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THE POTENTIAL DISCRIMINATORY EFFECT ON PERSONALITY RIGHTS OF ARTIFICIAL INTELLIGENCE SYSTEMS USED IN EMPLOYMENT AND THE LEGAL INSTRUMENTS TO COMBAT THIS EFFECT

Roxana MATEFI[1]

Abstract: *In a context where Artificial Intelligence is increasingly becoming part of our everyday lives, bringing considerable and undeniable improvements and facilitating many activities that used to be very time-consuming, the issue that constantly arises is that of identifying the legal means to mitigate the risks arising from the increasingly widespread use of AI systems. In this context, the adoption of the EU AI ACT represented an extremely important step forward at European level in terms of AI regulation.*
This paper aims to analyse how artificial intelligence systems used in employment can infringe on personality rights and what mechanisms AI ACT offers to counteract or at least limit these harmful effects.

Key words: *Artificial Intelligence, employment, personality rights, discrimination.*

1. Introduction

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, referred to as AI ACT for short, a name we will continue to use throughout our analysis, represents the first comprehensive regulation on Artificial Intelligence adopted at the European level, whose main purpose is "to improve the functioning of the internal market by laying down a uniform legal framework in particular for the development, the placing on the market, the putting into service and the use of artificial intelligence systems (AI systems) in the Union, in accordance with Union values, to promote the uptake of human centric and trustworthy artificial intelligence (AI) while ensuring a high

[1] *Transilvania* University of Braşov, roxana.matefi@unitbv.ro, corresponding author

level of protection of health, safety, fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, including democracy, the rule of law and environmental protection, to protect against the harmful effects of AI systems in the Union, and to support innovation." (https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng)

The AI Act was formally adopted by the European Council on May, 21, 2024 and then published in the Official Journal of the European Union on July, 12, 2024. The Regulation entered into force on August 1, 2024, but the requirements of the of this Act will start applying gradually.

Most of the provisions will start applying from August 2nd, 2025. This is also the deadline for the Member States to report to the Commission on the status of the financial and human resources of the national competent authorities, to designate national competent authorities (notifying authorities and market surveillance authorities), communicate them to the Commission, and make their contact details publicly available, lay down rules for penalties and fines, notify them to the Commission, and ensure that they are properly implemented. (https://artificialintelligenceact.eu/implementation-timeline/.)

2. What is Artificial Intelligence?

A comprehensive definition of artificial intelligence is difficult to provide, given the complexity of this notion and the evolution of the concept over the time. As doctrine emphasized "a strong definition, that maintains its accuracy over decades, has always remained elusive" (Steckelmacher and Bogaerts, 2025, p. 81-103), as "there are countless competing definitions for artificial intelligence" (Westerstrand, S., 2025, p. 2).

However, the regulation requires from the very beginning that "the notion of 'AI system' in this Regulation should be clearly defined and should be closely aligned with the work of international organisations working on AI to ensure legal certainty, facilitate international convergence and wide acceptance, while providing the flexibility to accommodate the rapid technological developments in this field. Moreover, the definition should be based on key characteristics of AI systems that distinguish it from simpler traditional software systems or programming approaches and should not cover systems that are based on the rules defined solely by natural persons to automatically execute operations." (https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng).

I consider the key element of the rigors imposed on such a definition to be its flexibility to accommodate to the technological developments in the field, given the accelerated pace at which these developments are taking place. Such a requirement is not at all easy, as the challenge of identifying such a comprehensive definition is considerable.

Based on the imperatives I referred to above, the definition provided by Art. 3 of the AI Act refers to the 'AI system' as "a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to

generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments".

The definition implies that such a system has a certain degree of autonomy (which varies from one system to another) and adaptability, being able to generate predictions, content, recommendations, or decisions, while, at the same time having the capability to influence the environments it interacts with.

3. AI benefits and risks

Presented by the AI ACT as "a fast evolving family of technologies that contributes to a wide array of economic, environmental and societal benefits across the entire spectrum of industries and social activities," the AI can, at the same time provide key advantages in various domains (such as healthcare, education, security, justice, etc.) and generate risk and cause material and immaterial harm to the protected fundamental and personality rights.

