run under these particular forms.

3.1. „We have lost our rights? (...) We got rid of them.”²⁵

The first case to be examined regards providing labor from the worker's home residence or under telework regime, in the absence of concluding an individual labor agreement in a written form. We are focusing on the situation when the legal relation exists and is valid as *negotium juris*, however it is not doubled by the existence of a written contract – as *instrumentum* –, whose drawing up is required *ad probationem*.

We are trying to find out which are the limits of the control conducted by labor inspectors – regarded from the perspective of the place of work – and if there are any effective means to identify undeclared labor incidents, when labor is provided in a distinct place than the one organized by the employer.

If there is no individual labor contract concluded in written form, and such labor is provided from home or from a distinct place, agreed upon with the employer²⁶,

²³ One such trend also derives out of the regulations adopted as a result of COVID-19 pandemic, and the law enforcement agent encourages, to the extent permitted by labor specificity, the conclusion or amendment of labor agreements in view of providing labor from home or under telework regime. In fact, if we consider the provisions of art. 17 of Law no. 55/2020, we find that, during the state of alert, the employer is permitted to decide unilaterally that the employee will work from home, in one of the previously described forms. In terms of the previously mentioned legal provision, one should provide two nuances. First of all, we notice that the Law established an exception from the rule regarding the amendment of the individual labor agreement by parties' agreement. Secondly, we find that the premise regarding the application of the legal provision is represented by the preliminary existence of an individual labor agreement. To this end, employers "order for work to be carried out under home-based or telework regime". Employer's unilateral decision is likely to substantiate the amendment of one of the essential clauses of the relevant agreement.

²⁴ Being duly classified by the legal literature within the range of labor agreements with particular elements, the home-based labor contract and the telework based labor contract mean, *inter alia*, the conducting of labor outside the place of work organized by the relevant employer. We hereby add, however, that the essence of telework is represented by the provision of labor by using information technology. See Alexandru Țiclea, *Telework – cutting-edge and flexible method of conducting employee's activity* (original title: Telemunca – modalitate modernă și flexibilă de desfășurare a activității salariatului), *The Law Review*, no. 11/2018, pp. 181-194; Brîndușa Teleoaca Vartolomei, *Regulating telework by virtue of Law no. 81/2018* (original title: Reglementarea activității de telemuncă prin Legea nr. 81/2018), *Romanian Labor Law Review*, no. 2/2018, pp. 45-52; Laura Georgescu, *Telework – news elements* (original title: Telemunca – elemente de noutate), *Romanian Labor Law Review* no. 2/2018, pp. 105-106; Laura Georgescu, *Solutions...*, pp. 29-30; Ion Traian Ștefănescu, *Theoretical and practical...*, pp. 354-359; Luminița Dima, *Labor Law* (original title: Dreptul muncii), C.H. Beck Publishing House, Bucharest, 2017, p. 57; Felicia Roșioru, *Individual Labor Law* (original title: Dreptul individual al muncii. Curs universitar), Universul Juridic Publishing House, Bucharest, 2017, pp. 332-333, 453-454; Septimiu Panainte, *Individual Labor Law* (original title: Dreptul individual al muncii), Hamangiu Publishing House, Bucharest, 2017, pp. 90-91.

²⁵ See, Samuel Beckett, *Waiting for Godot*, Faber and Faber Limited, London, 1965, p. 19.

²⁶ According to art. 5 paragraph (2) letter c) of the Law no. 81/2018.

under telework regime, we find there is an impediment tending to become insurmountable in terms of identifying the existence of any such legal labor relation. Labor inspectors are unable to perform control activities in any location where there would be clues that a natural person is working without the conclusion in writing of an individual labor contract.

To this end, from the perspective of the place of work subject to control, we can rely on the provisions of Law no. 108/1999²⁷ and of Government Decision no. 488/2017²⁸. Thus, by virtue of art. 19 letter a) of Law no. 108/1999 one sets forth the right of labor inspectors of “having free, constant and without prior notice access to the premises of any given employer and to any other place of work, as organized by any natural persons or legal entities”. The contours of the last thesis of the previously mentioned disposition are likely to clarify the questions we have started from. We find that within the range of organized places of work, one may not include the employee’s home residence, or any other distinct location where the activity is carried out (under telework regime)²⁹.

