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ORIGINAL PAPER

Legal perspectives on the regulation of artificial intelligence systems and the protection of the stability of employment relationships

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Abstract:

The evolution of artificial intelligence systems requires a profound reassessment of the foundations of labor law, moving from the classic vision of subordination to the employer, whether a natural or legal person, to a reality in which the algorithm acquires control and coordination powers. The establishment of a regulatory framework capable of legally integrating these autonomous agents requires the definition of a form of hybrid responsibility, which prevents the dilution of the employer's obligations through the use of technology. The protection of employees' interests in this context cannot be limited to simple temporary measures, but must be shaped around the recognition of a fundamental right to job stability in the face of uncontrolled automation. From a legal perspective, this protection involves the imposition of strict limits on the replacement of human labor, based on the principle of social utility and the need to maintain a balance between technological efficiency and social security.

A rigorous analysis of algorithmic control mechanisms reveals the need to introduce ”human safeguard clauses”, which would guarantee that decisions affecting the essence of the individual employment contract remain under the jurisdiction and discernment of the human factor. The law must intervene through imperative norms that condition the implementation of artificial intelligence systems on the demonstration of the fact that they do not cancel the employee's right to exercise their profession, transforming technological progress from a threat to economic existence into a support tool. Thus, the outline of a liability regime for the acts of intelligent agents and the consolidation of mechanisms to combat dismissals based exclusively on algorithmic performance become the basis of a new labor law, capable of protecting the dignity and viability of the employee status in a labor market dominated by automation.

Keywords: *Digital legal personality, employment security, guarantee of human intervention, algorithmic law, artificial intelligence (AI).*

JEL Classification: K31, O33, J63

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1. Introduction

Introducing artificial intelligence (AI) in the workplace leads to considerations that go beyond simple substitution of human activities by technologies. Besides tools designed for the purpose of automating production or administration processes, employers make use of data analysis for allocation of work tasks, behavior monitoring, and performance assessment. Both processes are covered by the broader concept of algorithmic management that includes not only artificial intelligence but also rule-based methods of organizing and evaluating work (International Labour Organization [ILO], 2024a). This differentiation is important as not all automated management tools represent artificial intelligence, however, both can have an impact on employees' working and staying conditions.

There are two ways how introduction of technologies in the organization affects the employment stability of its members. While AI can help in making organizational changes in a way that will lead to reduced necessity of particular work or position performance, the algorithmic management can impact the decisions about particular workers. None of these approaches implies necessary dismissal of employees. While task automation can go together with human work, provided how technologies are introduced and what kind of tasks are delegated to humans and machines (ILO, 2024b), still, ability to generate performance evaluations, recommendations, or predictions requires consideration of how this output of technologies obtains its authority and can be contested.

From the standpoint of labour law, what is problematic about technology is not the fact that it is an element of managerial decision-making but the fact that technology can blur the exercise of employer's power. Algorithmic management scholarship raises the issue of accountability and the complexity of mapping the rationale behind the tools used by managers (ILO, 2025). It is especially pertinent when such a tool is used to justify an employment action. A technological recommendation cannot be considered as a justification per se because it needs to be assessed in light of the criteria behind the decision taken. The normative assumption made here is that delegating management tasks to technology cannot enable the employer to diminish his obligations towards employees.

In order to understand how to consider the issue of organizational changes and employment protection, international labour standards serve as an important source of information. Article 4 of the ILO Termination of Employment Convention, 1982 (No. 158) states that termination shall be justified by a valid reason connected to the worker's capability or behaviour or to the needs of the business. This provision serves as an international standard that takes into account legitimate interests of the organization but does not equate dismissal with an unlimited managerial discretion. It will also help differentiate termination resulting from an assessment of a particular worker from the one resulting from reorganization of the economic process (ILO, 1982).

As far as the EU is concerned, the legal regime combines data protection rules with regulations regarding the risks associated with AI. Article 22 of the Regulation (EU) 2016/679 covers decisions based exclusively on automated processing which produce legal effects or similar impacts on individuals, unless there are some exceptions and safeguards. The scope of this Article should not be neglected or transformed into a general ban on any AI-enabled decisions. The Regulation (EU) 2024/1689 introduces a risk-based approach, listing particular types of employment applications in Annex III and setting certain requirements related to human oversight. It is important to state that the AI Act complements but does not replace current labour-law and data-protection rights (European

Parliament and Council, 2016, 2024). Technical compliance and legality of the employment decision are related but separate matters.

