

REGULATION OF TELEWORK IN BRICS: LESSONS FROM THE PANDEMIC

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The COVID-19 outbreak forced many employers worldwide to organize remote workplaces and introduce new technologies of labor organization in order to protect employees from the threat of disease. After the pandemic is over, it is reasonable to anticipate an increase in telework. The legal framework of telework continues to evolve unevenly in different countries around the world. The BRICS countries lag behind the United States and the European Union in terms of the legal regulation of telework, and they lack the necessary statistical data collection. The integration of the BRICS countries calls for the development of unified approaches to the legal status of teleworkers. The creation of new jobs in the conditions of the pandemic requires the development of the regulatory framework, analysis of innovative experience and assessment of law enforcement. This article systematizes the approaches of Russian and world scientists to the major issues of telework regulation, including: the conceptual apparatus, the advantages and disadvantages of remote employment, the analysis of legislative initiatives of the BRICS countries in the context of a pandemic and the allocation of best practices, the features of concluding, changing and terminating an employment contract, determining the rights and obligations of teleworkers, the implementation of the right to social partnership, and ensuring labor protection, safety and well-being. The findings of the analysis lead to the conclusion that in order to achieve decent work in digital economy, the BRICS countries need to design a general approach to the regulation of telework for similar to the approach taken by the European Union, and to upgrade existing legislation.

Keywords: legal regulation; teleworking; teleworkers; pandemic; BRICS.

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Introduction

The development of telecommunication technologies has had a significant impact on the labor market and changed the employment structure. The twentieth century was a period of large industries; flexible forms of work, including teleworking, have become more common in the twenty-first century. The workplace no longer has to be located in factories, banks or offices. The term “place of work” loses its obligatory meaning in employment relations.¹ Information technologies make it possible to work from home and create co-working, which leads to a paradigm shift and requires changes in legislative regulation. In the context of the COVID-19 pandemic, most countries of the world, including the BRICS countries, were forced to impose restrictions and bans on traditional work arrangements and actively implement telework.

In the 1970s, J. Nilles et al. marked the beginning of research on teleworking with the publication of his book *The Telecommunications-Transportation Tradeoff: Options for Tomorrow*.² There are several approaches to the definition of teleworking in international practice. In an English-speaking environment, the most commonly used term is “telework.” The term “teleworking” is frequently used in the reports of the International Labour Organization (ILO). Telework, as defined by the ILO, is work that is carried out in whole or in part outside the permanent workplace and is based on the use of personal electronic devices such as computers, tablets or telephones.

¹ Васильева Ю.В., Шуралева С.В. Содержание трудового договора о дистанционной работе: теоретические аспекты // Вестник Пермского университета. Юридические науки. 2015. № 2(28). С. 88–97 [Yulia V. Vasilyeva & Svetlana V. Shuraleva, *The Content of the Labor Contract on Remote Work: Theoretical Aspects*, 2(28) Bulletin of Perm University. Legal Sciences 88 (2015)].

² Jack M. Nilles et al., *The Telecommunications-Transportation Tradeoff: Options for Tomorrow* (1976).

In the Russian Federation, the term “telework” is not mentioned in legislation. The concept of “telework” was doctrinally used in comparative legal research.³ Before the introduction of Chapter 49.1 into the Labor Code of the Russian Federation, the terms “work from home,” “teleworking” and “remote work” were proposed to be considered one of the flexible forms of work.⁴ With the implementation of Chapter 49.1 of the Labor Code of the Russian Federation, the term “remote work” is used.⁵

With an amendment in 2021, the terms “remote work” and “distance work” are now used interchangeably. According to Article 312.1 of the Labor Code of the Russian Federation, remote work is defined as

working in accordance with an employment contract outside the employer location, its branch, representative office, other separate structural unit (including ones located in another area), outside a permanent workplace, territory or facility which are directly or indirectly controlled by the employer with the use of information and telecommunication networks, including the Internet, and public communication networks for interaction between the employer and the employee.

In 2020, the ILO noted in “An employers’ guide on working from home in response to the outbreak of COVID-19” that the term “work from home” (WHF) describes an agreement in which an employee fulfills the basic responsibilities of his or her job while staying at home and using information and communication technologies.⁶ The term “work from home” is recommended to indicate temporary work in the pandemic. The concepts of “work from home” and “work-from-anywhere” have already been reflected in the scientific works and in the legislation of some countries.⁷ Thus, the

³ Либо М.Г., Кошелева С.В. Телеработа как новая форма управления персоналом в организациях виртуального типа // Вестник Санкт-Петербургского университета. Менеджмент. 2004. № 3. С. 117–137 [Marina G. Libo & Sofia V. Kosheleva, *Telecommuting as a New Form of Personnel Management in Virtual Organizations*, 3 Vestnik of Saint Petersburg University. Management 117 (2004)]; Яворчук Н.Н., Шушклина В.В. Телеработа и фриланс: в порядке постановки проблемы // Юридический вестник Кубанского государственного университета. 2010. № 5. С. 6–10 [Natalia N. Yavorchuk & V.V. Shushkina, *Telework and Freelancing: In the Order of Problem Statement*, 5 Legal Bulletin of Kuban State University 6 (2010)].

⁴ Томашевский К.Л. Компьютерное надомничество (телеработа) как одна из гибких форм занятости в XXI веке // Трудовое право в России и за рубежом. 2011. № 3. С. 32–36 [Kirill L. Tomashevsky, *Computer Home Work (Telework) as One of the Flexible Forms of Employment in the 21st Century*, 3 Labor Law in Russia and Abroad 32 (2011)].

⁵ Трудовой кодекс Российской Федерации от 30 декабря 2001 г. № 197-ФЗ // Собрание законодательства РФ. 2002. № 1 (ч. 1). Ст. 3 [Labor Code of the Russian Federation No. 197-FZ of 30 December 2001, Legislation Bulletin of the Russian Federation, 2002, No. 1 (part 1), Art. 3].

⁶ ILO, An employers’ guide on working from home in response to the outbreak of COVID-19 (2020) (Apr. 21, 2022), available at https://www.ilo.org/actemp/publications/WCMS_745024/lang--en/index.htm.