We bring forward a first argument, of semantical nature. According to the dictionary, ‘to organize’ means “(...) to establish and coordinate the technical, economic and administrative means, in such way as to enable the optimum performance of a given process”³⁰. If we are to translate these facts to the legal disposition under analysis, we find that such places of work, organized by natural persons or legal entities, do not regard the employee’s home residence or, *exempli gratia*, any coffee shop where the activity is carried out by an employee working under telework regime. In what concerns such particular spaces, the employer does not hold the prerogatives so as to exercise any form of control whatsoever, in view of organizing them.

A second element of proof derives out of art. 19 letter a)³¹ of Law no. 108/1999 (in the form presented by the article prior to amendment). If we try to do an exegetic

²⁷ Law no. 108/1999 for the establishment and organization of Labor Inspection, with the latter's subsequent amendments and adjustments, as published in the Official Journal of Romania no. 290 as of May 3rd 2012.

²⁸ The Government Decision no. 488/2017 regarding the approval of the Regulation for the organization and functioning of the Labor Inspectorate, as published in the Official Journal of Romania no. 594 as of July 25th 2017.

²⁹ We exclude from the range of the mention regarding any other place, the case when the employee conducting the activity under telework regime might find himself at the employer’s head office, or in any other place of work organized by the employer on one or several days within a given month.

³⁰ The Explanatory Dictionary of Romanian Language (original title: Dicționarul Explicativ al Limbii Române – DEX), 2nd Edition, Romanian Academy, Universul Enciclopedic Publishing House, Bucharest, 1998, p. 727.

³¹ In its form prior to amendment - by Law no. 51/2012 on the amendment of Law no. 108/1999 for Labor Inspection establishment and operation (as published in the Official Journal of Romania no. 182 as of March 21st 2012) –, art. 19 letter a) set forth the labor inspectors’ right “to have free, constant and without prior notice access at the office of the legal entity and in any other place of work organized by the latter”. The Constitutional Court has denied the exceptions of non-constitutionality regarding the aforementioned article. See the Constitutional Court Decision no. 296 from June 9th 2005, as published in the Official Journal of Romania no. 724 from August 10th 2005; Constitutional Court Decision no. 1000 from July 8th 2010, published in the Official Journal of Romania no. 594 from August 23rd 2010. See

exercise, we find that the form under which we currently find the same legal disposition does not represent a change of view on the part of the law enforcement agent. It is not intended to expand the range of places which may be subject to control. The reason of bringing such amendment seems to have been determined by the need to remedy a gap, since, previously, the concept of employer was assimilated to the one of legal entity. Nowadays, any reference to both the natural person and the legal entity is likely to align the provisions in the Labor Inspection field, with the ones stipulated by the Labor Code.

To the same end, we also take into account the legal provisions by virtue of which the labor inspectors are allowed to conduct their control at the location/place where teleworkers carry out their activity. We hereby focus on art. 9 paragraphs (2) and (3)³² of Law no. 81/2018. If the law enforcement agent's intent had been that of art. 19 letter a) of Law no. 108/1999 shall benefit of extensive interpretation, art. 9 of Law no. 81/2018 would have no longer been necessary.

We also find it opportune to examine, from the perspective of the European Convention on Human Rights, the variable geometry presented by the premise situation we have described. We will take into account the physiognomy of the right to respect for private and family life, as regulated under art. 8 of the European Convention on Human Rights. Acknowledged as a conditional right in the doctrine³³, the right to respect for private and family life may be limited, if four conditions are met cumulatively³⁴: (1) such limitation shall be in accordance with the law, (2) such limitation is aimed at legitimate purposes, (3) such limitation is necessary in a democratic society, and (4) such limitation is proportional with the aimed goal³⁵.

