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E - J O U R N A L

Answers in the Slovenian Legal Framework to the Challenges Posed by Artificial Intelligence in Employment Relationships*

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Abstract

The challenges of introducing artificial intelligence into employment relationships are diverse and require a timely and effective response at national and European level. The Slovenian legislator has not yet specifically or systematically addressed the regulation of AI and its consequences. This is partly understandable, as all eyes are on the EU to see how it will adopt the relevant regulations and directives, followed by implementation at national level. However, this does not mean that employers using AI solutions in the workplace or/and in the employment relationship are bound by nothing until a new regulation is adopted. In the search for solutions to the challenges posed by the use of AI in the world of work, we can already rely (at least in part) on the existing legal framework, as it already contains certain safeguards to protect workers. Where existing legal frameworks do not provide answers or are too general in terms of the specifics of employment relationships, solutions will have to be sought at both EU and national level on the basis of discussion, consultation and social dialogue to ensure decent and just working conditions notwithstanding the changing nature of work and new developments in the labour market.

Keywords: artificial intelligence, employment relationships, legal framework, Slovenian labour law, discrimination, limitless surveillance

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1. Introduction

Although technological solutions can make work easier, safer, more productive, and provide more work opportunities by allowing flexibility in location, time, and/or scope of work, they also carry many risks.

In recent years, scholars and researchers have pointed to several ways in which the use of artificial intelligence (AI) in the employment relationship can be problematic, such as, the risk of discrimination,[1] the invasion of workers' privacy and data protection,[2] limitless surveillance,[3] the deterioration of working conditions,[4] the restriction of collective labour rights,[5] growing precariousness[6] and more.[7]

The challenges posed by the use of AI to ensure decent working and living conditions are not limited to new forms of work, as the use of AI is also increasing in more traditional work environments and standard employment relationships.[8] The automation and digitisation of various employer functions, from hiring to firing, through the use of AI in new ICT technologies has enabled algorithmic management of workers. AI enables new approaches to organising work processes, monitoring workers, selecting job candidates and processing worker data, among other things. Algorithmic management devices are increasingly being used by employers to manage their workforce, even outside the so-called gig economy. The development of automation and robotics and the rise of algorithmic management bring challenges to both the labour market and its regulation.

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1 See, for example, Frederik J. Zuiderveen Borgesius: Strengthening legal protection against discrimination by algorithms and artificial intelligence. *The International Journal of Human Rights*, vol. 24, no. 10 (2020) 1572–1593.; Raphaële a Xenidis – Linda Senden: EU Non-discrimination Law in the Era of Artificial Intelligence: Mapping the Challenges of Algorithmic Discrimination. In: *General Principles of EU Law and the EU Digital Order*. Kluwer, 2020.; Sylvaine Laulom: Discrimination by Algorithms at Work. In: Tamás Gyulavári – Emanuele Menegatti (eds.): *Decent Work in the Digital Age: European and Comparative Perspectives*. Oxford, Hart Publishing, 2022. 271–290.

2 See, for example, Frank Hendrickx: Regulating Worker Privacy and Data Protection: Exploring the Global Source System. In: Gyulavári–Menegatti (eds.) op. cit. 293–310.; Adrian Todolí-Signes: Algorithms, artificial intelligence and automated decisions concerning workers and the risks of discrimination: the necessary collective governance of data protection. *Transfer: European Review of Labour and Research*, vol. 25, no. 4. (2019) 465–481.

3 See, for example, Antonio Aloisi – Elena Gramano: Artificial Intelligence is Watching You at Work: Digital Surveillance, Employee Monitoring, and Regulatory Issues in the EU Context. *Comparative Labor Law & Policy Journal*, vol. 41, no. 1. (2019) 95–122.; David Mangan: From Monitoring of the Workplace to Surveillance of the Workforce. In: Gyulavári–Menegatti (eds.) op. cit. 311–330.; Ifeoma Ajunwa – Kate Crawford – Jason Schultz: Limitless Worker Surveillance. *California Law Review*, vol. 105. (2017) 735–776.

4 See, for example, Alex J. Wood: Algorithmic Management Consequences for Work Organisation and Working Conditions. (JRC Technical Report) Seville, European Commission, 2021. JRC124874; Luísa Nazareno – Daniel S. Schiff: The impact of automation and artificial intelligence on worker well-being. *Technology in Society,* vol. 67, 2021.

5 See, for example, Valerio De Stefano: *Negotiating the algorithm, Automation, artificial intelligence and labour protection.* ILO Employment Policy Department, 2018.; Valerio, De Stefano – Simon Taes: *Algorithmic management and collective bargaining.* European Trade Union Institute, 2021.