The Romanian labour law gives one a basis to examine these issues. According to Article 10 of the Law No. 53/2003, employment is considered to be the work done under the subordination of an employer, who can be either a natural or legal person. Article 6 covers the protection against unfair dismissal. Article 17 mentions the provision of information regarding criteria used for professional evaluation as one of the obligations of the employer. Regarding dismissals which are not connected with an employee's personal features, Article 65 states that the abolition of an employee's position must have a serious cause. Thus, these provisions give a good ground for the analysis of application of the safeguards in case of assessment or restructuring based on the use of technology. Technological introduction does not imply an automatic right of dismissal nor a right to keep the same position.

In consequence, the research problem looks at whether current safeguards are adequate in case the exercise of management powers is achieved through technological mediation. Through a doctrinal method, the analysis will use international standards, European regulation, and the labor law of Romania in an interaction with relevant judicial interpretations. The purpose of the analysis is to establish the circumstances in which the use of artificial intelligence by employers does not prejudice the legitimacy, accountability, and challengeability of decision-making related to employment. Employment security is interpreted as protection from termination of employment being unjustified or illegal, and not as immunity from organizational change. It is on the grounds of the above that the tests of meaningful human oversight, intelligibility of decision-making, and availability of redress become important.

2. Artificial intelligence and employer authority

The technological transformation impacts not only the legal characterisation of the employment relation but also the exercise of managerial authority. Recommendations or decisions in respect of instruction, supervision, and evaluation of the worker's performance can be generated by means of the technological device. Directive (EU) 2024/2831 acknowledges the changed way of exercising managerial functions by referring to automation of such tasks as work distribution, scheduling, evaluation, and imposing measures adverse for the worker. These conclusions were drawn from the regulation of platform work, but there is also a more general legal point at stake: technological mediation of the exercise of authority might make the source and grounds of the employment-related decision less transparent to its addressee (European Parliament and Council, 2024b, recitals 8 and 30).

Thus, the legal analysis should distinguish between technological autonomy and legal responsibility. Regulation (EU) 2024/1689 defines the AI system as a technology capable of inference of the output with varying degrees of autonomy, but the obligations established by the regulation can be assigned to identified individuals or entities, including providers and deployers of the system. The use of the AI system by an employer can be interpreted as deployment of this technology, whereas the provider or the marketer can have another regulatory status. In other words, assigning different duties to the actors involved in the use of the technology does not amount to the attribution of legal personality to it (European Parliament and Council, 2024a, Article 3).

Such approach allows making a more grounded discussion of the question of accountability than presupposing that the algorithm can become the bearer of the

employer's obligations. While the participation of the provider of the technological solution might give rise to additional issues of contractual or regulatory nature, such participation alone does not define the legality of the employer's decision towards the employee. As far as the AI Act expressly preserves the relevance of the labour law, and allows establishing the more favourable rules and collective agreements in respect of employers' use of the AI system, the regulatory regime of the Act allows adopting the cumulative approach to the question. In other words, the obligations related to the use of the technology should be satisfied alongside the obligations arising out of the employment (European Parliament and Council, 2024a, Article 2(11) and recital 9).

Thus, responsibility should be discussed in the terms of the functions performed by each particular actor, not in terms of the technological system's autonomy as a decision maker. The selection of the technology, its purpose and the weight of its output as a basis of the decision can be taken into account. The invocation of an algorithm's recommendation as the ground of a decision is no substitute of the required legal grounds of the measure adopted. It becomes particularly relevant if the outcome of the decision impacts the employee's professional aptitude, right to employment or continued employment.

International standards demonstrate that employment protection and organisational adaptation are not necessarily incompatible. Article 4 of the ILO Termination of Employment Convention, 1982 (No. 158), requires a valid reason for termination connected with the worker's capacity or conduct, or with the operational requirements of the undertaking. Its preamble expressly acknowledges the difficulties associated with economic conditions and technological change. The Convention consequently offers a framework for examining automation without treating technological restructuring as either inherently unlawful or automatically sufficient to justify dismissal (ILO, 1982).

The protection established by the Convention also has a procedural dimension. Article 7 requires, subject to its stated qualification, an opportunity for workers to defend themselves against allegations concerning conduct or performance before termination. Articles 8 and 9 provide for recourse to an impartial body and examination of the reasons for termination, while Article 10 addresses remedies where termination is found unjustified. Applied as an analytical benchmark to algorithmic assessments, these provisions direct attention towards the employee's ability to understand the allegations, challenge the evidence and obtain an independent assessment of the employer's justification. These are interpretative implications of the Convention's safeguards, not express rules on artificial intelligence (ILO, 1982, Articles 7–10).

