

*Dorota Dzienisiuk*

University of Warsaw, Poland

e-mail: [d.dzienisiuk@wpia.uw.edu.pl](mailto:d.dzienisiuk@wpia.uw.edu.pl)

ORCID: 0000-0002-0543-9114

## **DIGITALISED WORK OF WOMEN IN THE EUROPEAN UNION AND POLISH REGULATION AND LEGISLATIVE PROPOSALS**

### **Abstract**

The article aims to assess if women's problems are specifically identified in labour legislation relating to digitalisation. Women appear in preparatory phases of legislative procedures (reports, motives), while usually they are not explicitly addressed in final drafts or acts. Digitalisation of work of women as such, referring to biological features of the gender itself is not perceived as a specific problem to be solved. Female workers are not treated as a vulnerable group which should benefit from additional guarantees in the process of digitalisation. It proves that in digitalised work, sex is not a distinctive feature: both sexes are able and skilled to work with digital devices. Criteria used to identify vulnerable groups refer to social situations rather than sex itself (e.g. education and training, caring responsibilities). However, women tend to constitute the majority of such groups. Therefore, respective 'horizontal' protective provisions and standards (e.g. working time, right to disconnect, work-life balance or non-discrimination) are particularly important for women.

## KEYWORDS

women, digitalisation, labour law, remote work, right to disconnect

## SŁOWA KLUCZOWE

kobiety, cyfryzacja, prawo pracy, praca zdalna, prawo do odłączenia się

## INTRODUCTION

Digitalisation of work is increasingly reflected in law: national, international and supranational, such as the European Union law. Details depend on features of a given work legislation and existing legal forms of work. Some of those legal acts or their motives directly refer to the position of women in a new and constantly changing digitalised working environment, significantly different from the ‘old-fashioned’ factory governed by labour law. Even the ‘classical labour law’ many years ago acknowledged that labour conditions connected with digital reality may influence women and men in different ways (e.g. electromagnetic radiation).

Increasing popularity of digital work and of our knowledge regarding its features as well as social and economic consequences have led to amendments in previous legislation. New, binding and non-binding, acts dealing precisely with various aspects of such work appear. The most important examples in the European Union law are autonomous European Social Partners Framework Agreements: on telework (16 July 2002) and on digitalisation (22 June 2020), as well as:

- European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL));
- European Parliament resolution of 16 September 2021 on fair working conditions, rights and social protection for platform workers – new forms of employment linked to digital development (2019/2186(INI)).

Legal acts dealing with digitalised work are based on general principles of labour law, so they seem to approach the same concepts and schemes as earlier legislation. Usually, it is agreed that digital work problems reflect other problems dealt with by labour law. Thus, we may observe that acts that were designed to set standards of ‘traditional work’ serve also the purposes of digitalised activity. In order to assess the extent and the goals of considering specific situations or points of view of women in drafting and setting the rules for digitalisation and digitalised work some of the ideas presented on the supranational level are confronted with the Polish legislative concepts.

The COVID-19 pandemic triggered digitalised work in an unprecedented way and emphasised the impact of this work on the life and social standing of women. Consequently, the hard and soft law adopted in recent years<sup>1</sup> refers to the problems of women resulting from digitalised work expressly or indirectly.

In the Framework Agreement on Digitalisation of 2020, the social partners agreed that the presence or introduction of digital technologies or tools has an impact on several topics that are often interrelated, i.e. work organisation (the distribution and coordination of work tasks and authority), work content and skills, working conditions (work environment, employment terms and conditions, such as working time or work-life balance) and work relations.

Social partners and scholars are currently discussing the best way to regulate the new reality embracing the particularities of digitalised work. The fundamental question is the method of addressing these issues, which can be ‘vertical’ – focused on digitalisation only or ‘horizontal’ dealing with general problems, such as working time or training of employees. More and more publications seem to focus on vertical problems, such as work-life balance or the right to disconnect, which is intrinsically related to the problem of working time.

Here, we will follow some main issues, such as job and sectoral segregation as well as jobs loss; health and safety at work; recognition of family responsibilities and non-discrimination. A resulting issue is assuring adequate social security in the digitalised world with a new form of work that is still not fully identified. Problems are old and similar to those appearing at every work. Here, we ask how to face them in view of new forms of work that give rise to dangers and consequences that differ from previous ones and, in particular, if and how specific problems of women should be addressed by law.