⁷ Prithwiraj Choudhury et al., *Work-From-Anywhere: The Productivity Effects of Geographic Flexibility*, 42(4) Strateg. Mgmt. J. 655 (2021).

pandemic has led to a fundamental rethinking of the conceptual apparatus and the introduction of new concepts.

1. Materials and Methods

Despite the fact that the comparative method is widely used in legal and economic studies, there has been little research on the comprehensive analysis of Russian and international legislation on teleworking.⁸ The focus is on research into the experiences of the United States and European Union (EU) countries, while the experiences of the BRICS countries are still poorly studied. This determines the relevance of the presented work and its scientific novelty.

The main objective of the study is to compare changes in the telework regulations in the BRICS countries in the context of the COVID-19 pandemic.

The research included the following stages:

- compilation of publications on the teleworking regulation based on the Russian Science Citation Index (hereinafter RSCI), the Web of Science and the Scopus database;
- study of the legal framework for teleworking in BRICS in the pre-pandemic period;
- assessment of the legislative process under the influence of the pandemic;
- identification of opportunities and prospects for improving the regulation of teleworking in Russia taking into account the enforcement experience of Brazil, India, China and South Africa.

The results of the study reflect the legal framework and publications as of 1 April 2021.

⁸ Marina Chudinovskikh & Natalia Tonkikh, *Telework in BRICS: Legal, Gender and Cultural Aspects*, 7(4) BRICS L.J. 45 (2020); Кожевников О.А., Чудиновских М.В. Регулирование труда дистанционных работников в России и за рубежом // Вестник Санкт-Петербургского университета. Право. 2020. Т. 11. № 3. С. 563–583 [Oleg A. Kozhevnikov & Marina V. Chudinovskikh, *Regulation of Telework in Russia and Foreign Countries*, 11(3) Vestnik of Saint Petersburg University. Law 563 (2020)]; Лютов Н.Л. Дистанционный труд: опыт Европейского союза и проблемы правового регулирования в России // Lex Russica. 2018. № 10(143). С. 30–39 [Nikita L. Lyutov, *Russian Remote Labor: The Experience of the European Union and the Problems of Legal Regulation in Russia*, 10(143) Lex Russica 30 (2018)]; Скавитин А.В. Телеработа в мировой экономической практике // Менеджмент в России и за рубежом. 2004. № 6. С. 108–117 [Alexey V. Skavitin, *Teleworking in World Economic Practice*, 6 Management in Russia and Abroad 108 (2004)]; Хусяинов Т.М. Особенности правового регулирования труда занятых в сети Интернет в Польше // Право и политика. 2016. № 1. С. 61–66 [Timur M. Khusyainov, *Features of the Legal Regulation of the Work of Those Employed on the Internet in Poland*, 1 Law and Politics 61 (2016)]; Хусяинов Т.М. Правовое регулирование интернет-занятости в Великобритании: Основные этапы формирования национального законодательства // Финансовое право и управление. 2017. № 1. С. 49–56 [Timur M. Khusyainov, *Legal Regulation of Internet Employment in the UK: The Main Stages of the Formation of National Legislation*, 1 Financial Law and Management 49 (2017)]; Чудиновских М.В. Регулирование дистанционного труда в странах Евразийского экономического Союза // Евразийская адвокатура. 2018. № 4(35). С. 109–111 [Marina V. Chudinovskikh, *Regulation of Remote Labor in the Countries of the Eurasian Economic Union*, 4(35) The Eurasian Bar 109 (2018)].

The research definition of key terms made it possible to form the relevant collections of publications in the Web of Science (WOS) and Russian Science Citation Index (RSCI) databases. According to the WOS database, the first publications devoted to teleworking were dated 1985–1986. These publications were sporadic until 1996. With the development of information technology and the growing popularity of teleworking, the number of publications is increasing. The year 2020 was of peak interest for the researchers.

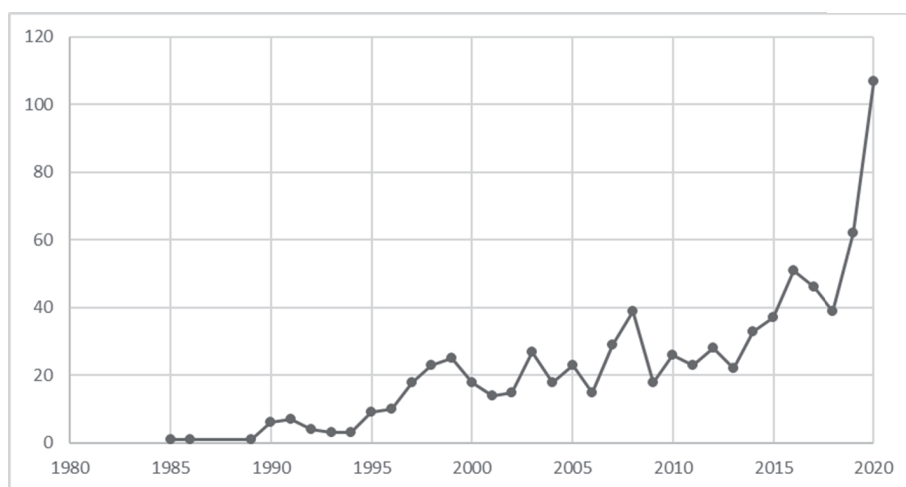


Fig. 1: The number of publications in the Web of Science database (using the keyword “telework”)

Source: Created by the author

The sharp increase in research is associated with the unprecedented legislative measures taken by many countries around the world in the context of the pandemic. The number of publications on telework in the Web of Science database remained between 40–60 per year until 2020. In 2020, more than 100 publications were devoted to “teleworking.” Taking into account the long indexing, it is possible to predict the growth of research in 2021. In international databases, researchers from the United States of America and the European countries have achieved leading positions. The data on the publications of scientists from the BRICS countries are shown in Table 1 below.

Table 1: The BRICS-specific sample of publications on teleworking in the Web of Science database

Country	Number of publications
Brazil	21
China	15
India	9
Russia	9
South Africa	2

Source: Created by the author

The presented data show that the largest number of publications on teleworking among the BRICS countries is noted in Brazil and China. Researchers from BRICS are still significantly behind scientists from the United States, Great Britain, Canada, and Germany in terms of publishing research results at an international level. The analysis of Russian publications on the teleworking regulation was carried out further. As of 1 March 2021, a total of 1,115 publications devoted to the issues of teleworking are indexed by the RSCI. Table 2 below presents the total number of publications and their main bibliographic indicators.