The Convention's relevance to Romania nevertheless requires a clear qualification. Romania has not ratified Convention No. 158; it must therefore be used as an international reference standard rather than presented as a treaty directly binding on Romania by virtue of ratification. This distinction preserves the usefulness of international comparison without confusing it with the identification of enforceable domestic obligations (ILO, n.d.).

At European Union level, the Charter of Fundamental Rights supplies a complementary framework. Article 15 protects the right to engage in work and pursue a freely chosen or accepted occupation, while Article 30 recognises protection against unjustified dismissal in accordance with Union law and national laws and practices. Article 31 protects working conditions that respect health, safety and dignity. These provisions support a conception of employment stability grounded in justified decision-making and

protection against arbitrary termination, rather than an unconditional entitlement to preserve a particular position. Their interpretation must also acknowledge the freedom to conduct a business recognised by Article 16 (European Union, 2012).

The relationship between these rights becomes especially relevant when an employer invokes technological efficiency to justify measures affecting employees. Neither commercial freedom nor employment protection should be treated as eliminating the other. Article 52(1) requires limitations on Charter rights to respect their essence and satisfy the principle of proportionality. At the same time, Article 51 limits the Charter's application to Member States when they are implementing Union law; it should not be invoked as though every domestic employment dispute automatically falls within its scope. Where applicable, Articles 27 and 47 further connect protection with timely information and consultation and access to an effective remedy (European Union, 2012).

The GDPR outlines a horizontal safeguard relevant for employment-related decisions that involve personal data. Article 22(1) states the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects or similarly significant impacts on the individual. An automated dismissal satisfies the criterion of legality. Nevertheless, the provision does not serve as a general prohibition of any algorithm-based decision-making for HR purposes; its applicability depends on the nature of the processing, the impacts of the decision, and whether it is based solely on automated processing (European Parliament and Council, 2016, Article 22).

There are exceptions in Article 22(2): when the decision is required for entering into or performance of a contract, authorized under Union or Member State laws with appropriate safeguards, or based on explicit consent. Such exceptions cannot be considered as alternatives to each other. If the decision was necessary for entering into or performance of a contract and/or based on explicit consent, according to Article 22(3), there are required some safeguards such as the right to human intervention, to state one's viewpoint, and to challenge the decision. When a law authorizes the decision, the law shall establish some appropriate safeguards. Additionally, the disparity of interests existing in some relations between data controllers and data subjects demands caution in determining whether the consent was given freely (European Parliament and Council, 2016, Article 22 and Recital 43).

The protection of individuals does not cease just because a decision is outside the scope of Article 22. Processing is still subject to general requirements of the GDPR, including lawfulness, fairness, transparency, purpose limitation, data minimization, and accuracy. Articles 13–15 include obligations of providing information, among others, regarding the automated decision-making, whereas Article 35 requires data protection impact assessment if processing poses a high risk to the rights and freedoms of individuals. Hence, the presence of human participation does not reduce the scrutiny of data and the procedure of evaluation of employees (European Parliament and Council, 2016).

The AI Act regulates technological risk. Annex III, point 4, lists particular employment-related applications, such as the systems designed for recruitment and selection, decisions affecting employment terms, promotion or termination, certain types of task allocation, and performance and behavior monitoring and evaluation. Nevertheless, classification should be understood in the light of Article 6, including its conditions and exceptions; not all the AI tools used in workplaces are necessarily high-risk systems. The regulation targets the purpose and potential impact of certain applications, but not the employment technology as a whole (European Parliament and Council, 2024a).

Human oversight constitutes the cornerstone of this approach. According to Article 14, high-risk systems should be designed and developed in such a way that allows for human supervision of their operations. It deals with the understanding of the limitations of the system, the recognition of the risks of overreliance on automated outputs, and, where applicable, ignoring, overriding, or reversing of these outputs. To Article 14, Article 26 adds the obligations of the deployers of high-risk AI, such as assigning the oversight to competent, trained, authorized, and supported individuals. Moreover, Article 26(7) includes informing workers' representatives and affected workers prior to the deployment or use of the high-risk AI system in the workplace. Together, these provisions distinguish substantive human oversight from merely formal participation of humans in the decision-making process (European Parliament and Council, 2024a).

Directive (EU) 2024/2831 provides a more detailed model for platform work. Article 10(5) requires that decisions that restrict, suspend, or terminate a person's contractual relationship or account and decisions of equal detriment are to be made by a human. Article 11 supplements this requirement with granting rights to explanations and human review of the decisions made or supported by automated systems. The value of this article is in addressing automated decisions as well as decisions supported by automation, reserving particularly detrimental decisions to human decision-makers (European Parliament and Council, 2024b).

