



# The EU Mutual Learning Programme in Gender Equality

## Artificial Intelligence and Gender Biases in Recruitment and Selection Processes

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# Artificial intelligence - good servant in Czech hands - perspectives for equality

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## 1. Introduction

### 1.1 General situation in recruitment, the use of AI

The Czech Republic is a country, where gender bias in recruitment and selection processes are quite frequent. Women often face discriminatory questions during recruitment processes, as most women are carers, their career is often interrupted for more than five years (due to very long parental leave, which may last until the child is three years old). Women often do not obtain higher positions in companies, as they are involved in caring for sick children or elderly parents. They are believed not to be as loyal employees as their male counterparts.

In this context, some big companies start using artificial intelligence (hereafter AI) in recruitment process. For instance, IBM provides a recruitment system based on usage of artificial intelligence to the most important car manufacture in the Czech Republic – Skoda auto. As for now, the reported experiences are very positive, it's seen as a very efficient way of finding new employees.<sup>1</sup>

Also, another important industry company reports, it is using chatbot during recruitment process. Here again, reactions of the employer are positive.<sup>2</sup>

### 1.2 Relevant legislation

Czech legislation contains special equal treatment legislation, in particular the Anti-Discrimination Act (Act No. 198/2009 Coll.). This act prohibits discrimination, including sex discrimination. Under Section 2, the Anti-Discrimination Act defines the right to equal treatment as the right not to be discriminated against. A number of grounds apart from sex are also covered: race, ethnic origin, nationality, sexual orientation, age, disability, religion and belief or opinions.

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<sup>1</sup> See <http://www.hybrid.cz/umela-inteligence-ibm-watson-pomaha-skodovce-s-naborem-novych-zamestnancu>

<sup>2</sup> See <https://umelainteligence.forbes.cz/lidske-zdroje>, or <https://tech.instory.cz/792-umela-inteligence-pomaha-hledat-firmam-nove-zamestnance.html>

Prohibition of discrimination in employment relationships can be found in the Act No. 262/2006 Coll., Labour Code.<sup>3</sup>

Equal access to employment, vocational training, working conditions etc. are guaranteed to all employees in the public and private sectors. Section 4 of Act No. 435/2004 Coll. on employment stipulates that parties to a legal relationship according to this law are obliged to guarantee the equal treatment of all physical persons who make use of their right to employment.<sup>4</sup>

Special acts, e.g. the Civil Service Act (Act No. 234/2014 Coll.), include separate provisions on the prohibition of discrimination which are very similar to the above-mentioned provisions. School Act (Act No. 561/2004 Coll. – Sec. 2), Consumer Protection Act (Act No. 634/1992 Coll. – Sec. 6) and also Act No. 127/2005 Coll., on electronic communication could be mentioned in connection with equality and use of AI.

There is no legal instrument specifically adopted to combat algorithmic discrimination in the Czech Republic. However, the above mentioned general antidiscrimination provisions could be applicable if algorithmic discrimination was at stake.

### 1.3 Case law and literature on AI biases

In general, the Czech case law is scarce, still, most discrimination cases already decided by Czech courts cover discrimination based on sex (only few cases more claimed discrimination based on disability), often in recruitment process.<sup>5</sup>

In the Czech Republic, there are no concrete cases or specific issues directly connected with algorithmic discrimination to be reported. Still, the topic of algorithmic discrimination starts to be discussed and researched.<sup>6</sup>

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<sup>3</sup> Section 16(2) states: 'Any discrimination, in particular discrimination on grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, gender, language, health, age, religion or belief, property, marital and family status is prohibited in employment relationships, relationship or duties to family, political or other sentiments, membership and activities in political parties or political movements, trade unions or employers' organisations; discrimination on grounds of pregnancy, maternity, paternity or sexual identification is considered to be discrimination on grounds of sex.'

<sup>4</sup> 'Any discrimination is prohibited when exercising the right to employment. The right to employment cannot be denied to a citizen on the grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, gender, language, health, age, religion or belief, property, marital and family status and the relationship or duties to family, political or other beliefs, membership and activities in political parties or political movements, trade unions or employers' organisations; discrimination on grounds of pregnancy, maternity, paternity or sexual identification is considered to be discrimination on grounds of sex.'