Table 2: The main indicators of publications on teleworking in the RSCI (1 March 2021)

Indicator	Value
Number of authors, person	1,588
Total number of publications, pcs	1,115
Number of articles in journals, pcs	675
Number of articles in journals included in the Web of Science or Scopus, pcs	6
Number of articles in journals included in the RSCI Core, pcs	18

Source: Created by the author

The distribution of Russian publications over the years reflects the same trend that was revealed in international citation databases. In 2020, the number of publications increased more than three times compared to 2019. The study of teleworking issues is in the field of interests of economists, lawyers, sociologists, as well as representatives of other sciences (Table 3).

Table 3: The distribution of publications by thematic areas

Thematic area	Number of publications	Rate, %
Economic Sciences	535	47,98
Law	238	21,35
Sociology	56	5,02
Computer Technology	28	2,51
Pedagogy	28	2,51
Other sciences	230	20,63
Total	1115	100,00

Source: Created by the author

It should be noted that different conceptual apparatuses are used in economic and legal research. In legal research, the terms “teleworking,” “teleworker” and “employment contract” are frequently used. All these terms comply with the current norms of the Labor Code of the Russian Federation. In economic research, the terms “teleworking,” “labor market” and “freelance” are more common, although the concept of “freelance” is not included in the Labor Code of the Russian Federation. The analysis of publications using keywords shows that the term “remote work” is more commonly used in the Russian scientific publications, which is not entirely consistent with the accepted international terminology (Table 4).

Table 4: The main keywords of Russian research on teleworking

Keyword	Number of publications
Distance work	494
Remote work	337
Teleworking employment	247
Teleworking occupation	154
Freelance	135
Remote employment	97
Labor market	97
Teleworker	97
Employment contract	77

Source: Created by the author

The analysis of the distribution of publications by regions and organizations shows that scientific schools are being formed in the Russian Federation to study

teleworking issues. The first place in terms of the number of publications is occupied by the Ural State University of Economics (Yekaterinburg), followed by the largest Moscow universities (the Russian University of Economics named after G.V. Plekhanov, Moscow State University, Russian Presidential Academy of National Economy and Public Administration and Financial University). Among other regional universities are the Saratov State Technical University named after Yu.A. Gagarin and the Samara State University of Economics (Table 5).

Table 5: The distribution of publications by organizations

Distribution of publications by organizations	Number of publications
The Ural State University of Economics	67
The Russian University of Economics named after G.V. Plekhanov	40
The Moscow State University named after M.V. Lomonosov	30
The Russian Presidential Academy of National Economy and Public Administration	29
The Financial University under the Government of the Russian Federation	27
The Saratov State Technical University named after Yu.A Gagarin	25
The State University of Management	19
The Moscow State Law University named after O.E. Kutafin	17
The Samara State University of Economics	17
The Russian State Social University	15

Source: Created by the author

Increasing publication activity is popular among researchers writing PhD theses or doctoral dissertations, as well as authors who have received support from scientific foundations. The most cited publications were further evaluated in the context of two thematic areas (“Legal Sciences” and “Economic Sciences”). Among the most cited articles in the field of legal sciences are the works of N.L. Lyutov,⁹ V. Stepanova,¹⁰

⁹ Lyutov 2018; *Люттов Н.Л.* Трансформация трудового правоотношения и новые формы занятости в условиях цифровой экономики // Журнал российского права. 2019. № 7. С. 115–130 [Nikitina L. Lyutov, *Transformation of Labor Relations and New Forms of Employment in the Digital Economy*, 7 Journal of Russian Law 115 (2019)].

¹⁰ *Степанов В.* Дистанционные работники – новая категория работников в российском трудовом праве // Трудовое право. 2013. № 6. С. 9–17 [Vladimir Stepanov, *Remote Workers – A New Category of Workers in Russian Labor Law*, 6 Labor law 9 (2013)].

K.V. Nushtaikina,¹¹ E.A. Brown,¹² A.V. Serova,¹³ N.N. Yavorchuk and V.V. Shukshina,¹⁴ Yu.V. Vasilyeva and S.V. Shuraleva,¹⁵ N.V. Zakalyuzhnaya,¹⁶ M.V. Chudinovskikh,¹⁷ T.Yu. Korshunova,¹⁸ T.M. Khusyainov.¹⁹ In the field of “economics,” the highest number of citations was noted in the publications of Yu.V. Dolzhenkova and S.V. Sidorkina,²⁰ F. Konobtseva,²¹ V.N. Gebrial,²²

¹¹ *Нуштайкина К.В.* Реализация права работников на социальное партнерство в условиях дистанционного труда // Вестник Пермского университета. Юридические науки. 2013. № 3(21). С. 152–156 [Ksenia V. Nushtaikina, *Implementation of the Right of Workers to Social Partnership in the Conditions of Remote Labor*, 3(21) Bulletin of Perm University. Legal Sciences 152 (2013)].

¹² *Браун Е.А.* Понятие нетипичной занятости и классификация ее видов // Трудовое право в России и за рубежом. 2014. № 3. С. 11–15 [Elena A. Brown, *The Concept of Atypical Employment and the Classification of its Types*, 3 Labor Law in Russia and Abroad 11 (2014)].

¹³ *Серова А.В.* Нетипичные отношения по трудоустройству // Российский юридический журнал. 2014. № 6(99). С. 121–128 [Alena V. Serova, *Atypical Employment Relations*, 6(99) Russian Legal Journal 121 (2014)].

¹⁴ Yavorchuk & Shushkina 2010.

¹⁵ *Васильева Ю.В., Шуралева С.В.* Дистанционная занятость и дистанционная работа с позиций российского трудового права // Российский ежегодник трудового права. 2014. № 9. С. 385–390 [Yulia V. Vasilyeva & Svetlana V. Shuraleva, *Remote Employment and Remote Work from the Standpoint of Russian Labor Law*, 9 Russian Yearbook of Labor Law 385 (2014)]; *Васильева Ю.В.* Дистанционная работа в России: вопросы правоприменения // Вестник Пермского университета. Юридические науки. 2016. № 2(32). С. 216–225 [Yulia V. Vasilyeva, *Remote Work in Russia: Questions of Law Enforcement*, 2(32) Bulletin of Perm University. Legal Sciences 216 (2016)].