Any control at the employee's home residence would first of all entail the existence of a legal ground based on which it is to be carried out. Taking into account that we have considered that art. 19 letter a) of Law no. 108/1999 does not include such premise, it would be necessary for the law enforcement agent to intervene. The

also, Dan Țop, *Labor Law Treatise. Doctrine and Jurisprudence* (original title: *Tratat de dreptul muncii. Doctrină și jurisprudență*), 2nd Edition revised and adjusted, Bibliotheca Publishing House, Târgoviște, 2015, p. 585.

³² Art. 9 paragraphs (2) and (3) of Law no. 81/2018: "(2) In order to check the due application and compliance with the legal requirements in the labor security, the health field as well as in the labor relations field, representatives of competent authorities shall have access to the places where one conducts telework activity, under the conditions stipulated within Law no. 108/1999 for Labor Inspection establishment and operation, as republished, with the latter's subsequent amendments. (3) In the event the place of conducting the teleworker's activity shall be the latter's home residence address, the access stipulated under paragraphs (1) and (2) shall only be granted following the prior notification of the teleworker and subject to getting the latter's consent to this end".

³³ See, Corneliu Bîrsan, *The European Convention on Human Rights. Comments on Articles* (original title: *Convenția europeană a drepturilor omului. Comentariu pe articole*), 2nd edition, C.H. Beck Publishing House, Bucharest, 2010, pp. 693 and the following.

³⁴ These conditions stem from the interpretation of article 8 paragraph (2) of the European Convention on Human Rights.

³⁵ Although, the doctrine pleads for analysing this condition separately from the others, it is examined by the European Court of Human Rights when the third condition is interpreted – *to be necessary in a democratic society*. See, William A. Schabas, *The European Convention on Human Rights. A commentary*, Oxford University Press, 2015, p. 406.

legislation would have to be amended so as to expressly establish the right of labor Inspectors to conduct the control at such a location. The analysis will take into account two directions, bearing in mind what we have already established regarding the telework regulation.

If in terms of the latter there are already several express provisions rendering legal effect to labor inspectors' right to perform the inspection at the employee's home residence, the solution is quite different in the case of home-based labor agreements. In fact, we find that the rule established under art. 9 paragraph (3) of Law no. 81/2018 cannot be extended to cover the home-based labor agreements. In line with art. 10 of the Civil Code, law analogy is forbidden if the legal provision which is to be thus enforced would include any restriction of the exercise of legal rights³⁶. Given that art. 9 paragraph (3) of Law no. 81/2018 expressly regulates such a situation, it would follow that the same cannot be applied for the event when labor is provided from the employee's home residence by virtue of one given home-based labor contract³⁷.

The second condition required under art. 8 paragraph (2) of the European Convention of Human Rights – the restraining should aim at a legitimate purpose – would be easier to be fulfilled given the lax definition of one such legitimate purpose. This type of purpose includes “(...) the economic well-being of the country, (...) protecting other individuals' rights and freedoms”. The need to protect an individual's rights, metaphorically perceived as “keystone” within the relevant architecture of regulating labor relations, might justify a certain interference (of course, at all times subject to also meeting the rest of the conditions). Moreover, we cannot deny the economic facts. *De plano*, the legal labor relation is irradiated and shows interconnections with tax – related facts, especially from the perspective of the obligation to pay taxes and contributions.

However, it is the last of these conditions which may trigger the most delicate issues. For an interference to be necessary in a democratic society, the Court reviews if it meets a certain imperative social need and if there is any proportionality between such restrain and the purpose being aimed at. This solution has been expressly stated in paragraph 62 of the European Court of Human Rights decision in the case *Halabi v. France*³⁸. We find that in order not to breach upon the proportionality requirement, regulating an interference should be accompanied by sufficiently serious guarantees so as to prevent any acts of abuse.

The Court underlines a distinction between the guarantees one has to bring if the residence would be subject to searching of premises and seizures, compared to the situation where only a mere inspection takes place. According to the case-law “De l’avis de la Cour, il y a certes lieu de distinguer, de par leur nature même, les

³⁶ We justify the application of article 10 of the Civil Code by reference to article 278 paragraph (1) of the Labor Code.