<sup>5</sup> See study of Public Defender of Rights (Czech equality body) on discrimination case law in years 2015-2019, available at [https://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/2020-vyzkum\\_judikatura-DIS.pdf](https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/2020-vyzkum_judikatura-DIS.pdf).

<sup>6</sup> Lobotka, A. (2019) *Umělá intelligence z pohledu antidiskriminačního práva a GDPR (Artificial intelligence from point of view of antidiscrimination law and GDPR)*. Wolters Kluwer. Prague.

As regards algorithmic discrimination based on ethnicity, Supreme administrative court decided, it is not necessary that the inspection of a rental apartment is refused due to the applicant's affiliation to a certain ethnic group or that another action is taken in which the discriminatory approach is openly manifested, it is sufficient that the applicant was asked about his or her national origin.<sup>7</sup> Ethnic origin, or family situation (single mothers usually have difficulties to find a rental flat) could appear in electronic forms of real estate companies.

There were two judgments on discounts for elderly using public transport. Supreme administrative court stated that granting discounts to certain groups of persons in urban public transport, but only if these persons had a permanent residence in the territory of a certain municipality, is discriminatory.<sup>8</sup> Discounts could have been actually provided through algorithmic decision-making. The system required a permanent residence in a certain area. This was discriminatory not only for Czech citizens from other areas of the country, but also for foreigners, even if they met the age condition.

If in the future any case arises, where artificial intelligence and gender bias is at stake, it's quite probable, that national judges would have problems in procedural issues, especially as regards proof, qualification of algorithmic discrimination as discrimination. At the same time, there are experiences from abroad, summarized in the literature, so there is already some guidance, which might be used.<sup>9</sup>

There are only few papers and one monograph on AI and (gender) biases.<sup>10</sup> Even these provide examples of possible algorithmic discrimination only from abroad. The monograph discusses the data protection law in detail, but not from the perspective of gender equality.<sup>11</sup>

## 2. Policy debate

Artificial intelligence is slowly gaining on relevance and attracts attention of all stakeholders. It's clear, AI will be used in all areas of economy in very near future. In fact, there is a strong tendency to support this trend as much as possible. Recent

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<sup>7</sup> Supreme Administrative Court – 7 As 190/2017-18

<sup>8</sup> Supreme Administrative Court – 1 As 14/2006-68, 4 AS 63/2005-69, (similar on discounts for using public sports areas - 7 CA 138/2004-33), similarly also CJEU case C-388/01 *European Commission v. Italy*.

<sup>9</sup> Lobotka, A. (2019) *Umělá intelligence z pohledu antidiskriminačního práva a GDPR*. Wolters Kluwer. Prague.

<sup>10</sup> Lobotka, A. (2019) *Umělá intelligence z pohledu antidiskriminačního práva a GDPR*. Wolters Kluwer. Prague. Hanych, M. *Umělá intelligence a lidská práva – nevyhnutelný střet?*. Bulletin centra pro lidská práva a demokratizaci. (2019) 10: 9. Lhotský, J. *Umělá intelligence a lidská práva – obor budoucnosti?*. Jiné právo. Available at: <https://jinepravo.blogspot.com/2020/04/jan-lhotsky-umela-intelligence-lidska.html>

<sup>11</sup> Lobotka, A. (2019) *Umělá intelligence z pohledu antidiskriminačního práva a GDPR*. Wolters Kluwer. Prague., pp. 78-85, 91-94

developments connected with Covid pandemic are only speeding up the process, also in public area (e.g. social security system, employment services, online teaching, online medicine etc.).

Since few years, public authorities take the trend into account and some advisory bodies and working groups have been established and are working on the topic of artificial intelligence, discussing it from several points of view.

- The following bodies and groups can be mentioned:

At the government level, there is

- Government Commissioner for Information technology and digitization, who is working under the Ministry of Interior, and
- Working group on Human Rights and New Technologies under the Office of the Government which focuses, *inter alia*, also on discrimination connected to artificial intelligence.