The sectoral and temporal limitations of this instrument should be kept in mind. The Directive does not introduce a general human-decision requirement for all employment relationships, and its deadline for transposition is 2 December 2026. Thus, the role of this Directive as a model for further reform should be distinguished from any obligations enforceable already against every Romanian employer. However, the combination of human oversight, understandable explanations, and review constitutes a solid legislative base for introducing human safeguard clauses beyond platform work, regardless of whether this happens through legislation or collective bargaining (European Parliament and Council, 2024b).

These instruments altogether indicate that protection of employment stability requires much more than mere verification of the technological reliability of the system. The legality of processing, justification of employment measure, and the effectiveness of the possibility for the employee to challenge this measure constitute three different matters. Normative message is that technological outputs should be used to support the judgment of the manager, not substitute an independent source of lawfulness. Human intervention protects employees only when it is backed by enough information, decision-making power, and procedures able to correct an unjustified decision.

3. Employment stability and employer liability in Romanian law

Romanian labour law provides a regulatory framework for assessing the usage of AI from the standpoint of pre-existing distribution of rights and obligations between the parties. Under Article 40(1), the employer has the right to organise the enterprise, impose obligations upon the employees, issue binding orders provided that they comply with the law, oversee work performance, and establish individual objectives and criteria for evaluation. There are limitations to these powers – Article 39 guarantees, amongst others, the dignity, professional training, information, and consultation of employees. Technological instruments thus may serve to assist in exercising managerial prerogatives, but their usage will be regulated by the rules governing such prerogatives (Romanian Parliament, 2003, Articles 39-40).

Professional evaluation is a good example. According to Article 17(3)(e), employees are to be informed of the criteria for professional evaluation of the performance, while Article 242(i) imposes a duty on internal regulations to determine the criteria for evaluation and the way how it is done. Thus, when an employer introduces an AI-supported evaluation system, it is important to distinguish whether it modifies the technical means for applying existing criteria or the criteria themselves. The automated score thus cannot be a valid substitute for identifying what exactly is being evaluated and how this is done. If technological implementation changes the contractual terms, then the requirements for their modification have to be taken into account as well, and not the assumption that the employer's organisational prerogatives allow any change (Romanian Parliament, 2003, Articles 17, 41 and 242).

This approach corresponds to the approach of Spulbar (2026) according to whom the legal requirements have to be integrated into the internal architecture of AI-assisted management decision-making, not just be taken into account externally after the implementation. Spulbar stresses the importance of traceability, accountability, and sufficient explanation of the decision made in order to achieve organisational control. This approach translated into the employment context implies the integration of legal requirements into the process of choosing, configuring, and using the evaluation system. It does not constitute an independent grounds for dismissal but allows explaining why the employer has to possess a justification for transforming technological output into employment-related decision.

One specific national protection relates to the workplace monitoring. Law No. 190/2018, Article 5 regulates the processing of personal data of employees carried out by means of electronic communications monitoring and/or video surveillance in case that the employer acts on the legitimate interests. This kind of processing may be justified only under a set of cumulative conditions: the interests pursued have to be sufficiently justified and superior to the interests or rights of the affected persons; employees are to be informed about it prior to its implementation; trade unions or employee representatives have to be consulted prior to the implementation; and less intrusive measures have to be considered and found inadequate beforehand. The retention period is to be limited to 30 days, excepting the statutory exceptions and justified cases (Romanian Parliament, 2018).

However, the scope of this provision has to be kept in mind. Article 5 regulates neither all applications of AI nor all kinds of processing of the employees' data. It is relevant when monitoring and legitimate interest are concerned. In case of AI-assisted monitoring system falling under the scope of the provision, no analytical sophistication may exempt the employer from justifying the monitoring, informing the employees, and considering less intrusive measures. Legal data collection and legal employment decision-making are two different things – satisfaction of the former requirement does not mean satisfaction of the latter (Romanian Parliament, 2018, Article 5; European Parliament and Council, 2016).

Legal consequences of the use of artificial intelligence are dependent on the ground invoked for dismissal. The employer may terminate the employment because of a negative professional evaluation of the employee, due to disciplinary violations, or due to organizational reorganization resulting in the abolition of the employee’s job position. Even though comparable technological means may provide some input into these processes, their legal rules are different. The legal conditions of these three situations and the issues to prove should not be confused within one category of "algorithmic dismissal" (Romanian Parliament, 2003, Articles 61–65).