³⁷ We would, thus find ourselves in a situation where the employee's individual right to work were to abide by both the particularities in terms of telework, and by the ones regarding home-based labor. To this end, Alexandru Țiclea, *Telework...*, p. 192.

³⁸ Decision ruled on May 16th 2019, case *Halabi v. France*, application no. 66554/14.

visites effectuées par les agents de l'urbanisme d'autres visites domiciliaires, telles celles entreprises par exemple, par les douanes, la direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF), ou l'administration fiscale qui peuvent conduire à saisir de nombreux documents, données ou objets"³⁹, and „Ainsi qu'elle l'a déjà relevé (paragraphe 55 ci-dessus), elle considère que *ce droit de visite et de communication constitue une ingérence moins importante que celle résultant de l'intervention d'autres agents de l'administration disposant du pouvoir de fouiller et de saisir des documents* [emphasis added] et des objets. Aussi, si la Cour peut s'inspirer des principes dégagés en matière de perquisition et de saisie, elle estime que ces critères relativement stricts, établis et suivis dans ce contexte spécifique, ne sont pas applicables en tant que tels aux contrôles comme celui en cause dans le cas d'espèce qui a trait à une visite ne donnant pas lieu à un pouvoir de contrainte.”⁴⁰

The previously presented points, which show relevance for the inspection performed by labor inspectors, lead to the conclusion that it would be necessary to provide guarantees against the arbitrary, even in the case of a mere inspection. In the case of *Halabi v. France*, when the French authorities in the urbanism field have carried out the search of premises, by getting inside the property without having the owner's consent, it has been found that there had been a breach upon an individual's right to privacy.

To this end, the analysis has been carried out in stages, and the Court has checked: if there had been any authorization from any given court so that the inspection could be carried out; if the plaintiff had been able to oppose effectively, without suffering any legal consequences, against the entering of his residence by the individuals holding due competence to conduct such control⁴¹. It seems that the

³⁹ See paragraph 55 of the European Court of Human Rights decision in the case *Halabi v. France*. For the case when tax inspectors searched the residential premises used by a natural person, the Court considered that sufficient guarantees exist when “(...) a judicial warrant which is issued by the judge after verification of the evidence lodged in support of the application; furthermore, the entire search and seizure procedure has been placed under the authority and supervision of a judge, who appoints a senior police officer to be present during the search and to report back to him or her, and who may at any time attend the premises in person and order the search to be suspended or halted”. See, the European Court of Human Rights decision ruled on January 8th 2002, in the case of *Keslassy v. France*, application no. 51578/99. In another case, when the competition authorities searched the applicants' place of business, the European Court of Human Rights considered that there are sufficiently serious guarantees when “(...) a judicial warrant which is issued by the judge after verification of the evidence lodged in support of the application; furthermore, the entire search and seizure procedure has been placed under the authority and supervision of a judge, who appoints a senior police officer to be present during the search and to report back to him or her, and who may at any time attend the premises in person and order the search to be suspended or halted. In addition, the person whose premises are searched had the possibility of contesting, within two months, the procedure by which the search and seizure was carried out, in front of the judge who authorized it”. See, the European Court of Human Rights decision ruled on December 21st 2010, in the case of *Société Canal Plus and others v. France*, application no. 29408/08.

⁴⁰ See, paragraph 65 of the European Court of Human Rights decision in the case of *Halabi v. France*.

⁴¹ See also the International Labor Organization, *Labor Inspection and Undeclared Work in the EU*, Working Document no. 29, EC Project GLO/12/24/EEC, Labor Inspection Strategies for combatting undeclared work in Europe, 2013, pp. 14, 30-31, available on-line at https://www.ilo.org/public/libdoc/ilo/2013/113B09_163_engl.pdf, accessed on March 4th 2021.