At a private level,

- in 2018 a Platform for artificial intelligence has been founded by the Czech confederation of industry and transport (the most important gathering of employers) in order to “examine the development of AI with regard to the ethical, social, economic and legal implications of its use. The protection of personal data and their processing is essential. It will also focus on the impact of AI on the labour market. Through the platform, the association will also participate in the creation of legislation at the national and European level so as to protect users' rights and at the same time enable the further development and innovation of artificial intelligence.”<sup>12</sup>
- There is also AI Observatory and Forum newly founded which is supposed to serve as the “Czechia's Expert Platform and Forum for Monitoring Legal and Ethical Rules for Artificial Intelligence”.<sup>13</sup>

The above mentioned entities issued already some documents and started some initiatives, among which:

- National strategy of artificial intelligence, issued in 2019 states: “We will focus on the protection of each person and consumer, their rights and privacy, especially the weakest. We will prevent discrimination, manipulation and

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<sup>12</sup> Founding document available at:

[https://www.spcr.cz/images/Z%C3%A1kladn%C3%AD\\_dokument\\_platforma\\_pro\\_AI\\_SP%C4%8CR.pdf](https://www.spcr.cz/images/Z%C3%A1kladn%C3%AD_dokument_platforma_pro_AI_SP%C4%8CR.pdf)

<sup>13</sup> Available at <http://observatory.ilaw.cas.cz/>

misuse of AI, we will set rules for decision-making algorithms about people in everyday life.”<sup>14</sup>

- Czechia prepared its position non-paper for the EU White Paper titled *Regulatory Framework for Artificial Intelligence in the European Union*.<sup>15</sup>
- In 2019, the Memorandum of the Government of the Czech Republic and the Ministry industry and trade of the Czech Republic and Platform for artificial intelligence Confederation of Industry and Transport of the Czech Republic has been published.<sup>16</sup> The Memorandum does not mention equality or algorithmic discrimination. It’s more a document to support collaboration and development of the AI.
- There is an initiative of the Academy of Science, Czech Technical University, Charles university and the City of Prague – prg.ai. This initiative for development of artificial intelligence and its reasonable regulation is supported by big private firms, like IBM, Avast, Adastra or Škoda Auto. One of its goals is to “support discussion on ethical, legal and socio-economical aspects of AI and will seek to fund one prg.ai Fellow position to lead this research at one of prg.ai member institutions.”<sup>17</sup>

Notwithstanding all the above mentioned, it shall be concluded, that the Czech Republic is still only beginning to consider several consequences of using the AI. Gender bias seem still to be a neglected element in research, legal debates and policy.

### 3. Recommendations

Bearing in mind what has been presented in parts 1 and 2 of this comments paper, some recommendations can be drawn for future Czech legislation, policy and practice.

- addressing the potential risk of (gender) discrimination of algorithms in recruitment processes
  - Including the concept of algorithmic discrimination in national legislation (with sanctions)

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<sup>14</sup> Available at [https://www.vlada.cz/assets/evropske-zalezitosti/umela-intelligence/NAIS\\_kveten\\_2019.pdf](https://www.vlada.cz/assets/evropske-zalezitosti/umela-intelligence/NAIS_kveten_2019.pdf)

<sup>15</sup> Available at [http://observatory.ilaw.cas.cz/wp-content/uploads/2020/02/CZ%20nonpaper\\_%20EU%20regulatory%20framework%20for%20AI.pdf](http://observatory.ilaw.cas.cz/wp-content/uploads/2020/02/CZ%20nonpaper_%20EU%20regulatory%20framework%20for%20AI.pdf)

<sup>16</sup> Available at [https://www.vlada.cz/assets/evropske-zalezitosti/aktualne/190116\\_Memorandum-k-AI-final.pdf](https://www.vlada.cz/assets/evropske-zalezitosti/aktualne/190116_Memorandum-k-AI-final.pdf)

<sup>17</sup> Available at <https://prg.ai/en/>

- Provide education and knowledge on potential risks of discrimination when using algorithms in recruitment processes to:
  - Judges
  - Lawyers
  - Employers
  - IT specialists
  - Labour inspectorates
  - Labour offices
- Presenting and exchanging good practices of concepts of recruitment algorithms where equal treatment principle has been taken into account
- raising awareness of the issue of gender bias in algorithms
  - starting publicly financed general and specialized awareness raising campaigns
  - including discussion on gender bias in debates on concepts of digitalization of recruitment process and other processes
  - providing short and clear information on gender bias in recruitment and how to avoid them when using artificial intelligence on social media and specialized websites (aiming especially at IT specialists)