In case of professional inadequacy invoked by the employer according to Article 61(d), Article 63(2) requires a prior evaluation carried out in accordance with the procedure provided by the respective collective agreement or, failing such an agreement, by the internal regulation. Algorithmic ranking may be used for that purpose, however, the legal value of that ranking is dependent on its correlation with the respective criteria and procedure. Low score, assessed independently, does not prove the lack of professional adequacy of the employee for the job position in question. Such assessment has to correlate the information about the employee's performance with his/her duties and the legal ground of dismissal. Similar requirements are stipulated by Article 64, regarding the obligation of offering job positions compatible with the employee's professional training (Romanian Parliament, 2003).

Another situation is dismissal on disciplinary grounds. In accordance with Articles 247 and 250, it has to be correlated with culpable breach and proportional response to it taking into account the circumstances of such breach, the degree of its faultiness and its consequences. Article 251 provides for a preliminary investigation of the employee's behavior before the dismissal. System-generated alert may signal about the behavior to be investigated but cannot substitute the assessment of culpability and proportionality of the response. For instance, discrepancy between the expected and the performed activity will have to be assessed in terms of its real circumstances to be able to conclude on that issue (Romanian Parliament, 2003).

By contrast, the ground of reorganization stipulated by Article 65 is applicable to cases when termination is due to the abolition of the employee's job position and is unrelated to that person. The abolition has to be real and have the legitimate and serious cause. The legal assessment here is focused on the organizational changes and the grounds of abolishing the position and not on proving professional inadequacy via another procedural path. The use of artificial intelligence can be the factual background of such changes, however, the employer has to prove the existence of statutory conditions in any way. On the other hand, it cannot be interpreted as the inherently illegal basis of organizational change (Romanian Parliament, 2003, Article 65).

These differences have significant evidentiary implications. According to Article 76, the dismissal decision has to be made in writing in accordance with the statutory conditions, including the grounds of dismissal. Under Article 79, the employer cannot refer to any other facts or legal grounds, besides those included in the written decision, while litigating the case. Article 272 puts the burden of proof in labor disputes on the employer. Therefore, these provisions are the basis of the argument that technological opacity cannot be considered as the exemption from the justification obligation. The employer has to prove the ground of the dismissal actually invoked and not merely point to the recommendation made by the system (Romanian Parliament, 2003).

The judicial protection restricts even more the possibility of shifting the consequences of flawed decision-making onto the employee. According to Article 80, an illegal or unjustified dismissal is nullified and the compensation is awarded for the loss of salary and other rights of the employee; reinstatement of the employment relationship is ordered upon the employee's request. On the other hand, Article 253 envisages compensation of material or immaterial damage done to the employee by the employer because of his fault related to the employee's work. Any potential liability of the employer to a technology provider is a totally separate issue which should not be confused with the employee's rights and obligations under the employment contract (Romanian Parliament, 2003).

The proposed framework of protections should include the issues of the quality of employment decisions and the possibility of adaptation before it becomes impossible to avoid the necessity of termination. In their study, Spulbar and Mitrache (2025) propose the balance between human labor and AI, including professional training, redesign of jobs, and workers' participation in changes in technologies. Their research has practical value regarding organizational and policy aspects of adaptation, but not as a definition of workers' rights under the labor law.

In Romanian legislation, there are elements related to adaptation as one of the components of professional training. For instance, according to Article 192, adaptation to the requirements of work and obtaining of high knowledge and skills, as well as mastering modern work methods, is one of the purposes of professional training. At the same time, Article 194 states that employers shall guarantee the participation of workers in training programs on a regular basis. Also, according to Article 195, the annual training plan of employers who have more than 20 workers is regulated after consultations with the trade union or the employee representative (Romanian Parliament, 2003). However, these provisions should not be interpreted as the obligation to train all employees prior to each dismissal according to Article 65.

The collaboration principle suggested by Spulbar and Mitrache (2025) may be used to create more effective protections through negotiation. The collective agreement could contain the rules for determining the needs in training, considering the possible internal transitions and discussing the effects of large-scale automation. According to Article 69, in case of planned measures, the obligations of consultations require the discussion of the possibilities to avoid or reduce dismissals and mitigate their effects, including measures for retraining or professional reconversion. More negotiated commitments could allow considering the risks associated with the implementation of AI without converting every desirable protection measure into the current general legal requirement (Romanian Parliament, 2003).

The human safeguard clauses could be the means of protecting employees by defining how significant employment decisions based on AI should be reviewed. The proposals for a contractual, collective, or legislative development should include the identification of the decision maker, the right to access the information, the opportunity to correct inaccurate data, and the right of the reviewer to deviate from the system's recommendation. The aim of these clauses would not be prohibition of technological support, but exclusion of formal approval of the outcome of any decision made with the participation of any identified person.