## **JOB / SECTORAL DIVERSIFICATION AND JOBS LOSS**

In the labour market, there are many differences between jobs in which digital technology is the essence of tasks performed and jobs in which the tasks performed remain the same as previously, but the equipment and methods have changed. The

---

<sup>1</sup> In Poland, the new concept of ‘remote work’, applied since March 2020, allowed the employer to oblige employees to perform the work agreed in employment contract outside the permanent workplace for a specified period of time. The ‘remote work’ was not defined, but it could be performed via telecommunication technologies. These new legal provisions were willingly applied to large numbers of employees. See Article 3, Ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych; consolidated version: Journal of Laws of 2021, item 2095, as amended. Since 7 April 2023, modified regulation of ‘remote work’ has replaced the regulation of ‘telework’ in the Polish Labour Code.

main problem in access to both kinds of work is knowledge and skills, backed indirectly by the need for adequate training. National differences are obvious as far as access to technology, digital gap, skills and training of employees are concerned. They result in different approaches to the content of legal provisions and practice, including activities of social partners.

Women have been present in the history of computers since its very beginning, since the first computers were created in the USA in the 1940s. Women were among the first programmers. The origins of telework are linked to British female programmers working at home in the 1960s. In Poland, since the 1950s computer programming has been considered a 'female profession', very suitable for female graduates of mathematical and engineering faculties. The political and economic transformation of the 1990s changed this situation totally and as a result the gender diversity in the most technologically advanced jobs has drastically diminished. There are some social movements to promote the participation of women in STEM (Science, Technology, Engineering and Mathematics).<sup>2</sup> It is one of the concerns in Europe<sup>3</sup> and on a global scale as well. It seems though that in some countries women are more interested in pursuing STEM fields than in others. The explanation is probably related to the economic and social environment and varies from country to country. For example, Arabs prefer to study information technology and engineering sciences to keep abreast of modern technology,<sup>4</sup> while for Indian women digitalisation is connected to flexible working hours of some outsourcing companies and good pay which helps them to contribute to their household finances.<sup>5</sup>

However, women are present not only in the most advanced technologies. They work in the increasingly digitalised working environment, in all branches of industries. So we still must remember about gender-related division of jobs. The sectoral diversification, also with regard to gender, is one of the concerns supporting the need for the regulation of platform work. Women make up 56% of

---

<sup>2</sup> On the basis of: K. Wasielewska, *Cyfrodziewczyny. Pionierki polskiej informatyki*, Warszawa 2020, *passim*, in particular: pp. 5, 21 – 40, 275-276.

<sup>3</sup> *Draft report on artificial intelligence in a digital age*, European Parliament, Special Committee on Artificial Intelligence in a Digital Age (2020/2266(INI)), rapporteur: A. Voss stresses that the acquisition and teaching of digital and AI skills needs to be accessible to all; EU policies must strive to remove obstacles to the participation of women and other discriminated groups in the digital economy and empower them to take the lead as tech investors and entrepreneurs. The report requests an incentive system to encourage companies to ensure their teams of developers and engineers include gender balance and minority inclusion (p. 39), available at: [file:///F:/prace/dyskr%20cyfr/AVoss\\_AIDA-draft-report-full-version.pdf](file:///F:/prace/dyskr%20cyfr/AVoss_AIDA-draft-report-full-version.pdf) (accessed 13 January 2022).

<sup>4</sup> A. Eltamimi, *The impact of new technologies in the current Arab labour market in selected Arab states* (in: *Labour law and the gig economy: challenges posed by the digitalisation of labour processes*, J. Carby-Hall, L. Mella Méndez (eds.), Routledge / Taylor&Francis 2020, p. 97.

<sup>5</sup> D. A. Patel, *Digitalisation vis-à-vis the Indian labour market: pros and cons*, (in: *Labour law and the gig economy: challenges posed by the digitalisation of labour processes*, J. Carby-Hall, L. Mella Méndez (eds.), Routledge / Taylor&Francis 2020, p. 97.

the retail trade workforce in Poland (Eurostat LFS 2020) and it is one of the highest rates in the European Union.<sup>6</sup> Especially during the COVID pandemic, it was visible that frontline workers were women and they were more exposed to health risks related to contacts with customers. Even irrespective of the pandemic, every day, we can observe that in the shops and supermarkets, female shop assistants and cashiers are replaced by automatic services and checkouts.

Since 2022, in Poland tasks and responsibilities related to a very popular child benefit (all parents of children under 18 are entitled to it) have been transferred from numerous local self-government offices to one big centralised national Social Insurance Institution.<sup>7</sup> During preparatory works, it was assumed that the processing of claims and payments would be automated and no additional person would be employed, not even a single one. On the other hand, massive redundancies were expected in self-government offices. These low paid posts were mostly occupied by women.