Contracting States have a margin of appreciation regarding this condition, since any event requiring an emergency action, given that evidence might be destroyed, would justify an interference of the authorities in the absence of authorization or of the home owner's consent⁴². However, even if none of the previously described conditions are met, the Court will check if the individual claiming the breach of his right to respect his home has had the actual opportunity to address a court after the inspection. The European Court of Human Rights will examine if such a court was able to rule in terms of the legality and necessity of such a measure⁴³.

We notice, therefore, that the practice is to check if there are sufficient guarantees against arbitrary measures taken by the authorities. The Court is very rigorous, stating that, in principle, "If individuals are to be protected from arbitrary interference by the authorities with the rights guaranteed under Article 8, a legal framework and very strict limits on such powers are called for"⁴⁴.

Regarding art. 9 paragraph (3) of Law no. 81/2018, we observe that it would be in line with the European Court of Human Rights standards. The establishment of guarantees, such as the notice and request for prior agreement of the teleworker – for conducting an inspection at the latter's home residence –, would ensure compliance with the Conventions' dispositions.

Yet, despite all of the nuances, we find that the previously described structure is relevant only if there is an individual labor agreement whose existence is well known by labor inspectors. From a logical perspective, one should identify the fact that labor is provided by virtue of a home-based labor agreement or, even under telework regime, so that, afterwards, the inspection shall take place according to the legal provisions in force.

When labor inspectors conduct the inspection in order to identify if a natural person is working in the absence of concluding an individual labor contract in written form, the premise is represented by the fact that they do not know if such an employee exists. Getting back to the case when the law would allow for conducting an inspection at the employee's home residence, for instance, we would find ourselves in a higher qualitative scenario, where labor inspectors would already be aware of the existence of a given employee providing labor under such conditions.

⁴² See paragraph 67 of the European Court of Human Rights decision in the case *Halabi v. France*, of which we hereby quote: "Elle note qu'en matière d'urbanisme, le risque de dépérissement des preuves d'une infraction est susceptible d'être, comme en l'espèce, très limité, pour ne pas dire inexistant, et qu'il ne peut donc justifier une ingérence dans un domicile sans l'assentiment de son occupant ou, à défaut, sans l'autorisation d'une autorité judiciaire". In one report of the International Labor Organization, it is stipulated that one might enter a certain residence, without authorization and without consent, if the employee would work by using explosives. See, International Labor Organization, *Working from home. From invisibility to decent work*, Geneva, 2021, p. 214, available on-line at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_765806.pdf, accessed on March 5th 2021.

⁴³ See paragraphs 68 and 69 of the European Court of Human Rights decision in the case *Halabi v. France*, application no. 66554/14.

⁴⁴ See, paragraph 45 of the European Court of Human Rights decision, ruled on December 16th 1997, in the case *Camenzind v. Switzerland*, application no. 136/1996/755/954.

Any interpretation to the contrary – that it would show no difference if one knew about the existence of the individual labor agreement – would lead to the conclusion that labor inspectors are allowed to conduct the inspection in any location where there may be clues that a natural person provides telework or home-based labor. Such a solution would be contrary to the premise we have started from, namely that the labor inspectors cannot conduct the inspection in any place.

The previously specified conditions bring us back to the initial question regarding how can the labor inspectors discover that telework or home-based labor is, in fact, undeclared labor, according to article 15¹ letter a) of the Labor Code. From a hands-on perspective, we find that the identification of labor provision in the absence of concluding an individual labor agreement would be achievable, first of all, as a result of labor inspectors being notified by the very employee. Such case would be possible if the relations between the parties to the labor contract would deteriorate, and the reaction would be triggered, for instance, by the employer's denial of paying the wages, or of acknowledging other rights inherent to the employee's status.

Secondly, the inspectors may receive notices from third parties regarding the provision of labor by an employee at the latter's home or under telework regime, in the absence of concluding the agreement in a written form. Inspectors would not be able to conduct a direct inspection at the employee's/teleworker's home residence or place of work (on the grounds above described). The control action shall target the employer, with less chances to identify any cases of undeclared labor. Eventually, clues may be gathered from filling in the identification sheet by those individuals who are present at the place under inspection. We take into account that in those identification sheets there is a section stating "I work together with the following individuals (...)". It might also be possible for the very employee to be present at the place of work organized by the employer⁴⁵ – in the case of telework –, and this would be an ideal situation, since it would be much easier to identify the case of undeclared labor.