6 See, for example, Janine Berg: Protecting Workers in the Digital Age: Technology, Outsourcing, and the Growing Precariousness of Work. *Comparative Labor Law & Policy Journal*, vol. 41, no. 1. (2019) 69–94.

7 For a comprehensive overview, see, for example, Gyulavári–Menegatti (eds.) op. cit.; Valerio De Stefano – Mathias Wouters: AI and digital tools in workplace management and evaluation: An assessment of the EU's legal framework. *Osgoode Legal Studies Research Paper,* No. 4144899 (March 1, 2022); *Special Issue of Comparative Labor Law & Policy Journal, "Automation, Artificial Intelligence and Labour Protection",* vol. 41, no. 1; Bernd Waas: Artificial intelligence and labour law. *HSI-Working Paper,* No. 17. December 2022 ·.

8 Jeremias Adams-Prassl: What if Your Boss Was an Algorithm? The Rise of Artificial Intelligence at Work. *Comparative Labor Law & Policy Journal*, vol. 41, no. 1 (2019) 123–146.

In this regard, an appropriate regulatory framework on the international, European and national level plays a crucial role in ensuring that the benefits of AI in the employment relationship outweigh the risks.

The purpose of this paper is to search for the answers to the challenges posed by AI in employment relationships in the Slovenian legal framework. While there are already some recent legal instruments or initiatives at EU level that address some of the risks posed by the introduction of AI in employment relationships,[9] a timely approach at national level is also necessary. The paper therefore aims to answer the research question of what solutions to the legal challenges posed by the use of AI in the employment relationships we can already find in the Slovenian legal framework and discusses whether it is already an effective tool and sufficient protection to ensure decent work in the era of the introduction of AI in employment relationships. To answer this question, national legal sources that (may) play an important role in this regard are analysed. In addition, it is determined what still needs to be regulated *de lege lata* and to what extent existing legislation can already provide sufficient answers.

This is done in six chapters, each dedicated to one of the selected challenges related to the use of AI in the employment relationship as already identified in the literature: discrimination, privacy and data protection, information asymmetry and power imbalance, work-life balance, occupational health and safety and protection of workers' supervising AI systems. The last chapter is then devoted to the final conclusions.

2. Prohibition of discrimination in employment relationships

The use of AI in employment or the workplace can lead to discriminatory outcomes because algorithms are trained on data that reflect past behaviours; therefore, they could maintain the same potentially discriminatory patterns that exist in society. The ways in which algorithms and AI can impact bias and discrimination have been addressed extensively in the general literature on AI and EU antidiscrimination.[10]

In addition to international and European legal sources several national acts are relevant to the prohibition of discrimination both in employment and more broadly. The Employment Relationships Act (ZDR-1),[11] the framework act regulating employment relationships in Slovenia, contains

[9] Notable among these are the General Data Protection Regulation (GDPR), which addresses personal data protection and privacy issues, and Directive 2019/1152 on Transparent and Predictable Working Conditions, which addresses insufficient protection for workers in more precarious jobs. However, some important initiatives related to artificial intelligence are still under discussion. Among the most important are the Proposal for the Artificial Intelligence Act and the proposal for a Directive on improving working conditions in platform work. Due to limitations in space the existing regulatory apparatus in EU law are not further discussed in this paper.

[10] See the literature under footnote 2.

[11] Zakon o delovnih razmerjih – ZDR-1 (*Official Gazette of the Republic of Slovenia,* No. 21/13 with amendments).

important safeguards to address various risks that arise when introducing AI into the labour market. Although ZDR-1 guarantees a minimum set of rights to employees, additional rights may be granted in each sector or at the employer level under collective agreements, employers' internal regulations or employment contracts. In addition, special rules may apply to public sector employees.[12] Due to limitations in space, this paper analyses the most relevant articles of ZDR-1 that may represent (at least partial) solutions to certain problems related to the use of AI.