To limit the risks arising from the use of AI systems, the new regulation establishes harmonized rules for the placing into market and the use of AI systems in EU, prohibits some AI practices which are considered to pose a certain risk on fundamental rights while at the same time setting some specific requirements for high-risk AI systems and obligations for operators of those systems.

Without going into further detail, we will just point out, as examples, the following systems, which, according to the AI EU ACT, are considered to have an unacceptable degree of risk and, as such, fall into the category of prohibited systems: AI system that deploys subliminal techniques beyond a person's consciousness or purposefully manipulative or deceptive techniques; AI system that exploits any of the vulnerabilities of a natural person or a specific group of persons due to their age, disability or a specific social or economic situation; AI systems that create or expand facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage, etc.

With regard to high-risk AI systems, the AI ACT includes the following types of systems in this category: AI systems used in biometrics; critical infrastructure, educational and vocational training; employment, workers' management and access to self-employment; access to and enjoyment of essential private services and essential public services and benefits; law enforcement; migration, asylum and border control management; administration of justice and democratic processes.

4. AI Systems used in employment, workers' management and access to self-employment

Some of the systems classified by AI ACT as high risk are, as we saw above, those used in employment, workers' management and access to self-employment. Annex III of the AI ACT includes here (a) the AI systems intended to be used for the recruitment or selection of natural persons, in particular to place targeted job advertisements, to analyze and filter job applications, and to evaluate candidates as well as (b) AI systems

intended to be used to make decisions affecting terms of work-related relationships, the promotion or termination of work-related contractual relationships, to allocate tasks based on individual behaviour or personal traits or characteristics or to monitor and evaluate the performance and behaviour of persons in such relationships.

As emphasized by the doctrine, "these use cases cover the entire life span of a contractual relationship. They can be categorised into two phases, with one phase being the time before a contract has been concluded and the other phase being the time in which the parties perform the contract" (Voigt and Hullen, 2024, p. 44 – 119).

In the first category, that of high-risk systems used prior to the conclusion of an employment contract, we can include, for instance "sourcing system that specifically identifies potential employees (or freelancers) with a suitable skills profile and contacts them for the purpose of concluding a contract" (Voigt and Hullen, 2024, p. 44 – 119), while in the stage following the conclusion of the employment contract, AI systems could be "used to adjust the terms and monitor performances in the context of the contractual relationship (…) various types of information, e.g. working hours, workloads or performance indicators, can be recorded and analysed by AI systems. AI systems can optimise processes and distribute tasks according to this analysis in order to increase efficiency" (Voigt and Hullen, 2024, p. 44 – 119).

As we have seen above, these categories of systems also present an increased risk, given that they are meant to monitor the employees' performance, to evaluate it, to promote them, etc., so the impact on their future careers is consistent.

5. The potential discriminatory effect of AI systems used in employment on personality rights

Among the main advantages of using AI systems in employment, the literature refers to the increased efficiency of the recruitment process, shortening the time allocated for this purpose; reduced unconscious biases, while the companies that use such systems are considered more innovative than the others, which help improving their reputation on the market (Xiong and Kim, 2025).

The main reason for classifying those systems as high-risk is linked to the impact they are likely to have on the future career prospects, livelihoods of those persons as well as on workers' rights. At the same time there is a great risk for those systems to perpetuate historical patterns of discrimination (for example against women, persons with disabilities, person of certain origin, racial or ethnic, etc.) when used in recruitment, evaluation, promotion, etc. The rights to data protection and the to privacy are also at risk when AI systems are used for monitoring the performance and the behaviour of employees.

6. Fundamental rights impact assessment for high-risk AI systems.

Article 27 of the AI Act establishes the obligation of the deployers of high-risk AI systems to perform an assessment of the impact on fundamental rights that the use of such systems may produce, before deploying such a system. Deployers are considered

the bodies governed by public law or the private entities providing public services.