¹⁶ *Закалюжная Н.В.* Особенности, возникающие при реализации прав работника в дистанционном трудовом отношении // Трудовое право в России и за рубежом. 2015. № 4. С. 42–46 [Natalia V. Zakalyuzhnaya, *Features That Arise When Implementing the Rights of an Employee in a Remote Labor Relationship*, 4 Labor Law in Russia and Abroad 42 (2015)].

¹⁷ Kozhevnikov & Chudinovskikh 2020; Chudinovskikh 2018.

¹⁸ *Коршунова Т.Ю.* Договор о дистанционной работе как способ оформления нетипичных трудовых отношений // Журнал российского права. 2020. № 2. С. 112–125 [Tatyana Yu. Korshunova, *The Contract on Remote Work as a Way of Registration of Atypical Labor Relations*, 2 Journal of Russian Law 112 (2020)].

¹⁹ Khusyainov 2016; Khusyainov 2017.

²⁰ *Долженкова Ю.В., Сидоркина С.В.* Дистанционная занятость в России: современное состояние и перспективы развития // Вестник НГУЭУ. 2015. № 1. С. 156–161 [Yulia V. Dolzhenkova & Svetlana V. Sidorkina, *Remote Employment in Russia: Current State and Prospects of Development*, 1 Bulletin of the NGUEU 156 (2015)].

²¹ *Конобевцев Ф.Д.* Дистанционный труд как новая форма занятости // Кадровик. 2011. № 9. С. 115–121 [Fedor D. Konobevtsev, *Remote Labor as a New Form of Employment*, 9 Kadrovik 115 (2011)]; *Конобевцев Ф.Д., Лаас Н.И., Гурова Е.В., Романова И.А.* Удаленная работа: технологии и опыт организации // Вестник университета. 2019. № 7. С. 9–17 [Fedor D. Konobevtsev et al., *Remote Work: Technologies and Experience of the Organization*, 7 University Bulletin 9 (2019)].

²² *Гебриаль В.Н.* Социальные аспекты феномена дистанционной работы как нового вида трудовых отношений // Государственное управление. Электронный вестник. 2008. № 17. С. 3 [V.N. Gebrial, *Social Aspects of the Phenomenon of Distance Work as a New Type of Labor Relations*, 17 Public Administration. Electronic Bulletin 3 (2008)].

A.V. Yudin,²³ V.M. Tregubova,²⁴ I.M. Gurova,²⁵ M.V. Ludanik,²⁶ A.V. Skavitin,²⁷ N.V. Tonkikh and T.V. Kamarova,²⁸ I.A. Gvozdikova and A.V. Kurochkin²⁹ (the authors are listed in the order of the number of citations). The peculiarity of the emergence of scientometric indicators is that the number of citations for influential articles increases after a certain period of time. The publications of 2018–2020 are still behind those of 2013–2014 in terms of citation rates. However, this does not indicate a lower scientific significance or quality.

The previously presented statistics showed that an explosive growth of interest in teleworking issues took place in 2020 in the context of the COVID-19 pandemic. In 2020, the RSCI has already indexed more than 450 publications on teleworking. The RSCI is the leading database in terms of the rate of indexing of publications; therefore, many studies published in 2020 have already reflected the impact of the COVID pandemic. In international studies of 2020 and 2021, the pandemic issues are not yet fully reflected because the average indexation period can be as long as two years. Scientific research is a necessary basis for improving teleworking regulations.

²³ Юдин А.В. Стратегия управления дистанционной формой занятости // Вестник Омского университета. Серия: Экономика. 2012. № 4. С. 121–125 [Andrey V. Yudin, *Strategy of Remote Employment Management*, 4 Bulletin of Omsk University. Series: Economics 121 (2012)].

²⁴ Трегубова В.М. Компьютерные технологии и дистанционная занятость работников // Социально-экономические явления и процессы. 2013. № 2(48). С. 117–120 [Valentina M. Tregubova, *Computer Technologies and Remote Employment of Workers*, 2(48) Socio-Economic Phenomena and Processes 117 (2013)].

²⁵ Гурова И.М. Дистанционная работа как перспективная форма организации труда для российских предпринимательских структур // МИР (Модернизация. Инновации. Развитие). 2016. Т. 7. № 1(25). С. 151–155 [Irina M. Gurova, *Remote Work as a Promising Form of Labor Organization for Russian Business Structures*, Vol. 7. No. 1(25) MIR (Modernization. Innovation. Development) 151 (2016)].

²⁶ Луданик М.В. Дистанционная занятость на российском рынке труда: формирование, развитие и механизмы регулирования: дис. ... канд. экон. наук [Marina V. Ludanik, *Remote Employment in the Russian Labor Market: Formation, Development and Regulatory Mechanisms*, Dissertation for the Degree of Candidate of Economic Sciences] (2006).

²⁷ Skavitin 2004.

²⁸ Тонких Н.В., Камарова Т.А. Оценка распространенности нестандартной занятости на рынке труда Свердловской области Российской Федерации по результатам социологического исследования // Вестник Омского университета. Серия: Экономика. 2017. № 2(58). С. 185–196 [Natalia V. Tonkikh & Tatyana A. Kamarova, *Assessment of the Prevalence of Non-standard Employment in the Labor Market of the Sverdlovsk Region of the Russian Federation Based on the Results of a Sociological Study*, 2(58) Bulletin of Omsk University. Series: Economics 185 (2017)].

²⁹ Гвоздикова И.А., Курочкин А.В. Математическое и информационное обеспечение дистанционной занятости // Труд и социальные отношения. 2017. № 5. С. 32–44 [Irina A. Gvozdikova & Alexander V. Kurochkin, *Mathematical and Informational Support of Remote Employment*, 5 Labor and Social Relations 32 (2017)].

2. Changes in the Telework Legal Framework in the BRICS Countries under the Influence of the Pandemic

In the context of the pandemic, all of the BRICS countries implemented a similar set of measures, which included the establishment of restrictions and bans, the transition to teleworking in many industries, and the introduction of distance learning into educational institutions. The first and most active measures were taken by China, which ensured the most effective fight against the epidemic. The main changes in teleworking organizations and approaches to regulation are further considered.