In a report of the International Labor Organization, it is mentioned that "The CEACR (Committee of Experts on the Application of Conventions and Recommendations) recognized that home work is by definition difficult to monitor. The main obstacles encountered by labor inspectors are the lack of clarity of the applicable legal framework; (...) the difficulty of determining the existence of an employment relationship, and the application of privacy rules when the workplace is also the home of the worker"⁴⁶.

The findings contribute to the shaping up of a perspective on the (im)possibility of identifying the provision of labor in the absence of concluding an individual labor agreement, in a written form (when labor is provided at home or under telework regime). The existing regulations include measures applicable *ex post facto*. They

⁴⁵ Especially if we consider the fact that the teleworker might provide labor on certain days of the month, from the very place of work organized by the employer. This interpretation stems from art. 2 letter a) of Law no. 81/2018.

⁴⁶ International Labor Organization, *Working from home...*, p. 217.

are not helpful for identifying the cases of undeclared labor⁴⁷, and the amplification of such phenomenon under pandemic circumstances may lead to a very precarious position of the employee. Given the difficulty of discovering undeclared labor, the most efficient measures are those *ex ante*, namely the preventive measures. In fact, building up one coherent policy for fighting the phenomenon does not involve solely turning to repressive measures, but also associating them with preventive measures. The purpose is that of triggering one intense dissuasive effect on certain conducts that render a fragile position of the individual, from the perspective of labor relations.

3.2. „The essential doesn't change”⁴⁸

The second premise we subject to analysis is regulated within art. 15¹ letter b) of the Labor Code and it regards the case when, although one has concluded an individual labor agreement for the labor provided at home or under telework regime, the employer has failed to fulfill its obligation to register the elements of such agreement within the general record of employees.

In light of the solutions of the previously described case, the space subject to inspection would be represented by the employer's premises or the place of work organized by natural persons or legal entities.

We consider the provisions of art. 12 paragraph (1) B.b) of the Regulation on Labor Inspection organization and operation⁴⁹, which state “For the purpose of fighting any and all cases of nondeclared labor, *inspection shall be carried out at the place of work, where one shall identify the individuals providing the relevant activity, based on identification sheets, the details existing in the general record of employees (...), as well as any other documents requested by the labor inspector [emphasis added]*”.

In terms of the documents that may be requested by the labor inspectors, there may be discrepancies between what is actually requested and what the employer shall supply. Failure to meet the legal requirements regarding the registration of elements of the individual labor agreement in the general record of employees might trigger the employer's avoidance to supply the contract or not to show it at all to the authorities.

Given that in the case of the home-based labor agreements the employee provides labor from his home residence, it would be difficult to find such a case of undeclared labor, especially if the employer would hide the existence of any written contract. This is also relevant for the provision of labor under telework regime. However, in this latter case, the employee might also provide labor from the place of work organized by his employer, and any eventual inspection during that time would actually facilitate the identification of any undeclared labor.

⁴⁷ We consider the particular premise of providing labor from home or under telework regime.

⁴⁸ See, Samuel Beckett, *op. cit.*, p. 21.

⁴⁹ The regulation has been approved by Government Decision no. 488/2017, as published in the Official Journal of Romania no. 594 from July 25th 2017.

Further clues may be supplied by filling in the identification sheets by the individuals “who work”⁵⁰ at the location subject to control. We focus our attention on one of the sections of the sheet, stating “I work together with the following individuals (...)”.

Regarding the elements registered in the general record of employees, in the event that such records do not exist, it would be reasonable and natural for labor inspectors to find the absence of such data. And yet, such finding shall be inseparably connected *a priori* with the idea of being aware of the existence of an individual labor agreement concluded in written form, which brings us back to the premise we have underlined in the beginning.