According to the above mentioned article, the assessment consist of:

"(a) a description of the deployer's processes in which the high-risk AI system will be used in line with its intended purpose;

(b) a description of the period of time within which, and the frequency with which, each high-risk AI system is intended to be used;

(c) the categories of natural persons and groups likely to be affected by its use in the specific context;

(d) the specific risks of harm likely to have an impact on the categories of natural persons or groups of persons identified pursuant to point (c) of this paragraph, taking into account the information given by the provider pursuant to Article 13;

(e) a description of the implementation of human oversight measures, according to the instructions for use;

(f) the measures to be taken in the case of the materialisation of those risks, including the arrangements for internal governance and complaint mechanisms."

The provision contained by Art. 27 of the AI Act is considered to be "a decisive and unprecedented step for the protection of fundamental rights of people. The FRIA (Fundamental Rights for Impact Assessment) represents a crucial obligation, requiring deployers of some high-risk AI systems to conduct comprehensive evaluations of potential impacts on FR prior to deploying the AI system" (Bertaina et al., 2025).

The obligation of conducting a fundamental rights impact assessment of the high-risk systems is applicable for the first use of those systems, but if, during their use the deployer appreciates that any of the above mentioned elements has changes or is no longer up to date, he needs to take measures for updating the information. This obligation is stipulated by par. (2) of the same Article.

The deployer has also the obligation to notify the market surveillance authority of the results of the assessment, once it has been performed.

7. Conclusions

As we have seen in our analysis, an important step taken by the adoption of the EU AI ACT was the classification of AI systems according to the degree of risk they pose to individuals' fundamental rights, in which sense we identify AI systems which pose unacceptable, high, limited and minimal risk.

Among the high-risk systems, the Regulation includes also AI Systems which are used in employment, workers' management and access to self-employment, due to the potential discriminatory effect they might have as well as influence on the future careers prospects.

In this context, one of the legal instruments which is meant to limit the potential harmful effects of these systems on fundamental rights is the obligation of the deployers of high-risk AI systems to perform an assessment of the impact of those systems on fundamental rights.

At the same time, in order "to ensure that the legal framework remains adaptable, future-proof, and responsive to emerging risks, technologies, and societal expectations

(…) the EU Artificial Intelligence Act incorporates the use of delegated acts, enabling the European Commission to update specific provisions, such as the list of high-risk AI systems, without undergoing the full legislative process" (Madl et al., 2026, p. 203-218).

References

Bertaina, S., Biganzoli, I., Desiante, R., Fontanella, D., Inverardi, N., Penco, I.G., Cosentini, A. C. (2025). Fundamental rights and artificial intelligence impact assessment: A new quantitative methodology in the upcoming era of AI Act. *Computer Law & Security Review,* Vol.56, https://doi.org/10.1016/j.clsr.2024.106101.

Madl, L., Bargu, S., Cuhadaroglu, M. (2026). Bridging Ethics and Regulation: How VBE Facilitates Compliance with the EU AI Act in High-Risk and General Purpose AI. In: Hagedorn, L., Schmid, U., Winter, S., Woltran, S. (Eds). *Digital Humanism. DIGHUM 2025. Lecture Notes in Computer Science,* vol. 16319 (pp. 203-218). Springer, Cham. https://doi.org/10.1007/978-3-032-11108-1_15

Steckelmacher, D., Bogaerts, B. (2025). Definition of AI. In: Raposo, V.L. (Eds)., *The European Artificial Intelligence Act. Law, Governance and Technology Series*, vol. 78 (pp. 81 – 103). Springer, Cham. https://doi.org/10.1007/978-3-031-98406-8_4

Voigt, P., Hullen, N. (2024). Which Requirements Apply to High-Risk AI Systems? *The EU AI Act.,* 44-119. Berlin, Heidelberg: Springer. https://doi.org/10.1007/978-3-662-70201-7_3

Ying Xiong, Joon Kyoung Kim. (2025). Who wants to be hired by AI? How message frames and AI transparency impact individuals' attitudes and behaviors toward companies using AI in hiring. *Computers in Human Behavior: Artificial Humans*, 3(4):100120. https://doi.org/10.1016/j.chbah.2025.100120.

Westerstrand, S. (2025). Fairness in AI systems development: EU AI Act compliance and beyond. *Information and Software Technology,* Vol. 187, https://doi.org/10.1016/j.infsof.2025.107864.

https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng).

Other information may be obtained from the address: roxana.matefi@unitbv.ro