2.1. The Russian Federation: New Approaches to Regulation

The experience of conducting comparative legal research allows us to conclude that, prior to the pandemic, Russian legislation regulated teleworking only sporadically. The gap between domestic and foreign regulations in 2020 was approximately ten years.³⁰ Leading scientists have repeatedly criticized the norms of the Labor Code of the Russian Federation in terms of:

- the lack of the possibility of concluding a contract on partial telework status;³¹
- the option of dismissing a teleworker based on the reasons specified in the employment contract;³²
- weak development of legal framework addressing the collective labor rights protection;³³
- reduction of the employer's obligations in the sphere of labor protection;³⁴
- the actual reversal of the burden of equipment, communication service costs to the employee;³⁵
- the complexity of the registration process in terms of the use of electronic digital signatures, etc.³⁶

³⁰ Черных Н.В. Влияние нетипичных форм занятости на теоретические представления о трудовом отношении (на примере норм о дистанционном труде) // Актуальные проблемы российского права. 2019. № 8(105). С. 108–117 [Nadezhda V. Chernykh, *Influence of Atypical Forms of Employment on Theoretical Ideas About Labor Relations (on the Example of Norms on Remote Labor)*, 8(105) Actual Problems of Russian Law 108 (2019)].

³¹ Филиппов В. Четыре минуса дистанционной работы // Трудовые споры. 2019. № 9. С. 68 [Vyacheslav Filippov, *Four Minuses of Remote Work*, 9 Labor Disputes 68 (2019)].

³² Lyutov 2019.

³³ Nushtaikina 2013.

³⁴ Филаткина А.П. Надомная и дистанционная работа: сравнительный анализ действующего законодательства // Трудовое право в России и за рубежом. 2015. № 1. С. 11–13 [Anna P. Filatkina, *Home and Remote Work: A Comparative Analysis of the Current Legislation*, 1 Labor Law in Russia and Abroad 11 (2015)].

³⁵ Chudinovskikh 2018.

³⁶ Kozhevnikov & Chudinovskikh 2020.

Russia introduced Federal Law No. 407-FZ dated 8 December 2020 amending the Russian Labor Code in relation to teleworking. Table 6 highlights the most substantive changes in the legislation.

Table 6: Changes in approaches to teleworking in the pandemic

Conditions	Before 2021	Since 2021
Types of teleworking	Only permanent	Permanent Temporary In case of emergency and pandemic
The reimbursement of costs of a teleworker	The employer's right	The employer's obligation
Additional reasons for dismissal	Any reason included in the employment contract	Two legal reasons (Art. 312.8 of the Labor Code)
Features of registration	An extensive list of the grounds for using electronic digital signatures	The use of electronic digital signatures is reduced

Source: Created by the author

Until 2020, the labor legislation enshrined only permanent teleworking. Teleworking can also be done on a temporary basis since 2021. In addition, employers have the right to implement emergency teleworking under special circumstances, which includes pandemic conditions. Temporary teleworking is also an option during natural disasters and bad weather conditions.

The following positive aspects should be indicated:

- a more detailed description of the rights and obligations of employees and employers;
- enshrinement of the right to the reimbursement of costs;
- protection against wage reductions and unjustified dismissals;
- simplification of the documentary procedure by reducing the number of cases in which mandatory electronic digital signatures are required.

The analysis of enforcement practice showed that one of the most problematic issues is the reimbursement of costs for a teleworker. Until 2020, the legislation established only the right of the employer to set the procedure for such reimbursement, which effectively reversed the burden of equipment, software and Internet costs to the employee. The Labor Code of the Russian Federation now states that the employer "has to compensate a teleworker for the use of his/her or

leased equipment, software and hardware, information security and other means, and also to reimburse the costs related to their use" beginning in 2021 (Art. 312.6 of the Labor Code of the Russian Federation). The period and procedure for such payments must be established in corporation bylaws or employment contracts. If the employer is unable to provide the employee with the equipment, software and other means necessary for teleworking, the time during which this employee does not work is considered downtime for reasons beyond the control of the employer and the employee. Downtime for reasons, which do not depend on the employer and the employee, if the employee informed the employer in writing about the beginning of a downtime, is paid in an amount of not less than two-thirds of the base wage rate (salary).

According to an analysis of Russian law enforcement, another issue was the norm of the Labor Code of the Russian Federation, which establishes the possibility of dismissing a teleworker for reasons specified in the employment contract. As a result, teleworkers were in a much more vulnerable position than other workers. In 2021, Article 312.8 of the Labor Code of the Russian Federation limited additional reasons for terminating a contract with a teleworker if:

- the teleworker does not interact with the employer on dealing with issues relating to the labor function for more than two working days from the date of receipt of the relevant request from the employer without a valid reason;
- the employee changes the work location that makes it impossible to fulfill the employee's obligations under the same conditions in accordance with the employment contract.

Despite the fact that the majority of legislative changes that have taken place are mainly positive,³⁷ there are still a number of outstanding issues and challenges. In the digital economy, the rate of other modes of labor importation is growing (for example, in accordance with a civil law contract, through digital platforms). The experiment of introducing a special tax regime for self-employed persons started in Russia in 2020. These categories are not protected by the Labor Code of the Russian Federation. The issues of accounting for working hours, overtime and night shifts remain unresolved. The experience of foreign countries shows that the total attendance records can be provided for teleworkers, and that overtime can be compensated. In addition, some European countries impose employer's liability if he or she violates the teleworker's right to rest. This right is called the "right to

³⁷ Васюков С.В. Об отдельных направлениях совершенствования законодательства о дистанционном труде в Российской Федерации // Вопросы трудового права. 2020. № 9. С. 11–18 [Sergey V. Vasyukov, *On Certain Directions of Improving the Legislation on Remote Labor in the Russian Federation*, 9 Labor Law Issues 11 (2020)]; Костева Д.А. Новеллы законодательства РФ о труде дистанционных работников: перспективы применения // Научный аспект. 2020. Т. 5. № 4. С. 680–684 [Daria A. Kosteva, *Legislation of the Russian Federation on Work Remote Workers and Application Prospects*, 5(4) Scientific Aspect 680 (2020)].

disconnect.”³⁸ The new edition of the Labor Code of the Russian Federation only states that the time spent interacting with an employer by a teleworker is included in working hours. Thus, there has been a significant rethinking of the norms of labor legislation on teleworking in the Russian Federation in 2020. Chapter 49.1 of the Labor Code of the Russian Federation on teleworking has been updated since 2021. The main purpose of the changes is to better regulate the rights and obligations of the employers and employees. However, enforcement practice continues to pose new challenges for employers, employees and scientists in terms of searching for an optimal model for regulating teleworking.