Such examples illustrate the worries if the disappearance of workplaces in feminised sectors will be sufficiently replaced by the creation of new jobs. Another important issue is to ensure that the skills of candidates for the new positions respond to the new requirements of the more or less advanced digital competences.

Among the solutions that might be helpful to women in the area of training, the parties to the Framework Agreement on Digitalisation suggested (p. 9) the operation of schemes such as “short time work that combines a reduction of working hours with training, in well-defined circumstances”. If an employer requests a worker to participate in a job-related training that is directly linked to the digital transformation of the enterprise, the training is paid by the employer or in line with the collective agreement or national practice. This training can be in-house or off-site and takes place at an appropriate and agreed time for both the employer and the worker, and where possible during working hours. If the training takes place outside of working time, appropriate compensation should be arranged.

The problem is also reflected in the European Parliament resolution on platform workers. In this resolution, ‘digital labour platform’ refers to a company which intermediates or offers, with a greater or lesser extent of control, on-demand services, requested by individual or corporate customers and provided directly or indirectly by individuals, regardless of whether such services are performed on location or online. And ‘platform workers’ are individuals executing

---

<sup>6</sup> K. Śledziewska, R. Włoch, *Cyfrowy klucz do przyszłości zawodowej. Kobiety na rynku pracy w kontekście kryzysu gospodarczego*, raport, Digital Economy Lab (DELab), Instytut Innowacyjna Gospodarka (INGOS), available at: <https://www.delab.uw.edu.pl/wp-content/uploads/2020/09/Raport-Woman-Update-Cyfrowy-klucz-do-przyszlosci-zawodowej.pdf> (accessed 13 January 2022).

<sup>7</sup> Ustawa z dnia 17 września 2021 r. o zmianie ustawy o pomocy państwa w wychowywaniu dzieci oraz niektórych innych ustaw, Journal of Laws of 2021, item 1981.

work or providing services, with a greater or lesser extent of control, via a digital labour platform; whereas, accordingly, it may include both workers and genuinely self-employed persons.

Following an ILO report,<sup>8</sup> the resolution distinguishes between online web-based platforms and location-based platforms. Workers on online web-based platforms perform tasks online, including various services on freelance and contest as well as contest-based platforms, solving complex problems or completing short-term tasks. The tasks on location-based platforms are carried out in person and include taxi delivery and home services, domestic work and care provision. This latter description corresponds to the descriptions of feminised jobs. At the same time, for the majority of on-location based workers and one third of online-based workers, platform work on digital labour platforms is their main source of income, with higher proportions in developing countries and for women. Nevertheless, in the EU, it still represents a small share of the general labour market.

Further, in recitals (V), it is observed that platform work reproduces gender inequalities from the general labour market, such as the gender pay gap and gender segregation in occupations or sectors. Platform work can be an opportunity to increase the participation of women in the labour force. The representation of women and men varies across the different types of services and platforms, with men represented more visibly in platform work with higher work autonomy and women more likely to perform more precarious platform work with limited work autonomy. People with significant caring and family responsibilities are therefore at a disadvantage and this is likely to have negative consequences, for women in particular. Women platform workers, especially drivers and those providing cleaning and care services in private residences, are exposed to the risk of sexual harassment and gender-based violence and might refrain from reporting this because of a lack of reporting tools, the absence of contact with a human manager or fear of negative ratings and loss of future work. The EU Parliament recalled (41) that women constitute only 22 % of workers in the transport industry and also represent a minority of platform workers in the transport and tourism industries, with anecdotal evidence suggesting that female platform workers in the transport industry have worse employment and working conditions than their male counterparts.

Labour law imposes strict minimum standards of working women protection. These standards usually do not extend to self-employed women.<sup>9</sup> Thus, a pre-

---

<sup>8</sup> ILO, *World Employment and Social Outlook 2021: The role of digital labour platforms in transforming the world of work*, p. 22.

<sup>9</sup> See the scope of application of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC); OJ L 348, 28 November 1992, p. 1, or the differences in the level of protection foreseen by the Directive 2006/54/EC of the Europe-

requisite for the appropriate protection of people engaged in platform work is to assure that they are legally qualified as employees (workers), not as self-employed, independent contractors or freelancers. This activity and income usually play the same role in the lives of employees and the self-employed. Sometimes employment is simply not available or possible to combine with family duties.