To start with, Article 6 of ZDR-1 contains a general and fundamental provisions on the employer's obligation to ensure equal treatment of applicants or employees irrespective of their personal circumstances that extend across all aspects of the employment relationship: in recruitment, during the duration of the employment relationship; and in relation to the termination of the employment contract. It defines the protection against discrimination in broad terms, both in terms of who it applies to and the areas or issues it covers, as well as in terms of the definition of personal circumstances. The employer must ensure equal treatment regardless of personal circumstances to the jobseeker (candidate) and the employee. Furthermore, in the selection process, any unequal treatment is prohibited, and the candidate is not obliged to answer questions which are not directly related to employment relationship, e.g. health, possible pregnancy, marital status (Article 27 of the ZDR-1). Therefore, employer's collection of personal data through various sources, in particular social networks, is (at least) legally questionable. Although limited processing of personal data from publicly accessible social networks may be permissible, the principle of "proportionality" should be observed when processing personal data. This means that, for example, it may be permissible to check the professional history of candidate, provided that it is apparent from the publicly accessible profile of a specialised social network used for job search or business networking, such as LinkedIn. Searching for such information on social networks of any other kind would not be permissible. This is especially the case if these profiles are not publicly accessible, but if the information seeker has to actively log in to the social network to obtain information about the person. The Slovenian Information Commissioner emphasises that the limit of (in)permissible processing of personal data in this case is not clearly defined by law and therefore it is only possible in a specific review procedure (and only for the scope of the specific procedure) to determine when such processing of personal data was disproportionate or unlawful, e.g. because there was no legal basis for such processing.[13]

The first paragraph of the Article 6 also lists or defines the personal circumstances on the basis of which it is not permissible to discriminate against workers and job applicants. The Slovenian anti-discrimination law, including ZDR-1, is based on a system of an open list of personal circumstances.

[12] On the characteristics of the Slovenian labour law regulation, see Zvone Vodovnik – Etelka Korpič-Horvat – Luka Tičar: *Slovenia.* Alphen aan den Rijn: Kluwer Law International, 2018.

[13] Opinion of the Slovenian Information Commissioner no. 0712-1/2017/1850, 26. 9. 2017; Available at: https://tinyurl.com/yx9ccwh4

Slovenia therefore provides protection against impermissible less favourable treatment on the basis of any personal circumstance.[14]

Also worth mentioning is the reversal of the burden of proof in discrimination disputes that has become a necessary component of anti-discrimination law. If, in the event of a dispute, a candidate or employee provides facts giving grounds for the suspicion that the prohibition of discrimination has been violated *(prima facie evidence)* the employer must demonstrate that, in the case in question, the principle of equal treatment and the prohibition of discrimination have not been violated (Article 6(6) of the ZDR-1). The burden of proof is distributed as follows: the worker or applicant must establish facts which justify the presumption of discrimination, and the employer must then prove that there has been no discrimination and therefore that the employer has not infringed the principle of equal treatment.

Furthermore, the ZDR-1 also seeks to strengthen the effectiveness of the enforcement of non-discrimination rights in practice through a provision prohibiting retaliation. In this respect, protection is granted to the victim of discrimination as well as to any other person who assists the victim of discrimination (Article 6(7) of the ZDR-1).

In addition to Article 6, other articles of the ZDR-1 must be taken into account. For example Article 7 which prohibits sexual and other harassment and workplace bullying, Article 8 that explicitly recognises the employer's liability for (non)pecuniary damage suffered by workers as a result of a breach of the prohibition of discrimination or workplace bullying, and Articles 27 and 28 that prohibit discrimination in the selection and employment contract procedure. Furthermore, if AI plays a role in the dismissal procedure, the articles governing legal protection against dismissal represent an important safeguard. Therefore, Article 83 concerning the prohibition of discrimination in the case of ordinary and extraordinary dismissal, Article 90 on unfounded grounds for dismissal, Article 102 on criteria for determining redundancies and Article 111, which lists among the grounds for extraordinary dismissal by the employee the employer's failure to ensure equal treatment of the employee or to protect him/her from sexual and other harassment or ill-treatment in the workplace has to be considered. Also relevant are provisions providing special protection for certain groups of workers, e.g. the elderly, women, workers with family responsibilities, etc., and Article 214 on non-discrimination for economically dependent persons.[15]

Although the analysed provisions have a broad scope, the issues that arise are similar to those related to EU non-discrimination law. The main method of enforcing non-discrimination law in the EU is for individuals to bring actions in court. However, because automated discrimination tends to be abstract and counterintuitive, subtle and intangible, it can be difficult for job seekers and employees

14 Barbara Kresal: Komentar k 6. členu ZDR-1. In: Irena Bečan et al.: *Zakon o delovnih razmerjih (ZDR-1) s komentarjem*. Ljubljana, GV Založba, 2019. 49–52.