2.2. Brazil: Flexibility for Employers and Employees

In Brazil, teleworking was actively introduced not only into the commercial sector but also into the public administration sector even before the coronavirus pandemic.³⁹ By 2020, many government agencies (for example, tax authorities, courts, statistical agencies) provided jobs for teleworkers.⁴⁰ In commercial organizations, teleworking is most widespread in:

- call centers (for example, in the assistance customer service centers of the largest Brazilian airlines);⁴¹
- in the spheres of creative work fields such as design, architecture, publishing, advertising;
- and in telecommunications companies.⁴²

One of the driving forces behind growth of teleworking is the requirement for job quotas for disabled people. The use of telecommuting technology allows employers to comply with this legal requirement in Brazil.

The widespread introduction of telecommuting technologies into both the commercial and public sectors has led to the emergence of labor disputes. Thus, disputes over overtime work, working hours and rest hours, as well as compensation

³⁸ Пак Г.С. «Право отключиться» как ответ на экспансию труда в нерабочее время: кто им воспользуется // Вестник Пермского университета. Философия. Психология. Социология. 2018. № 4(36). С. 508–516 [Galina S. Pak, “The Right to Disconnect” as a Response to the Expansion of Labor in Non-Working Hours: Who Will Use It, 4(36) Bulletin of Perm University. Philosophy. Psychology. Sociology 508 (2018)].

³⁹ Aimée M.S. da Silva, *A aplicação do teletrabalho no serviço público brasileiro*, 3rd Congresso Internacional de Direito e Contemporaneidade (2015) (Apr. 21, 2022), available at <http://coral.ufsm.br/congressodireito/anais/2015/1-2.pdf>.

⁴⁰ Fernando Filardi et al., *Advantages and Disadvantages of Teleworking in Brazilian Public Administration: Analysis of SERPRO and Federal Revenue Experiences*, 18(1) Cadernos EBAPE.BR 28 (2020).

⁴¹ Alvaro Mello, *The Use of Telework in Call Center and Multi-Client Contact Centers Operating in Brazil: Study to Identify the Driving Forces, Restrictive and Recognized Contributions*, PhD dissertation, University of São Paulo (2011).

⁴² Alvaro Mello & Armando Dal Colletto, *Telework and its Effects in Brazil in Telework in the 21st Century* 211 (2019).

for the costs of teleworkers were considered in the courts of Brazil.⁴³ It is necessary to note that a large number of studies are being carried out in Brazil as part of evaluating the effectiveness of teleworking. According to Brazilian researchers, the transition to teleworking almost completely solves the problem of absenteeism and dismissals, reduces the costs for both employees and employers, and increases labor productivity.⁴⁴ The analysis of scientific publications shows that teleworking is mainly regarded positively in Brazil.

Brazil's labor legislation has been amended in the context of the coronavirus pandemic. On 22 March 2020, the Provisional Measure No. 927/2020 setting labor measures to face the COVID-19 pandemic was adopted by the President of Brazil. The Presidential Decree recommended employers transit employees to teleworking. The main changes of the teleworking regulations in Brazil under the influence of the pandemic are presented in Table 7.

Table7: Telework legal framework in Brazil

	Until 2020	Since 22 March 2020
Transition to teleworking	There are changes to agreements on personal work and telework if there is a mutual agreement between the employee and the employee	The main purpose of this measure is to guarantee the protection of the employee's health; that is why it allows unilateral modifications of the employment contract. The employer is obliged to notify the employee about the need to transit to teleworking (with 48 hours' advance notice)
Trainees and apprentices	Teleworking for trainees and apprentices is not allowed	Teleworking for trainees and apprentices is allowed
End of the emergency mode of teleworking	The teleworking regime can be changed as determined by the employer, with a minimum transition period of fifteen days	It is possible to return to the traditional mode of work immediately, irrespective of the existence of individual or collective agreements, and without pre-registration of the individual employment contract changes

Source: Created by the author

In 2020, the Brazilian Public Labor Prosecution Office issued a memorandum of advice to employers on various aspects of teleworking, including digital ethics and

⁴³ Manuel M.P. Estrada, *Realidade do Teletrabalho no Brasil e nos Tribunais Brasileiros*, 12 Revista Direito e Liberdade 103 (2010).

⁴⁴ Sergio Volk, *Teletrabalho: reduza custos e aumente a produtividade*, IBEF (2015) (Apr. 21, 2022), available at <http://www.ibefsp.com.br/content-hub/teletrabalho-opcao-para-reduzir-custos-e-aumentar-produtividade>.

etiquette, adopting internal teleworking policies, ensuring ergonomics and mental health protection, protecting confidentiality, and informing employees about COVID-19 prevention measures. Thus, Brazil's labor legislation has undergone substantive changes regarding the teleworking regulation. The amendments are intended to enhance flexibility for employers and employees in contractual relationships.

2.3. India: Overcoming Obstacles and Inequalities

The peculiarities of the Indian labor market are the high proportion of small enterprises and the shadow economy. According to E. Bragina, so-called "invisible labor" has developed in India, which, on the one hand, helps millions of people to survive, but, on the other hand, deprives them of many legal and social guarantees.⁴⁵ "Invisible labor" is mainly focused on physical work and is thus hardly prone to digital transformation. As noted by Indian researchers, the majority of the workers in India were not familiar with teleworking technologies before the pandemic, and employers generally considered these technologies to have a set of disadvantages.⁴⁶ The main difficulties in the transition to teleworking were inaccessibility to technology (especially in rural areas), a decrease in labor productivity, and difficulties in organizing and monitoring telework.⁴⁷

Teleworking in India has spread mainly in the fields of telecommunications and information technology (IT) until 2020. The issue of teleworking regulations in the IT industry is of strategic importance for India. Many Indian programmers are teleworkers at large American and European companies. India pays special attention to information security. The experience of 2020 has shown that teleworking can be the only possible option for continuing work in emergencies, epidemics, and natural disasters. An awareness of the need to improve the legal framework and management system is gradually replacing the critical attitude to teleworking.