In the case of digitalised work and new forms of work, the boundary between employment and self-employment is even more ambiguous than in 'old' jobs. Detailed case law and jurisprudence helped to draw distinction in many cases.<sup>10</sup> For platform workers, this process is in an initial phase and is best represented by the problems with qualifying Uber drivers. A platform transport company may provide its services through independent traders who act on its behalf as subcontractors or through employees. The controversy surrounding the status of drivers with respect to Uber led to a few court judgments in some EU Member States and the opinions that drivers working for Uber do not pursue – at least when they are driving in the context of Uber's services – an independent economic activity.<sup>11</sup> Consequently, the status of Uber drivers may be related to labour law (workers), not only to purely commercial law (contractors). In Poland, for practical reasons and additionally after the public protests of taxi drivers, Uber drivers officially have to register their economic activity and for social law purposes are treated as self-employed. Thus, basic social entitlements are guaranteed. The Court of Justice of the European Union decided that in criminal proceedings, an intermediation service, the purpose of which is to connect by means of a smart-phone application and for remuneration non-professional drivers using their vehicles with persons who wish to make urban journeys, must be regarded as being inherently linked to a transport service and, accordingly, must be classified as 'a service in the field of transport' within the meaning of Article 58(1) of the Treaty on the Functioning of the European Union.<sup>12</sup>

---

an Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26 July 2006, pp. 23–36 and the Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21 December 2004, p. 37.

<sup>10</sup> As an example see ILO Employment Relationship Recommendation, 2006 (No. 198).

<sup>11</sup> See judgment of the London Employment Tribunal of 28 October 2016, *Aslam, Farrar and Others -v- Uber* (Case 2202551/2015); decision of the Audiencia Provincial de Madrid No 15/2017 of 23 January 2017 in an action between *Uber and the Asociación Madrileña del Taxi*; and order of the Tribunale Ordinario di Milano of 2 July 2015 (cases 35445/2015 and 36491/2015) quoted in the opinion of Advocate General M. Szpunar delivered on 11 May 2017 in case C-434/15 *Asociación Profesional Elite Taxi v Uber Systems Spain, SL* (paragraph 53) as well as conclusion presented in this opinion (paragraphs 56 and 63).

<sup>12</sup> Judgment of the Court (Grand Chamber) of 20 December 2017, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*, case C-434/15, ECLI:EU:C:2017:981; also judgment of the Court (Grand Chamber) of 10 April 2018, *Uber France SAS*, case C-320/16, ECLI:EU:C:2018:221.

In the European Parliament resolution on platform workers, it was noticed that some self-employed persons or workers are at risk of being misclassified and of not enjoying the rights inherent to their status. Whereas workers in digital labour platforms should have the same rights and the same access to social protection as the non-platform workers of the same category, with full respect for the diversity of national labour market models, the autonomy of social partners and national competences. With the aim of facilitating the correct classification of platform workers, the Parliament suggests introducing a rebuttable presumption of an employment relationship for platform workers, in accordance with national definitions as set out in Member States' respective legislation or collective agreements, combined with the reversal of the burden of proof and possibly additional measures. The document stresses that whenever platform workers dispute the classification of their employment status in legal proceedings before a court or administrative body according to national legislation and practices, it is for the party who is claimed to be the employer to prove that there is no employment relationship. Such provisions would be extremely helpful to women claiming their rights related to employment, particularly in case of pregnancy.

## HEALTH AND SAFETY AT WORK

One of the aims of declaring that platform workers are legally classified as employees is to ensure the health and safety of their work. In the European Parliament resolution on the right to disconnect, it was observed that the International Agency for Research on Cancer has classified radio-frequency radiation as a possible carcinogenic. Pregnant women may be at particular risk when exposed to radio-frequency radiation (resolution on the right to disconnect, motive D). Such work of women, especially pregnant ones, is traditionally restricted. But it is also widely expected that digitalised production or services procedures are safer than traditional ones. They are hygienic and clean. The electronic devices are becoming increasingly healthy and safe. It might explain why an old Polish regulation restricting the working time with devices equipped with display screens (computers, first of all) during pregnancy<sup>13</sup> is now replaced by a less severe regulation. Previously, working with display screens for more than 4 hours a day was forbid-

---

<sup>13</sup> About the question whether work at display units can affect the result of pregnancy outcome see for example: *Visual display units: Radiation protection guidance*, prepared by the International Non-Ionizing Radiation Committee of the International Radiation Protection Association in collaboration with the International Labour Organization, International Labour Office, Geneva 1994, pp. 27-38, available at: [https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS\\_218609/lang-en/index.htm](https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS_218609/lang-en/index.htm) (accessed 12 January 2022).

den.<sup>14</sup> Now it is not permitted if it exceeds 8 hours a day and obligatory breaks have been introduced.<sup>15</sup> However, it is also worth noting that this regulation is placed under the title suggesting that the restriction is due to the physical or manual effort, and not to the display screen or radiation itself. Similarly, the distinct situation of pregnant and breastfeeding women hardly appears in the documents related specifically to digitalised work.