Getting back to the issue of conducting an inspection at the employee’s residence address, as such employee provides labor under telework regime, we find that the regulation under art. 9 paragraph (3) of Law no. 81 / 2018 proves to have limited utility. And this, if we consider the fact that the premise is represented by the fact that the labor inspectors know that an individual labor agreement exists. If labor inspectors are already aware of the existence of such an agreement, they shall find it easy to conduct the necessary checking within the general record of employees and to find any infringement of the obligation established under employer’s duty, according to art. 16 paragraph (2) of the Labor Code. The legal disposition – art. 9 paragraph (3) of Law no. 81/2018 – seems to show utility especially *exempli gratia* for checking the compliance with working hours or with the conditions under which labor is provided by the teleworker.

Just like in the previously analysed scenario, this time also we see that transition towards home-based labor or telework is likely to impede the conducting of any actual inspection and the finding of cases of labor being provided “in the absence of any legal forms”. This brings us back to what should stand for the primordial goal, namely the implementation of prophylactic measures.

4. “But let us persevere in what we have resolved, before we forget”⁵¹

It is a priority to establish consolidated mechanisms of ensuring the compliance with labor law legislation. From this perspective, generally, the solutions may concern the establishment of legal presumptions and/or administrative procedures. In line with the previous solutions, contraventional sanctions shall be imposed if the obligation to provide the necessary information will be breached by the employer⁵².

⁵⁰ Art. 12, point B letter c) of the Regulation on Labor Inspection organization and operation.

⁵¹ See, Samuel Beckett, *op. cit.*, p. 69.

⁵² Such solutions are taken into account by the legal rules adopted by the European Union (*exempli gratia* paragraph 39 of the Preamble of the Directive 2019/1152 on transparent and predictable working conditions in the European Union).

In light of the abovementioned, the legal framework in Romania nowadays can be considered at least insufficient in order to confer strength to the control activity carried out by the labor inspectors in the effort to uncover and sanction the situations when, on the basis of working remotely, the conclusion of a labor agreement is eluded.

Thus, *de lege ferenda*, we consider that a series of solutions can be adopted. They would tackle several fields and, convergently, they will allow the identification and adequate qualification of the labor relations.

1. Regarding article 7 of the Tax Code, concerning the qualification of activities as dependent/independent, in the legal literature critics have been formulated and we consider them to be pertinent.⁵³ One has to take into account the fact that the decision of the tax authorities (regarding the reclassification of a legal relation as a dependent one) is not opposable to the labor inspector (and even less to the courts). Therefore, it appears to be necessary to clarify the relationship between the reclassification of income and the reclassification of contracts, “in order to avoid the situation when a certain relation is, from a tax law perspective, a labor one but, from the perspective of labor specialized courts, it is a civil contract”⁵⁴.

In this context, regarding labor legislation, we refer to point 11 letter b) of the Recommendation no. 198/2006 concerning the employment relationship⁵⁵: For the purpose of facilitating the determination of the existence of an employment relationship, Member States should, within the framework of the national policy, provide “for a legal presumption that an employment relationship exists where one or more relevant indicators is present”.

Following this direction, we appreciate that it is necessary to regulate criteria in the labor legislation for the identification of labor relations (*largo sensu*)⁵⁶, with due regard to what is stipulated in point 13 of the Recommendation no. 198/2006, respectively:

- a) The fact that *the work*:
 - is carried out according to the instructions and under the control of another party;
 - involves the integration of the worker in the organization of the enterprise;
 - is performed solely or mainly for the benefit of another person;

⁵³ Felicia Roșioru, *Defining Features of the Individual Labor Contract* (original title: Trăsăturile definitorii ale contractului individual de muncă), *Studia Universitatis Babeș-Bolyai series Iurisprudentia* no. 4/2016, p. 33 and the following; Felicia Roșioru, *Individual labor...*, pp. 55-59; Alexandru Athanasie in *Opinions of the specialists regarding “other labor relations” than the ones which arise from the individual labor contract* (original title: Opinii ale specialiștilor cu privire la „alte raporturi de muncă” decât cele care izvorăsc din contractual individual de muncă), available at <https://www.juridice.ro/647687/opinia-specialistilor-sursele-izvoarele-nationale-ale-altor-raporturi-de-munca.html>, accessed on April 10th 2021.