In India, teleworking is not only regulated by labor laws. As a result, there was a ban on long-term work from home for IT companies until 2020. After discussions with the largest companies in the IT industry, the Indian Ministry of Communications has significantly simplified the teleworking procedure in 2020. The most important regulatory change is that teleworkers now have the right to work not only from home as part of the "Work-From-Home" concept but from anywhere ("Work-From-Anywhere").

⁴⁵ Брагина Е.А. Невидимый труд в экономике стран Азии и Африки // *Мировая экономика и международные отношения*. 2013. № 11. С. 53–61 [Elena A. Bragina, *Invisible Labor in the Economy of Asian and African Countries*, 11 *World Economy and International Relations* 53 (2013)].

⁴⁶ Melissa Cyrill, *Remote Work in 2021: Tips for HR Managers in India*, India Briefing, 9 December 2020 (Apr. 21, 2022), available at <https://www.india-briefing.com/news/remote-work-india-new-normal-2021-key-considerations-employers-21318.html/>.

⁴⁷ Dharma R. Bathini & George M. Kandathil, *Bother Me Only if the Client Complains: Control and Resistance in Home-Based Telework in India*, 1(42) *Empl. Relat.* 90 (2020).

As mentioned before, a large number of foreign companies from the United States, European countries, and China are represented in the Indian labor market. These companies have much more experience in organizing remote workplaces. It was this experience that formed the basis for recommendations for ensuring the health, safety and well-being of teleworkers. Indian law does not contain peremptory norms requiring employers to reimburse the costs of teleworkers. However, many large companies began financing programs aimed at purchasing and repairing equipment, training employees, and protecting cyber security during the pandemic. A good example is the experience of the German-based company, DHL. In order to reduce the negative impact of computer technology on health, the company's teleworkers are recommended to alternate 25 minutes of work with a five-minute break. A number of other large companies have also initiated medical and psychological assistance programs for teleworkers. These examples show that not only national requirements, but also the actions taken by large companies are of great importance during a pandemic. In general, there is a significant rethinking of the teleworking model under the influence of the pandemic in India. However, in contrast to Russia, China and Brazil, the spread of teleworking in India is constrained by objective economic factors, such as a high level of poverty, a low level of digital literacy, and gender inequality.

2.4. China: From Workplace to Anyplace

According to Chinese researchers, teleworking was still not widespread 5–7 years ago and met with resistance and misunderstanding on the part of both employees and employers.⁴⁸ They emphasized that teleworking was contrary to the traditional spirit of collectivism in the early stages of its implementation.⁴⁹ However, there have been radical changes in evaluating the benefits of teleworking in recent years, especially in 2020. A growing number of Chinese residents have begun looking for telework opportunities.⁵⁰ When studying the teleworking regulations in China, special attention is paid to the issues of state support for the development of teleworking⁵¹ and the supervision of the activities of teleworkers.⁵² Studies aimed at comparing the features

⁴⁸ Nicholas Bloom et al., *Does Working from Home Work? Evidence from a Chinese Experiment*, 18871 NBER Working Papers 1 (2013) (Apr. 21, 2022), available at https://www.nber.org/system/files/working_papers/w18871/w18871.pdf.

⁴⁹ Lien-Yin Hsu & Justin S. Chang, *Telework and Conventional Work: From a Chinese Perspective*, 39(2) J. Nat'l Taipei U. Tech. 105 (2006).

⁵⁰ Peipei Wang et al., *Research on Policies to Support Telecommuting in China*, The Fourth International Conference on Electronic Business (ICEB2004)/Beijing (2004), at 1368 (Apr. 21, 2022), available at <https://aisel.aisnet.org/cgi/viewcontent.cgi?article=1247&context=iceb2004>.

⁵¹ Sumita Raghuram & Dong Fang, *Telecommuting and the Role of Supervisory Power in China*, 31(2) Asia Pac. J. Mgmt. 523 (2013).

⁵² Baiyin Yang & De Zhang, *A Theoretical Comparison of American and Chinese Culture and Impacts on Human Resource Theory and Practice*, 3(4) Int'l J. Hum. Resources Dev. Mgmt. 338 (2003).

of Chinese and Western culture can be distinguished into a special group. This issue is especially important because of the active integration of the Chinese economy into the global economy. Large European and American companies not only opened production facilities in China, but also made substantive changes in the practice of regulating labor relations. The rapid development of the Chinese economy over the past decade has led to the emergence of powerful national companies that successfully compete with foreign corporations. China is the world leader in the number of teleworkers because of this intense competition. According to the Statistical Report on Internet Development in China, the number of teleworkers increased to 346 million by the end of 2020. Research has shown that an employer can save more than US\$2,100 per teleworker per year.⁵³

When evaluating the changes in teleworking in the context of the pandemic, it should be noted that China was the first to recognize the gravity of the new virus threat and begin introducing restrictions and bans, as well as transferring citizens to teleworking. China's experience in regulating teleworking has a number of specific features. The right of teleworkers to maintain wages has been enshrined in legislation, which correlates with Russian practice. Another distinguishing feature is that China pays special attention to the development of national platforms and software. DingTalk by Alibaba, Feishu by ByteDance, and Wechat Work by Tencent have become the most popular apps in the course of the pandemic. All of these platforms offer the same services as Google, Zoom and Microsoft. Monitoring of employee discipline is also carried out using special software. Thus, the main emphasis has been placed not on changing legislation, but on the development of national services and technical capabilities for teleworking in China. Best practices of leading companies (e.g. Alibaba, Tencent, China Telecom) in conducting business have also become very important.