15 Kresal op. cit.

to recognise discrimination and thus take legal action. And even if they suspect discriminatory practises, claimant must present enough facts before the burden of proof reverses, making it even more difficult to take legal action.[16]

3. Protection of workers personal data and privacy

Information gathering is not new, but in the past its scope was limited by the availability of information as well as the human ability to process it. Algorithms, Big Data, and AI, however, have made access to data virtually unlimited and have significantly reduced the cost of accessing and processing data. The use of new technologies to assess and monitor workers has thus fundamentally changed the way information is collected and obtained, the way that information is processed, and the way decisions are made. In addition, the lower cost of these three levels makes it easy for companies to increase their monitoring of workers: The cheaper the surveillance, the more action employers will take to protect their business interests.[17]

Information technology and AI make it possible to monitor workers' activities on a scale previously unimaginable, and to collect and process vast amounts of data about those activities. For example, more and more workers are using wearable devices that allow them to continuously record their movements and location, their work pace, and even their breaks. The data collected by wearables is often analysed using AI to assess the worker's productivity and ability to perform specific tasks.[18]

AI enables the collection and processing of a vast amount of personal data, but at the same time, it also allows for (excessive) invasion of employee privacy by giving employers constant access to employee data, including personal data such as family planning data, health data, etc. This can lead to a sense of constant surveillance and consequently stress among workers and negatively impact efficiency and productivity, raising several concerns. The use of AI to monitor workers can negatively impact work-life balance by blurring the traditional line between an individual's workplace and personal life. Information about an employee's weekend can easily be combined with productivity measurements during the workday, revealing patterns that go far beyond traditional employer concerns. Even when information is collected and stored in anonymized form, data sets from multiple sources can enable relatively rapid identification of individuals within an organisation. At the same time, the collection and processing of vast amounts of data can increase the risk of discrimination and negatively impact working conditions, while making it impossible or difficult to organise and unite workers.

16 De Stefano–Wouters op. cit. 48.

17 Todolí-Signes (2019) op. cit.

18 Aloisi–Gramano op. cit.; Mangan (2022) op. cit.; Ajunwa–Crawford–Schultz op. cit.; Wood op. cit.

With respect to workers' privacy and personal data, Article 48 of the ZDR-1 provides that personal data of employees may be collected, processed, used and transferred to third parties only if this is provided by law or if this is necessary for the exercise of rights and obligations arising from or in connection with the employment relationship. The article further states that employees' personal data may only be collected, processed, used and transferred to third parties by the employer or by an employee specifically authorised by the employer (data protection officer). However, the employer is obliged to immediately delete and no longer use personal data of employees for the collection of which there is no longer a legal basis. The rights referred to in this article shall also apply to the job applicant. In case of violation of the right to protection of personal data, the Information Commissioner may inspect the employer.[19] The misuse of personal data may also constitute a criminal offence, and its unlawful processing may also result in civil (tort) liability. Furthermore, Article 46 of the ZDR-1 provides for a general obligation to protect and respect the worker's personality and privacy, stating that the employer must protect and respect the worker's personality and respect and protect the worker's privacy. Although the ZDR-1 is a *lex specialis* to the general regulation under the EU General Data Protection Regulation (GDPR)[20] and the Personal Data Protection Act (ZVOP-2)[21], it can be concluded that it is a relatively general provision that needs to be supplemented.

The protection of the employee's personal data is further protected by the ZVOP-2, which is the fundamental source of law (*lex generalis*) for the protection of personal data in Slovenia and which employers must also respect. ZVOP-2 regulates the areas that the GDPR leaves to the Member States. It replaced the previous ZVOP-1[22] and entered into force on January 26, 2023.

With regard to the employment relationship, particular mention should be made of Article 78 of ZVOP-2 on video surveillance in the workplaces. It states that it is prohibited to use video surveillance to record workplaces where an employee usually works, unless this is absolutely necessary for the safety of people or property or the prevention or detection of violations in the field of gambling or for the protection of classified information or business secrets, and these purposes cannot be achieved by milder means funds. Video surveillance may be conducted only in those parts of the premises and to the extent necessary to protect those interests, and employees must be informed in writing in advance that video surveillance will be conducted. Direct monitoring is only permitted if it is carried out by expressly authorized personnel of the operator. Before introducing video surveillance in public or private areas, the employer must consult with representative trade unions and the workers' council or other workers' representative body.

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19 According to the Information Commissioner Act (Zakon o informacijskem pooblaščencu – ZinfO, *Official Gazette of the Republic of Slovenia,* No. 113/05), the Information Commissioner acts as a complaints, inspection and prosecution body and supervises the implementation of ZVOP-2.