In digitalised work, psychological tensions become more and more important. Thus, also the rules in this field, like the European autonomous Framework Agreement on Work-Related Stress signed between European social partners in 2004, are also of great importance.

## FAMILY RESPONSIBILITIES

For people with family responsibilities, legal form of their work is crucial: employees have many more rights (such as restricted working hours and paid leaves) than self-employed contractors or freelancers. Usually, the legal form of work also defines the scope of social protection and level of income during the periods of intensive family duties corresponding to intervals in working career or part time work. Work itself is important, but also the extent of work providing sufficient income matters.

In labour law, we use basic concepts of time and place of work which allow to draw quite a distinct line dividing working and private spheres. The idea of division of these spheres is the main base to set standards regarding maximum working time or the protection of privacy of employees. Traditional workplace allows the concentration of equipment and supervision of workers by the employer. In digitalised work, even tracking or monitoring devices do not provide such possibilities. Workers can, to a certain extent, decide where and when they actually work. Therefore, a different approach to the responsibilities and risks of both sides of the work relationship might be adopted. The massive use of digital devices and

---

<sup>14</sup> Work exposing to electromagnetic fields, ionizing or ultraviolet radiation as well as work with display screens for over 4 hours a day was listed as forbidden for pregnant women in an annex to a Regulation of the Council of Ministers of 1996: Rozporządzenie Rady Ministrów z dnia 10 września 1996 r. w sprawie wykazu prac szczególnie uciążliwych lub szkodliwych dla zdrowia kobiet; consolidated version: Journal of Laws of 2016, item 2057.

<sup>15</sup> Regulation of 2017 on the list of works strenuous, dangerous or harmful for pregnant and breastfeeding women covers work with display screens exceeding in total 8 hours a day, while the time dedicated to operation of a display screen may not exceed 50 minutes at a time: Rozporządzenie Rady Ministrów z dnia 3 kwietnia 2017 r. w sprawie wykazu prac uciążliwych, niebezpiecznych lub szkodliwych dla zdrowia kobiet w ciąży i kobiet karmiących dziecko piersią; Journal of Laws of 2017, item 796.

sophisticated software, for both employment related and private purposes, leads to a new way of perceiving privacy, work, workplace and working time as well as the availability of employees to perform tasks assigned by the employer.<sup>16</sup> What is more, in the digitalised world, also all or almost all family members are active ‘digitally’, which makes interpersonal and emotional relations even more complex. Communication within family is possible during working hours, without formally interrupting the performance of work tasks (e.g. without formal application and authorisation for a break).

The term ‘blending’ is sometimes used for the phenomenon of dealing with private matters at work and professional issues at home. From the perspective of equality, the conciliation of family and work is not a problem exclusive to women. Men take responsibility for some family tasks and this fact extends the problem of work-life balance to all workers. Yet, it is recognised that women continue to assume most family responsibilities, while anti-discrimination rules offer protection against discriminatory treatment, whether based on biological sex or cultural gender.<sup>17</sup>

The COVID-19 pandemic has highlighted<sup>18</sup> a discrepancy in the ideas we have in Europe. Women are still expected to take care of the children and at the same time there are calls to get more women to the labour market for longer working hours. This is the essence of work-life balance regulation.<sup>19</sup>

That is why the European Parliament resolution on the right to disconnect adopted during the COVID-19 pandemic is expected to be more important for women than for men. While presenting the overall situation, the authors of the resolution pointed out issues connected to the position of women. Digital tools can make finding work-life balance particularly difficult for women burdened with both employment related tasks and unremunerated caring and housework responsibilities.

The ever-greater use of digital tools for work purposes leads to an ‘ever-connected’, ‘always on’, or ‘constantly on-call’ culture which is in opposition to workers’ fundamental rights and fair working conditions, including fair remuneration, limitation of working time, work-life balance, physical and mental health, safety at work and well-being. This process can have a detrimental effect on equality

<sup>16</sup> B. Godlewska-Bujok, *Praca zdalna w kontekście życia rodzinnego* (in:) M. Mędrala (ed.), *Praca zdalna w polskim systemie prawnym*, Warszawa 2021, p. 174.