2.5. South Africa: Barriers to Telework

Table 1 above showed that South Africa has the smallest number of scientific publications on teleworking issues among the BRICS. South African researchers have repeatedly noted the sporadic nature of the data and the lack of comprehensive programs for teleworking accounting. Research on teleworking is carried out mainly in the fields of information technology, education, and the financial sector.⁵⁴ According to N. Baard and A. Thomas, teleworking can contribute to productivity growth in the field of information technology.⁵⁵ Despite the widespread awareness of the benefits of

⁵³ China Internet Network Information Center (CNNIC), Statistical Report on Internet Development in China (September 2020) (Apr. 21, 2022), available at <https://cnnic.com.cn/IDR/ReportDownloads/202012/P020201201530023411644.pdf>.

⁵⁴ Crispin Chipunza & Trust Kabungaidze, *Attributes Utilised by Knowledge Workers in Identifying Employers of Choice: Focus on Accountants and Information Technology (IT) Specialists in South Africa*, 31(2) J. Soc. Sci. 137 (2012).

⁵⁵ Nicholas Baard & Adèle Thomas, *Teleworking in South Africa: Employee Benefits and Challenges*, 8(1) SA J. Hum. Resource Mgmt. 1 (2010).

teleworking, its spread in South Africa was constrained by a number of factors prior to the pandemic. As a result, South Africa has a highly stratified society, and the literacy rate is extremely low in rural areas.⁵⁶ Many areas lack access to not only the Internet, but also to electricity. A significant portion of the population speaks African dialects, and the use of telecommunications technologies requires a high rate of computer literacy, as well as knowledge of the English language.⁵⁷

As a result of all these factors, South Africa ranks lower than the other BRICS countries in terms of the total number of teleworkers and their share in the labor force. The study conducted by D. Morrison shows that the readiness for teleworking depends on a number of factors, including the availability of high-speed Internet, as well as the availability of employee training programs.⁵⁸

When it comes to regulating teleworking in South Africa, special attention is paid to the protection of personal data and the organization of control through technical means. Thus, the Protection of Personal Information Act (POPIA) requires employers to notify employees that their performance is being monitored using special software, cameras, and a system to intercept private messages. Employees in South Africa should be kept informed of working from home best practices and how to deal with fatigue by employers, and the latter should encourage workers to set their own boundaries to achieve work-life balance. Employers in South Africa should inform (or educate?) employees about best practices for working from home and how to deal with fatigue, and workers should be encouraged to set their own boundaries to achieve work-life balance.⁵⁹

Gender inequality is also a problem in South Africa. Women have fewer opportunities to transition to teleworking. Furthermore, women were the ones who were most affected during the lockdown, as the majority of them already had low incomes prior to the pandemic. The pandemic has led to an increase in gender inequality and has the potential to exacerbate the growing poverty.⁶⁰ For South Africa, one of the priority areas of state policy is the financing of programs aimed at creating infrastructure and developing digital literacy.

⁵⁶ Chidi M. Lebopo et al., *Explaining Factors Affecting Telework Adoption in South African Organisations pre-COVID-19 in SAICSIT'20: Conference of the South African Institute of Computer Scientists and Information Technologists 2020* 94 (2020).

⁵⁷ Chudinovskikh & Tonkikh 2020.

⁵⁸ Joseph Morrison, *Explaining the Intention of IT Workers to Telework: A South African Perspective*, A dissertation presented to the Department of Information Systems, University of Cape Town (2017) (Apr. 21, 2022), available at https://open.uct.ac.za/bitstream/handle/11427/25502/thesis_com_2017_morrison_joseph.pdf?sequence=1&isAllowed=y.

⁵⁹ Walter Matli, *The Changing Work Landscape as a Result of the COVID-19 Pandemic: Insights from Remote Workers Life Situations in South Africa*, 40(9/10) *Int'l J. Sociol. Soc. Pol'y* 1237 (2020).

⁶⁰ Naila Kabeer et al., *Feminist Economic Perspectives on the COVID-19 Pandemic*, 27(1-2) *Fem. Econ.* 1 (2021).

Conclusion

This study allows us to highlight the main trends in telework regulations in BRICS. In the context of the pandemic, all of the BRICS countries were forced to impose restrictions, bans, lockdowns, and transition employees to teleworking, as well as amend legislation. By the end of 2020, a critical review of the current labor legislation was made in the Russian Federation. Regulations on teleworking were revised in 2021. In the other BRICS countries, legislative changes were made to both labor legislation and personal data protection procedures, to ensure cyber security related to teleworking.

Teleworking had gained popularity in both the commercial and public sectors prior to the pandemic in Brazil and China. In the Russian Federation, teleworking of public authorities was not introduced until 2020. The analysis of the BRICS countries' experiences highlights the need for a more thorough understanding of the limits and possibilities of introducing teleworking into state authorities in Russia.

The abrupt transition to teleworking during the pandemic has led to the increasing importance of corporations in labor regulation. The adoption of new laws or amending existing ones is a rather lengthy process, which is why large companies have taken on the responsibility of urgently modernizing internal rules, explanatory work, changes to employment contracts, employee training procedures, and technical equipment in workplaces. Due to the fact that some of these responsibilities are enshrined in legislation, they reflect established best practices.

The increase in the proportion of teleworkers aggravates problems of inequality in different ways. Teleworking is focused primarily on skilled and educated workers. For the majority of the BRICS countries, the increase in the proportion of teleworkers can exacerbate the problems of poverty and gender inequality (this problem is especially acute for India and South Africa). The BRICS countries will need to develop and carry out large-scale projects aimed at increasing digital literacy, subsidizing computer equipment and learning foreign languages to cope with the problems of inequality.

Teleworking has been provided with incentives to develop in the context of the pandemic. It will continue to develop even as countries ease restrictions because both employees and employers recognize the advantages and opportunities associated with teleworking. Moreover, teleworking was actively introduced into new industries, stimulating, for example, the development of telemedicine.⁶¹ Thus, the COVID-19 pandemic has led to substantive changes in the labor markets of the BRICS countries and highlights the need to improve legislative regulation. The issues of harmonization of labor laws in the BRICS countries, ensuring data protection and creating equal conditions for citizens' access to teleworking could be included as further areas of research.

⁶¹ Путило Н.В. Телемедицина: потребности общества и возможности законодательства // Журнал российского права. 2018. № 6(258). С. 124–135 [Natalia V. Putilo, *Telemedicine: The Needs of Society and the Possibilities of Legislation*, 6(258) Journal of Russian Law 124 (2018)].

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