20 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), *OJ L* 119, 4.5.2016, p. 1–88 .

21 Zakon o varstvu osebnih podatkov– ZVOP-2 (*Official Gazette of the Republic of Slovenia,* No. 163/22).

22 Zakon o varstvu osebnih podatkov– ZVOP-1 (*Official Gazette of the Republic of Slovenia,* No. 86/04 with amendments).

Although the GDPR allows Member States to allow trade unions to initiate a procedure under the GDPR independently of an individual applicant,[23] this possibility is unfortunately not mentioned in the ZVOP-2.

The basic principles of personal data protection in the GDPR and the ZVOP-2 provide solutions to mitigate the negative impact of AI in the workplace, but it is important to ensure that these provisions are properly enforced in employment relationships. In this regard, national data protection authorities, in the Slovenian case the Information Commissioner, plays the most important role. He already issues important guidance on the protection of personal data in employment relationships, but the document was published before the adoption of ZVOP-2 and does not cover issues related to the use of artificial intelligence, so it needs to be updated.[24]

4. Education and training as a counterweight to information asymmetry and power imbalance

The right to education and training is particularly important in the age of new technologies, including AI, because workers need to be trained to work with new technologies and the right to education can play an important role in understanding how AI works and plays a role in the employment relationship.

Pursuant to Article 170 of the ZDR-1, a worker has the right and obligation to undergo continuous education, training and development in accordance with the requirements of the work process in order to maintain or enhance his ability to perform the work specified in the employment contract, maintain employment and increase his employability, while, on the other hand, the employer is obliged to provide education, training and continuing education to employees if the requirements of the work process so require or if the education, training and continuing education is suitable to avoid termination of the employment contract due to incapacity or for operational reasons. In accordance with the requirements of education, training and continuing education of employees, the employer has the right to refer the employee for education, training and continuing education, and the employee has the right to request such education, training and continuing education himself.

Although the legal basis is in place, data for Slovenia show a low percentage of adults participating in education and training.[25] Other research also indicates that older people, people with lower levels of education, people who are at high risk of automation of work processes, and people who are unlikely

[23] Alexia Pato: The National Adaptation of Article 80 GDPR: Towards the Effective Private Enforcement of Collective Data Protection Rights. In: Karen McCullagh – Olivia Tambou – Sam Bourton (eds.): *National Adaptations of the GDPR*. (Collection Open Access Book) Luxembourg, Blogdroiteuropeen, 2019.

[24] Available in the Slovene language at: https://tinyurl.com/5ycwanas

[25] Lifelong Learning Week. Statistical Office of the Republic of Slovenia, 2020. Available at: sl-vsezivljensko-ucenje.pdf (stat.si).

to be doing the same jobs as today in the coming years are among the most vulnerable groups.[26] Moreover, the role of employee representatives in this regard is still relatively passive.[27]

It is complicated to explain and understand how AI works, and therefore difficult to challenge employer decisions. This can lead to information asymmetry and power imbalance.

In addition to education and training, the right to information and consultation of workers' representatives and social partners is an important tool to ensure transparency, explainability and understanding of how AI works. This has an important legal basis in EU law, in particular in Directive 2002/14/ EC establishing a general framework for informing and consulting employees in the European Community.[28] In this respect, it is the national laws of the Member States that must ensure that the Directive is adequately implemented.[29]

In Slovenia, Directive 2002/14/ EC is implemented through some provisions of the ZDR-1 and Worker Participation in Management Act (ZSDU).[30] In practise, however, there are no specific activities of the social partners with regard to the introduction of AI in employment relations. There has also been no specific discussion of AI in the Economic and Social Council. While trade unions and employers' associations indicate that they are aware of the importance of AI in the labour market, there are no more concrete structured activities related to AI and its impact on the labour market.[31] This clearly indicates an inadequate response at the national level and highlights the need to reopen the debate on how to make this directive more effective. In addition, it will be critical to ensure adequate training for workers on the use of artificial intelligence and how to recognise the dangers associated with it.

5. New technologies – an opportunity or a risk for a better work-life balance?

Given the possibility of constant surveillance made possible by AI and the blurring of the boundaries between private and professional life, the provisions on this issue are also important.