<sup>17</sup> T. Ushakova, *Work-life balance and Industry 4.0 in the legal framework of the European Union* (in:) J. Carby-Hall, L. Mella Méndez (eds.), *Labour law and the gig economy: challenges posed by the digitalisation of labour processes*, Routledge / Taylor&Francis 2020, pp. 192-193, 199.

<sup>18</sup> For example, new forms of unpaid work like helping children in online lessons or widespread practice of simultaneous remote work and care of children heated the discussion whether care is a private or a public matter.

<sup>19</sup> 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; OJ L 188, 12 July 2019, p. 79.

between men and women, because of its disproportionate impact on workers with caring responsibilities who tend to be women (motive C of the resolution). Women were at a particularly high risk from and were more severely hit by the economic and social fallout resulting from the COVID-19 crisis, due to their predominant or still traditional role of carer of the home and family. The increase of teleworking during the COVID-19 crisis could also pose a higher risk to people with caring responsibilities, such as single parents, families with children and families with dependent relatives requiring care; whereas work and private life during a time of teleworking, social distancing and lockdown needs to be well balanced. Consequently, gender aspects should be addressed in the context of the right to disconnect (motive G).

As a solution, the draft directive presented in the annex to the resolution suggests that EU Member States shall ensure that employers take the necessary measures to provide workers with the means to exercise their right to disconnect, i.e. “not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time”. Member States shall ensure that employers set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured, in accordance with workers’ right to privacy and to the protection of their personal data. Workers shall have the possibility to request and obtain a record of their working times. Employers should implement the right to disconnect in a fair, lawful and transparent manner. Member States shall provide for at least the following working conditions:

- (a) practical arrangements for switching off digital tools for work purposes, including any work-related monitoring tools;
- (b) system for measuring working time;
- (c) health and safety assessments, including psychosocial risk assessments, with regard to the right to disconnect;
- (d) criteria for any derogation by employers from their requirement to implement a worker’s right to disconnect;
- (e) in the case of a derogation under point (d), the criteria for determining how compensation for work performed outside working time is to be calculated in accordance with other directives, and with national law and practices;
- (f) awareness-raising measures, including in-work training, to be taken by employers with regard to the working conditions.

Member States shall ensure that discrimination, less favourable treatment, dismissal and other adverse measures by employers on the grounds that workers have exercised or have sought to exercise their right to disconnect should be prohibited. Member States shall ensure that workers whose right to disconnect is violated have access to swift, effective, and impartial dispute resolution and the right of redress in the case of infringements of their rights.

Also the Framework Agreement on Digitalisation aims to deal with risks and challenges around the delineation of work and of personal time, both during and beyond working time. Achievement of organisational objectives should not require out-of-hours connection. With full respect for working time legislation and working time provisions in collective agreements and contractual arrangements, for any additional out-of-hours contacting of workers by employers, the worker is not obliged to be contactable. Appropriate compensation for any extra time worked should be guaranteed. Employers should provide alert and support procedures in a no-blame culture to find solutions and to guard against detriment for workers for not being contactable. Measures to be considered include respecting working time rules as well as teleworking and mobile work rules. They also include guidance and information for employers and workers on how to comply with these rules including on how to use digital tools, e.g. emails, including the risks of being overly connected, particularly for health and safety issues (p. 10).

It should be noted that the history of legal recognition of the right to disconnect started in France as linked to collective bargaining on professional equality between women and men (Loi El Khomri or Loi Travail). Since January 2017, relevant provisions have been inserted into the French Labour Code into a title dedicated to obligatory collective bargaining (initially Article 2242-8). In certain enterprises, every four years, the employer is engaged in collective bargaining on the professional equality between women and men and the quality of life at work and of working conditions (Article 2242-1 of the French Labour Code since 1 March 2022). This collective bargaining deals with typical issues of non-discrimination, equal treatment of men and women or private and professional life links. At the same time, it encompasses the right to expression, including via digital tools and the right to disconnect as such (Article 2242-17 of the French Labour Code). Such legislative method suggests that the matters of equal treatment and protection of workers in digital work are interrelated and it is possible to deal with them simultaneously. As the detailed solutions are decided on the level of separate enterprises, it is possible to develop good practices and test various tools in order to protect the right to disconnect<sup>20</sup> and the rights and interests of women at the same time.