These clauses should separate the issue of the possibility of an internal justification and the legal requirements regarding the decision. A procedure for reviewing the decision should require the written justification of the contribution of the system, information considered in the context, and reasons for adopting or rejecting the output of the system. The document will not guarantee the legality of the action but will make the process of compliance control and judicial review more effective. Thus, this proposal expands Spulbar's (2026) emphasis on traceability and verifiable governance while maintaining the employees' rights as the standard for the evaluation of the decision.

Each negotiation protection should not conflict with the mandatory nature of labor law. The prohibitions of Article 11 of the law prevent contracting the provisions contrary to legislation and inferior to the minimum rights provided, and Article 38 makes the waiver of rights guaranteed by the legislation impossible. Therefore, the human safeguard clause should only increase, but not replace the legal protections concerning dismissal, data

processing, and judicial remedies. It should not turn into the pre-acceptance of the decision from the employees if the adverse decision is made with the help of technology (Romanian Parliament, 2003).

The resulting model maintains the freedom of discretion of managers while requiring the legal attribution and control of its exercise. The employment continuity does not require the stop of innovations, but it requires the inability of organizational innovations to bypass the conditions of evaluation, discipline, restructuring, and compensation. The proposed contribution is a framework of strengthened human responsibility: technological systems may assist the assessment of work and organization of production, while the employer remains responsible for the legal grounds, procedure, and consequences of the taken measures.

4. Judicial safeguards against technological control: Bărbulescu v. Romania

The Grand Chamber decision in Bărbulescu v. Romania provides an important basis for analyzing the boundaries of technological employer control. It was pronounced on 5 September 2017 and pertained to the issue of electronic communication monitoring of the applicant and protection provided by Romanian courts after his termination of employment. From the point of view of artificial intelligence, an accurate methodology should be specified – the dispute did not concern an AI-based system or automated termination of employment, but set standards for evaluation of workplace monitoring which would be relevant in case of algorithmic supervision (European Court of Human Rights [ECtHR], 2017a).

The applicant, Bogdan Mihai Bărbulescu, worked as a sales engineer in a private company. At the request of his employer, he created an account on the messaging platform Yahoo Messenger in order to communicate with his clients. The internal regulations of the company forbade any personal use of company resources, but it contained no information about the possibility of monitoring employees' communications. During 5-13 July 2007, his communication were monitored in real time. Responding to an inquiry about the use of company resources, Bărbulescu claimed that he had used it only for professional purposes. Afterwards, the employer presented a 45-page transcript of the communication with his brother and fiancée, which included messages with personal content. On 1 August 2007, his employment contract was terminated (ECtHR, 2017a, paragraphs 11-23).

Bărbulescu complained about his termination of employment to Romanian courts claiming, among other things, violation of the secrecy of his correspondence. His complaint to the Bucharest County Court was refused on 7 December 2007, and his appeal to the Bucharest Court of Appeal was dismissed on 17 June 2008. Domestic courts acknowledged the rights of employer to supervise work and considered such supervision legitimate under the circumstances. Further, the applicant appealed to the ECtHR claiming that Romanian authorities had failed to protect his right to respect for private life and correspondence guaranteed by Article 8 of the European Convention on Human Rights (ECtHR, 2017a, paragraphs 24-30).

The procedural distinction between the two Strasbourg decisions should be noted. By a decision of 12 January 2016, a Chamber found no violation of Article 8 of the Convention by six votes to one. Referring the case to the Grand Chamber, the latter pronounced an opposite verdict on 5 September 2017, finding a violation of Article 8 by eleven votes to six. In this case, the responsibility of the Romanian state for the lack of effective protection of convention rights, rather than a direct responsibility of the private

employer, was at stake. Thus, the case was examined in accordance with the positive obligations of States under Article 8 of the Convention (ECtHR, 2017a; ECtHR, 2017b).

Such approach defines the boundaries of the relationship between privacy protection and job security. ECtHR did not play the role of domestic labor court which would consider anew each substantive criterion of dismissal. Instead, it was concerned with the question of whether national authorities have ensured the proper balance between the rights of the employee and the interests of the employer. Thus, the case shows that the judicial review of technologically based dismissal should take into account the rights engaged by the creation and usage of evidence, and not just the existence of workplace rule and its violation.

Communication carried out in the course of work can also be regarded as belonging to the sphere of private life and correspondence. Restrictions imposed by an employer on the use of communication devices for personal purposes do not deprive this communication of the protection guaranteed by Article 8 of the Convention. Even if there are reasonable limitations to the rights to privacy, managerial orders cannot deprive social relations in the workplace of its significance. Therefore, the mere existence of the restriction on personal communication will not be enough to make monitoring of the content of such communication justified (ECtHR, 2017a; ECtHR, 2017b).