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26 Polona Domadenik Muren – Tjaša Redek – Maja Zalaznik – Valentina Franca: Qualitative research among labour market stakeholders in the framework of the national research project – Adult Lifelong Learning for Sustainable Development and Digital Breakthrough. january 2023.; Available at: https://www.pef.upr.si/sl/raziskovanje/programi-in-projekti-arrs/2022032215365750/vsezivljenjsko-ucenje-odraslih-za-trajnostni-razvoj-in-digitalni-preboj-vzu-preboj

27 Valentina Franca: Med teorijo in prakso: vsebine izobraževanja in usposabljanja v kolektivnih pogodbah dejavnosti (Between theory and practice: the content of education and training in the collective agreements of the industries). *Delavci in delodajalci,* vol. 18, no. 4. (2018) 609–632.

28 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation. *OJ L* 80, 23.3.2002, p. 29–34.

29 De Stefano–Wouters op. cit.

30 Zakon o sodelovanju delavcev pri upravljanju- ZSDU (*Official Gazette of the Republic of Slovenia,* No. 42/93 with amendments).

31 Stakeholder responses were obtained in the framework of the the research project V5-2267.

In Slovenia, several labour law instruments aim to facilitate work-life valance, such as the right to work part-time for parental reasons, the additional day of annual leave (Article 159 of the ZDR-1), and the possibility to take annual leave during school vacations (Article 163(2) of the ZDR-1).

The general provision of Article 182, which obliges the employer to enable work-life balance, is specified in the third paragraph of Article 148, which provides that an employee may propose a different working time arrangement to meet the needs of work-life balance. An employee may propose a different working time arrangement to ensure work-life balance, and the employer must justify its decision in writing, taking into account the requirements of the work process. The written justification may also be sent electronically to the employee's e-mail address provided by the employer, who must also prescribe its use. This means that the employer cannot reject the employee's proposal simply because it would mean a different organisation of the work process, but must examine in each individual case whether the proposed change in employee's work schedule represents a disproportionate interference in the organisation of the work process and objectively justify his decision. In doing so, he must weigh up the rights of the (parenting) worker to shorter working hours and to a better reconciliation of his or her family and professional obligations on the one hand, and the rights of the employer to organise the working process on the other, and give priority to the protection of the worker's right.

With regard to the right to request different distribution of working time, Slovenian legislation complies with the Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers (the WLB Directive)[32] on flexible working arrangements, however, telework is not included.

Although the worker has the right to request teleworking regardless of the reason, according to the ZDR-1 telework needs to be agreed between the worker and the employer. The employer is not obliged to comply with the worker's request or even provide reasons for any refusal of such a request. In this part, an obligation of the employer to consider and respond to requests within a reasonable period of time, providing reasons for any refusal of such requests or for any postponement of such arrangements, will need to be enacted to fully comply with the WLB Directive.[33]

Furthermore, the ability to work anywhere, anytime blurs the line between working time and free time. Long working hours and constant availability have a negative impact on the worker's ability to organise his leisure time and on his family life, preventing him from resting and thus having a negative impact on his health. In this respect, the right to disconnect is gaining in importance, not only for teleworkers, but also for employees who work on the employer's premises.[34] Although the

[32] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, PE/20/2019/REV/1, *OJ L* 188, 12.7.2019, p. 79–93.

[33] Sara Bagari: L'équilibre entre vie professionnelle et vie privée en Slovénie à la lumière de la nouvelle Directive européenne 2019/1158. *Revue de Droit Comparé Du Travail et de La Sécurité Sociale*, no. 3. (2018) 70–81.

[34] See, for example, Eurofound, Telework and ICT-based mobile work: Flexible working in the digital age. (New forms of employment series) Luxembourg, Publications Office of the European Union, 16 January 2020.; The right to disconnect in the 27 EU member states. *Eurofound Working Paper,* 28 July 2020; Paul M. Secunda: The Employee Right to Disconnect. *Notre Dame Journal of International & Comparative Law*, vol. 9, no. 1 (2019) Article 3.

right to disconnect is currently not regulated in the Slovenian legislation, we can find it in a few collective agreements that have regulated homeworking in Slovenia. These have stipulated that the employment contract must specify the time during which the worker must be available to the employer by telephone or e-mail and that outside these times the worker is not obliged to report to or answer to the employer (right to disconnect). Furthermore, in 2021 an Expert Committee on Teleworking has been set up and is operating within the Economic and Social Council, dealing, among other things, with the regulation of the right to disconnect. The right to disconnect is provided for in an amendment to the ZDR-1, which is currently being drafted by the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