However, the duty to disconnect from the employee was suggested in order to consider the co-responsibility of the employee and employer.<sup>21</sup> All workers are

<sup>20</sup> The negotiated right to disconnect referred to such methods as: partially replacing the use of e-mail with engagement to the company's social network, promoting the principle of exemplariness among management, efforts of taking precautions with respect to the configuration settings of mobile devices: see S. Rodríguez González, *Digital disconnection as a limit to corporate control of working time framework* (in:) *Labour law and the gig economy: challenges posed by the digitalisation of labour processes*, J. Carby-Hall, L. Mella Méndez (eds.), Routledge / Taylor & Francis 2020, p. 214.

<sup>21</sup> B. Mettling, *Transformation numérique et vie de travail. Report to Minister of Labour Myriam el Khomri*, September 2015, p. 21, available at [https://travail-emploi.gouv.fr/IMG/pdf/rapport\\_mettling\\_transformation\\_numerique\\_vie\\_au\\_travail.pdf](https://travail-emploi.gouv.fr/IMG/pdf/rapport_mettling_transformation_numerique_vie_au_travail.pdf) (accessed 13 January 2022).

responsible for their acts related to the workplace. It is a challenge to combine the right to disconnect and the right to individual liberty to enjoy our private life as we wish. These challenges result in the issue of ethics in the workplace and work organisation, which leads to the humanisation of work, protection of dignity and (mental) health.<sup>22</sup>

The generally binding legislation in Italy<sup>23</sup> and Spain<sup>24</sup> also refers to collective agreements specifying the details of the right to disconnect. In Germany, such agreements are concluded without specific legislative basis.<sup>25</sup>

## NON-DISCRIMINATION

Specific provisions relating to equal treatment in digitalised work can be perceived as a step in developing anti-discrimination regulation by identifying and inserting new challenges into the already existing structure. The European Trade Union Confederation (ETUC) online survey on Fair Digitalisation and Workers Participation revealed that less than one in ten respondents regarded improvements in terms of gender equality and new opportunities for women as important opportunities resulting from digitalisation (none in France and Denmark, while 18% in Italy and 12% in Spain).<sup>26</sup> Framework Agreement on Digitalisation states that digital transformation strategies should be built on a shared commitment of social partners to, among others, an equal opportunities policy to ensure that digital technology results in benefit for all workers. If digital technology contributes to inequality, for example between women and men, this issue must be addressed by the social partners (p. 9).

---

<sup>22</sup> L. Lerogue, *The right to disconnect from the workplace: strengths and weaknesses of the French legal framework* (in: J. Carby-Hall, L. Mella Méndez (eds.) *Labour law and the gig economy: challenges posed by the digitalisation of labour processes*, Routledge / Taylor&Francis 2020, p. 228).

<sup>23</sup> Article 19, Legge 22 maggio 2017, n. 81, Misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l'articolazione flessibile nei tempi e nei luoghi del lavoro subordinato, GU Serie Generale n. 135 del 13-06-2017.

<sup>24</sup> Article 88, Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales, BOE-A-2018-16673.

<sup>25</sup> K. Naumowicz, *Prawo pracowników zdalnych do bycia offline – rozważania prawnoporównawcze* [*The right of remote workers to be offline – some comparative legal remarks*], “Roczniki Administracji i Prawa” [Annuals of The Administration and Law] 2021, Vol. XXI, special issue I, pp. 539-540.

<sup>26</sup> E. Voss, H. Riede, *Digitalisation and workers' participation: what trade unions, company level workers and online platform workers in Europe think. Report to the ETUC*, September 2018, pp. 14-15, available at: <https://www.etuc.org/en/publication/digitalisation-and-workers-participation-what-trade-unions-and-workers-think> (accessed 13 January 2022).

The phenomenon of spreading the use of artificial intelligence (AI) for various purposes in work environment creates risks that need a specific approach. We already know that the data and the results appearing in AI procedures can be biased because they represent discriminatory human decisions. Usually, it is a bigger problem for women than for men that digital technology and AI surveillance systems, along with data processing, raise the risk of compromising the dignity of the human being, particularly in cases of personal monitoring. This could lead to the deterioration of working conditions and well-being of female workers.

Framework Agreement on Digitalisation states (pp. 11-12) that social partners at the level of the enterprise and other appropriate levels should pro-actively explore the potential of digital technology and AI to increase the productivity of the enterprise and the well-being of the workforce, including a better allocation of tasks, augmented competence development and work capacities as well as the reduction of exposure to harmful working conditions. In particular, deployment of AI systems should follow the principles of fairness, i.e. ensuring that workers and groups are free from unfair bias and discrimination. It needs to be transparent and explicable with effective oversight. The degree to which explicability is needed is dependent on the context, severity and consequences. Checks will need to be made to prevent erroneous AI output. In situations where AI systems are used in human-resource procedures, such as recruitment, evaluation, promotion and dismissal as well as performance analysis, transparency needs to be safeguarded through the provision of information. In addition, an affected worker can make a request for human intervention and/or contest the decision along with testing of the AI outcomes. AI systems should be designed and operated to comply with the existing law, including data protection regulations, as well as guarantee privacy and dignity of the worker. Data minimisation and transparency along with clear rules on the processing of personal data limit the risk of intrusive monitoring and misuse of personal data.