The Court's approach has been based on the principle of proportionality and guarantees against arbitrariness. Six factors, specified in Paragraph 121, should be taken into account by the national authority in considering workplace monitoring:

- Whether the employee has been informed in advance of the possibility of monitoring and the scope thereof.
- The scope of monitoring and the level of interference in privacy, in particular, whether the employer has examined communications traffic or communications content.
- Whether there are grounds for such monitoring and, in particular, whether the examination of communications content is justified.
- Whether it was possible to reach the aim by other means, less interfering with privacy.
- The consequences for the employee and the use made of the results of monitoring.
- Whether sufficient guarantees were provided to the employee in case of intrusive monitoring (ECtHR, 2017a, § 121; ECtHR, 2017c).

All of the factors listed above should be considered together as a whole. Advance information may be very important, but it cannot guarantee proportionality per se. In turn, a legitimate organizational objective does not mean access to any information that can be obtained using a technical device. Distinction between communications traffic and their content is rather illustrative: as the intensity of intrusion increases, the justification should correspondingly increase (ECtHR, 2017a, § 121; ECtHR, 2017c).

Ineffective investigation in the Romanian case demonstrates practical importance of such an approach. Domestic courts have not considered well enough whether the applicant was informed in advance of the nature and scope of monitoring, in particular, the possibility of accessing communication content. They have not also evaluated sufficiently the level of intrusion, specific justifications for monitoring and the presence of other ways to achieve this goal. References to the risks related to company's information system were not enough without evaluation of their relevance to the situation. Also, they

have not sufficiently considered the consequences, in particular, dismissal and the time when employer accessed the communications (ECtHR, 2017b).

Connection with employment security lies in the character of justification and review of the disciplinary act. Information obtained during monitoring can be convincing evidence of conduct, but not always the issue of whether monitoring was justified and the consequences were proportional will be solved. Such an adjudication requires a careful consideration of these questions; it does not mean that employees can neglect workplace rules and employers cannot monitor communications or apply dismissal under certain conditions (ECtHR, 2017c).

Application of the judgment in Bărbulescu to algorithmic management should be done by analogy rather than the imposition of rules that the judgment itself did not make. What is relevant here is the use of technologically produced information to exert managerial power over workers. Whenever AI systems are used to analyze the communication, observe the worker, or produce a profile of their conduct, the issues of notice, purpose, intrusiveness, and consequences remain legally significant. They do not depend on the fact whether the employer personally reads information or gets its technologically produced interpretation.

First, there is the question of the notice provided to the employee. A generic claim that the company's resources are being monitored may be insufficient to inform about the true nature of the system that classifies the behavior and provides indicators for the employment decisions. In the light of the court's focus on adequate notice, what can serve as an appropriate safeguard here is the information about categories of the activity being assessed, the purposes of such monitoring, and potential uses of such information in employment decisions.

Second, there is the issue of alternative measures. An employer should not assume that the availability of detailed information necessarily means its necessity for the achievement of the stated goal. When the legitimate aim is verifying the completion of the assigned tasks, continuous monitoring of communications may require stronger justification than the focus on the result. Again, the principle derived from the judgment is the necessity of contextual evaluation, not a generalized hierarchy whereby certain technologies of monitoring can always be used but not others (ECtHR, 2017a, § 121; ECtHR, 2017c).

Third, there is the problem of the transformation of monitoring into the employment decision. Assume that an employee received an alert about the particularly low level of their activity. Such an alert may indicate the need for additional investigation, but it does not say whether the information is reliable, whether the metric reflects their work assignments, or whether there are other reasons for the results. A proper human assessment needs to take care of all these issues before the indicator is used to prove any misconduct or lack of competence. Proposed safeguard responds to the risk that the seeming precision of the output will overshadow the need for individualized legal reasoning.

For Romanian courts, the above-mentioned approach should be done together with the applicable domestic legal rules. According to Article 272 of the Labour Code, it is the employer who bears the burden of proof, while the rules concerning professional evaluation, disciplinary investigation, and the grounds enumerated in the decision of dismissal cover the issues that the employer needs to prove. Under Article 5 of Law No. 190/2018, there are certain conditions when monitoring of electronic communications and video surveillance are allowed in the interests of the employer. These obligations need to

be considered as a whole, not as separate sets of requirements whose satisfaction guarantees compliance with all of them (Romanian Parliament, 2003, 2018).