6. Forgotten (aspects of) occupational safety and health

Studies show that there are multiple occupational risk factors when using the AI in the employment relationship. For a start, the feeling of being permanently observed represent a risk factor as invasive technological control and lack of privacy can cause various psychosocial risks. Secondly, the fact that it is impossible to contest a decision made by an algorithm can lead to anxiety and frustration which can be especially damaging if combined with the threat of dismissal or, in general, a feeling of job insecurity. Thirdly, workers subject to automated or algorithmic management of their work may see their work (or workload) intensified, which is even more problematic as the European Agency for Safety and Health at Work[35] has indicated that the main source of stress identified by workers are the hours they have to work and the workload.[36]

Although Slovenia Health and Safety at Work Act (ZVZD-1)[37] does not address specific issues related to the introduction of AI in employment relationships, it contains some relevant provisions to pay attention to in this respect.[38] On the one hand, a worker has the right to work and to a working environment that ensures his safety and health at work, and, on the other hand, he has the duty to observe and implement the rules on safety and health at work and to carry out his work with care.[39]

In accordance with Article 13 of the ZVZD-1, employers and employees or their representatives must inform each other, consult together and co-determine on occupational safety and health

35 EU-OSHA: Second European Survey of Enterprises on New and Emerging Risks (ESENER-2). Overview Report: Managing Safety and Health, 2013.

36 For more on occupational risks associated with work managed by artificial intelligence, see Adrián Todolí-Signes: Making algorithms safe for workers: occupational risks associated with work managed by artificial intelligence. Transfer: *European Review of Labour and Research*, vol. 27, no. 4. (2021) 433–452.

37 Zakon o varnosti in zdravju pri delu- ZVZD-1 (*Official Gazette of the Republic of Slovenia,* No. 43/11).

38 The same applies on the EU level.

39 In this respect Article 35 of ZDR-1 states, that workers must respect and implement the regulations and measures on safety and health at work and perform their work with due care in order to protect their own life and health and the health and lives of others.

issues in accordance with ZVZD-1 and the regulations on employee participation in management. Furthermore, the use of AI should clearly be included in the risk assessment (Article 17 of the ZVZD-1), and the employer has to publish the safety statement with the risk assessment in the usual way and communicate it to the workers in so far as it concerns them whenever it is amended and supplemented (Article 18 of the ZVZD-1).

In addition to the above, pursuant to Article 37 of the ZVZD-1, the employer must inform workers about (among other things) the types of hazards in the working environment and workplace, the precautions necessary to prevent hazards and minimise harmful consequences, which may include the use of AI in the employment relationship. Given the novelties and specificities that the introduction of AI brings to (some or all) workplaces, employers must also ensure that workers who will use AI in their work are properly trained in how to work safely and healthily with AI.

Interestingly, a comparison with the results of the ESENER-2014[40] and ESENER-2019 survey shows different trends at country and EU level, not only in risk factors, but also in the management of occupational safety and health and the associated drivers and barriers. Worker participation in the management of psychosocial risks has declined in many countries, even though a participatory approach is recognised as important for managing these increasingly prevalent risks.[41]

Although occupational safety and health has always been an important part of labour law protection, it does not seem to receive enough attention in practice. Furthermore, from a legal perspective, although there are some ways of addressing occupational safety and health in connection with the use of AI at the workplace through the existing legal framework there is a need for an act to address this issue more specifically. Specific risks that occur with the introducing of AI in the workplace therefore call for specific regulation, both on European[42] as well as on national level, to ensure that the field of occupational safety and health also adequately and efficiently adapts to the changes taking place in the world of work.

7. The need to protect "whistle-blowers" on AI issues

The risks of introducing AI into the labour market also highlight the need for adequate protection for workers, AI developers, as well as others who identify potential violations of workers' rights related to the use of AI in the context of their work or work environment, and who draw attention to these risks and the dangers of AI or raise the issue publicly. This is especially important regarding

40 EENER stands for European Survey of Enterprises on New and Emerging Risks carried out every five years by the EU-OSHA.

41 Results of the ESENER-2019 survey are available at: https://tinyurl.com/2p8cez3f

42 In this respect see Todolí-Signes (2021) op. cit.

the enforcement of existing labour rights and might be an essential pathway to discover illegal or undesirable practices.[43]

In Slovenia, the Whistle-blower Protection Act (ZZPri)[44], adopted on 27 January 2023, establishes the methods and procedures for reporting and dealing with breaches of regulations of which individuals become aware in the working environment, and the protection of individuals who report or publicly disclose information about a breach (Article 1 of the ZZPri). ZZPri transposes into Slovenian law Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.[45] However, while the Directive, which otherwise determines a whole range of areas EU policies covered by protection, retained the sectoral approach,[46] the Slovenian ZZPri includes a comprehensive protection of whistle-blowers and applies more broadly. More specifically, the protection provided by the ZZPri includes all persons reporting the breaches of (all) regulations in force in Slovenia. This means that the ZZPri also provides protection to whistle-blowers who report or publicly disclose information about a breach of labour law.