⁵⁴ Raluca Dimitriu, *Reclassification...*, p. 80.

⁵⁵ Recommendation no. 198/2006 concerning the employment relationship was adopted at Geneva on June 15th 2006, available at <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO>, accessed on April 10th 2021.

⁵⁶ In the Romanian law, the typical form of the labor relation is the one expressed through the conclusion of an individual labor contract, defined in article 10 of the Labor Code by underlining its essential features. These features, from a practical perspective, are sublimated through a diversity of concrete aspects (indices, parameters, criteria, landmarks) which are subject to verification in the effort to classify and which are not regulated as such.

- must be carried out personally by the worker;
- is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work;
- is of a particular duration and has a certain continuity;
- requires the worker's availability;
- involves the provision of tools, materials and machinery by the party requesting the work.

b) The fact that *the remuneration*:

- is periodically paid to the worker;
- constitutes the worker's sole or principal source of income;
- includes the provision of payment in kind, such as food, lodging or transport;
- is paid in the context of recognition of entitlements such as weekly rest and annual holidays;
- includes the payment by the party requesting the work for travel undertaken by the worker in order to carry out the work;
- is obtained in the absence of financial risk for the worker.

As one can see, these specific criteria have a different relevance and they envisage both the juridical dependency as well as the economic dependency of the worker. If the labor inspector, analysing a certain physiognomy of a legal relation, would ascertain that a minimum number (preestablished legally) of these criteria⁵⁷ would be met, a relative legal presumption should operate. According to this, the legal relation should be classified as a labor relation which generated the obligation of concluding an individual labor contract.

2. In order to facilitate the actions of verifying the identification criteria of the labor relations, of classifying the agreement and of verifying the conformity with the labor legislation, it would be possible to impose additional obligations to the legal persons who benefit from the work performed remotely and on an ongoing basis⁵⁸ by natural persons, such as:

- the obligation to conclude in written form those contracts considered to be of civil or commercial nature (including digital form);
- the obligation to declare and to communicate to the Labor Inspectorate these contracts (this would require the reconfiguration of the program ensuring the electronic evidence of workers – REVISAL (the General Record of Employees), this, of course, on the grounds of a new regulation which would accommodate these changes).

3. Article 19 letters c) and e) of Law no. 108/1999 can be amended in order to establish the right of labor inspectors to summon natural persons in order for them to give a statement regarding the content of the legal relation on the basis of which they work. Beyond the direct effect of ensuring the possibility to clarify the existence

⁵⁷ We consider that the application of the legal presumption should depend essentially of the subordination relationship (work is carried out according to the instructions and under the control of another party, the employer) as well as of the periodic payment of the remuneration.

⁵⁸ Naturally, day laborers would be excluded.

and the nature of the legal relationship, such an authorization would compensate, in a certain degree, the impossibility of the labor inspector to perform (without prior agreement) an inspection at the place where a person is working remotely, taking into account that such a place is not organized by the beneficiary of the work.

4. Last, but not least, we consider that article 260 paragraph (1) letter f) of the Labor Code has to be repealed. Through this article it is established the contraventional liability of the natural person who is working without concluding an individual labor agreement⁵⁹. The legal rule appears to concern both the situation when the parties have not concluded an individual labor contract, as well as the situation when they have concluded a civil or commercial agreement, either deliberately or by mistake.

We appreciate that, primarily, the practical efficiency of this rule is at least questionable if we consider the purpose of combating undeclared work. Secondly, we take into account the fact that such a rule may further inhibit the consent of the natural person who is working, due to the risk of contraventional liability. Such a consent is a *sine qua non* condition for carrying out an inspection at the place of residence where the natural person is working remotely.

⁵⁹ For details regarding the contraventional liability and the evolution of the legal rules regarding the matter, see Dan Țop, *Labor Law Treatise*, Mustang Publishing House, 2018, pp. 589-601.