Chronological distinction is also important here. The facts of Bărbulescu case happened in 2007, before the applicability of the GDPR, as well as Law No. 190/2018 and AI Act. It means that these instruments cannot be mentioned as the legal basis of the court's decision in this historic case. What can be done on the basis of the judgment is the assessment of the comparable practices under today's legal framework, whereas the court's decision gives its independent Convention-based analysis of privacy protection and the adequacy of the domestic judicial review.

Finally, the judgment cannot serve as a basis for the ban on dismissals based on automated processes and the absolute right to the particular job. Its principal lesson for algorithmic management is that neither managerial prerogatives nor technological capabilities can eliminate the necessity of justifying the intrusion and evaluating its employment consequences. The employment protection will become more efficient when courts evaluate not only the employment decision itself but also the informational and procedural process of its formation (ECtHR, 2017b, 2017c).

5. Conclusions

In addition to worker displacement, the impact of artificial intelligence on employment protection is connected with the change in the nature of managerial power. As technology becomes involved in task distribution, monitoring of employees' behaviour, and evaluation of their performance, the working conditions and the means of sustaining employment become dependent on information and assessments which might be unclear and hard to contest. Employment protection needs to be understood as the prevention of unjustified and insufficiently accountable decisions instead of guaranteeing the perpetuation of the existing employment.

The standpoint corresponds with the statement of De Stefano (2018) about the necessity to move the automation debate beyond counting the losses in employment numbers. The quality of work performed, protection of the human dignity, and restrictions on the managerial discretion are important regardless of whether technology leads to employment loss. Thus, the main challenge of employment protection in such circumstances is not to oppose the innovation, but to make sure that the organizational benefits of technological development are achieved without reducing the ability of the employee to understand, contest and influence decisions concerning their professional life.

The above-mentioned analysis implies an accountancy-based model of protection in which the technological assistance does not exempt the employer from responsibility for the measures introduced. It is crucial to distinguish between the technical creation of a certain output and legal justification of employment decisions. Professional inadequacy, disciplinary violation, and employment redundancy are three different concepts which cannot be established simply based on the idea of the efficiency of a certain algorithm. The apparent objectivity of scores or recommendations made should not conceal choices underlying the data collection, definition of performance criteria, and imposition of consequences depending on a particular result.

Similarly to the approach taken in the present work, Prassl (2019) finds algorithmic management to be an issue which challenges traditional regulations of employment relations. His work makes the differentiation between problems that could be solved by the adaptation of the existing regulation framework and those that involve the reconsideration of the principle of managerial accountability. Such division helps to find

the balance in dealing with the problem: technological mediation does not make employment guarantees outdated, but it shows the weak spots of their realization if the bases of a decision-making process become unclear. The combination of the proper application of current guarantees and the targeted protection mechanisms can solve the problem.

Human involvement is one of the key factors in such approach, but its protective function depends on its quality. Just confirmation of the algorithm's suggestion does not constitute the sufficient review. For the adequate review, it is necessary to have sufficient information, the possibility to assess the employee's situation, and the authority to alter the suggested measure. Human safeguards clauses could make it possible to implement these requirements and give the employee the opportunity to question wrong information or unjust assessment. The objective of such safeguards is to prevent the technological mediation from becoming an obstacle on the way between the authority and its consequence.

Another important factor is the organizational dimension of the problem. According to the ideas of Kellogg et al. (2020), algorithms could be considered as part of a contested territory of work organization which shows how the use of such tool can change the nature of the relationship between managerial direction and workers' response. From this perspective, transparency is necessary but not sufficient: awareness that monitoring takes place does not mean that employees have the influence on its purpose and results. Workplace dialogue could supplement individualized review by involving the discussion of the design and implementation of technological management in this process.

Thus, for Romania, the approach proposed above constitutes neither a general ban on the automation nor an acceptance of the technological restructuring as being self-justifying. Instead, it presents the framework which makes possible to reconcile innovation with individualized justification, proportionate control, and effective remedies. Training, task modification, and internal transition programs could promote employment stability, while increased procedural protection could reduce the risks of imposing consequences on the basis of opaque or inadequately analyzed assessment. Such measures should be developed taking into account the specifics of the particular workplace instead of being seen as universal solutions to any technological change.

At the same time, the limits of the analysis should be identified. The doctrinal and jurisprudential approach applied here helped to develop standards and proposals, but did not provide the information about the actual practices of employers in regard to them. Empirical research concerning the workplace implementation, collective bargaining, and resolution of disputes connected with the use of AI could give more information about the effectiveness of these safeguards. In this respect, the main value of labour law in the context of technological developments is in keeping the power accountable and preserving the human dignity and voice of the employee.

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