In terms of protection of the whistle-blower, the retaliatory, protective and supportive measures, which are regulated in Articles 19 and 20 of the ZZPri, are of particular importance. In this respect, in order to qualify for protection, it is required that the whistle-blower, in addition to the report or public disclosure, had reasonable grounds to believe that the information about the infringements reported was true at the time of the report. The law provides for several possible methods of notification, distinguishing between internal and external notification, and also regulates public disclosure of infringements, which is subject to relatively strict and not entirely clear conditions.

Furthermore, ZZPri imposes important obligations on public and private sector employers. To comply with ZZPri within a specified timeline[47] they must adopt an internal act that describes the internal reporting procedure and establishes several aspects, including a trustee to examine and process reports of violations, and certain other tasks, such as providing information to the whistle-blower on the protection under ZZPri, as well as the duty to cooperate with the external reporting body.

43 De Stefano–Wouters op. cit. 47.

44 Zakon o zaščiti prijaviteljev- ZZPri (*Official Gazette of the Republic of Slovenia,* No. 16/23)

45 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, PE/78/2019/REV/1, *OJ L* 305, 26.11.2019, p. 17–56.

46 Darja Senčur Peček: How to improve the protection of Employees-Whistleblowers in Slovenia by implementing the EU Whistleblower Protection Directive. In: Dagmara Skupień (ed.): *Towards a Better Protection of Workplace Whistleblowers in the Visegrad Countries, France and Slovenia*. Lodz University Press, 2021. 71–97.

47 The deadline was May 2023 for public sector employers and private sector employers employing 250 or more employees, and December 2023 for other private sector employers, typically employing between 50 and 249 employees.

8. Conclusion

AI is already having a significant impact on the scale of employment, but also on the nature of many employment relationships, affecting the field of labour law, which will have to adapt. This means not only that new legislation will have to be enacted and new solutions found, but also that existing legislation will have to be adapted to the new challenges of the labour market.

The Slovenian legislator has not yet specifically or systematically addressed the regulation of AI and its consequences. This is partly understandable, as all eyes are on the EU to see how it will adopt the relevant regulations and directives, followed by implementation at national level.

However, this does not mean that until new regulation will be adopted employers using AI solutions in the workplace or/and in employment relationship are not bound by anything. In finding solutions to the challenges posed by the use of AI in the world of work we can (at least partially) already rely on the existing legal frameworks, as they already contain certain safeguards that protect workers. In this respect, the challenge remains, in interpreting and monitoring the implementation of the current legislation in an AI environment.

Although activities to regulate AI are taking place on a monthly basis at the EU level, timely action at the national level is also essential. Already at this stage, there is a need to evaluate the existing legislation of the above-mentioned laws and to conduct a social dialogue on the necessary changes in both the relevant laws and collective agreements to ensure a functioning and effective legal framework that meets the challenges posed by the use of artificial intelligence in the labour market.

There is a need for consistent implementation of legislation that already provides some solutions, such as the right to continuous education, training and upskilling, mutual information, consultation and participation in the introduction of AI in the work process based on the provisions of the ZVZD-1, and the recognition of the use of AI as a hazard that must be included in the risk assessment. Although both the GDPR and the ZVOP-2 provide important solutions with regard to the protection of personal data, there is a need for swift interpretation of the relevant provisions and the development of legally sound guidelines by the competent authorities (Information Commissioner), as well as raising awareness among employees of the protection offered by the GDPR and the ZVOP-2 in the event of a notification of non-compliance.

Where existing legal frameworks do not provide answers or are too general in terms of the specifics of employment relationships, solutions will have to be sought at both EU and national level on the basis of discussion, consultation and social dialogue. In this respect, while the GDPR is a very promising tool to address the risks associated with the introduction of AI in employment, the principles and criteria of the GDPR are quite flexible, which makes it difficult to apply consistently. To prevent discrimination in the workplace and develop effective legal solutions, we also need to understand

the fundamentally different control and decision-making structures behind algorithmic.[48] The legal framework that guarantees health and safety at work also needs to be adapted and renewed.

In the end, it is up to all stakeholders, including the European institutions and the Members States to ensure decent and just working conditions notwithstanding the changing nature of work and new developments in the labour market.

[48] Adams-Prassl (2019) op. cit.