The European Parliament resolution on platform workers acknowledged that digital labour platforms use tools such as apps, algorithms and AI as part of their business model in order to match supply and demand, and to manage workers to varying extents. The resolution states that algorithmic management must be fully transparent and under human oversight in order for workers to be able to challenge decisions through effective procedures where necessary and must not be based on biased datasets related to gender, ethnic background or sexual orientation, so as to avoid any risk of discrimination in its outcomes; whereas more vulnerable groups such as women, minorities and persons with disabilities have a higher risk of rating bias.

One of the concerns of the anti-discrimination law is to ensure effective remedies available to victims. We may expect that the use of datasets prepared for the AI processes and the processes themselves can be also used in relevant court or

administrative proceedings to assess if in a given case discrimination, especially indirect discrimination, occurs.

## CONCLUSION

In this article, the development of labour legislation was analysed from a specific angle focusing on the position of women. At present, a few legal acts dealing with digitalised work have been adopted. As a rule they are expected to be implemented by social partners or other bodies. They seem to reflect the attitude that it is useful to regulate digitalisation by setting objectives and expect that non-legal solutions will appear drawing from human resources management methods such as training or information campaigns.<sup>27</sup> The expectations towards the solutions elaborated by social partners through their collective bargaining prove that the regulation on digitalisation and the position of women in digitalised work is at an early stage and there are no obvious provisions to be implemented. The legislative bodies have received reports identifying the main issues to be solved and now they are considering or preparing the legal initiative in this field. We still have to observe if these actions will lead to improvement of the position of women, hopefully.

At present, it seems that digital devices can be handled by women as well as by other workers. Specific problems result from gender-related social and economic circumstances. In general, the problems of women are not addressed as a separate issue. The binding regulation aiming to address precisely the problems of women working digitally was initially directed to the protection of their health and safety. The regulation of the new issues related to psychosocial health and family or private life is in the preparatory phases. Such issues are dealt with among wider legal problems such as equality in employment, working time and training of workers or work-life balance.

Female workers are not treated as a vulnerable group which should benefit from additional guarantees in the process of digitalisation. Other criteria are used to identify vulnerable groups. They refer to the social situation rather than the employment position of people: education and training, caring responsibilities or psychological characteristics (reaction to stress, need for privacy). However, women tend to constitute the majority of such groups. Usually, it is assumed that they play a major role within such vulnerable groups because they have caring responsibilities or have fewer digital skills due to the previous differences in edu-

---

<sup>27</sup> About such features of employment policy see J. M. Servais, *The ILO and the Social Consequences of the COVID-19 [ILO oraz społeczne konsekwencje COVID-19]*, "Roczniki Administracji i Prawa" [Annuals of The Administration and Law] 2021, Vol. XXI, special issue: p. 67.

cation or training provided to men and women. That is why general, traditional ‘horizontal’ standards of protection of workers play an important role for women, as well to those working in digitalised working environments.

## REFERENCES

- Carby-Hall J., Mella Méndez L. (eds.), *Labour law and the gig economy: challenges posed by the digitalisation of labour processes*, Routledge / Taylor&Francis 2020
- Godlewska-Bujok B., *Praca zdalna w kontekście życia rodzinnego* (in:) M. Mędrała (ed.), *Praca zdalna w polskim systemie prawnym*, Warszawa 2021
- Mettling B., *Transformation numérique et vie de travail. Report to Minister of Labour Myriam el Khomri*, September 2015, p. 21, available at [https://travail-emploi.gouv.fr/IMG/pdf/rapport\\_mettling\\_transformation\\_numerique\\_vie\\_au\\_travail.pdf](https://travail-emploi.gouv.fr/IMG/pdf/rapport_mettling_transformation_numerique_vie_au_travail.pdf) (accessed 13 January 2022)
- Naumowicz K., *Prawo pracowników zdalnych do bycia offline – rozważania prawno-porównawcze [The right of remote workers to be offline – some comparative legal remarks]*, “Roczniki Administracji i Prawa” [Annals of The Administration and Law] 2021, Vol. XXI
- Servais J. M., *The ILO and the Social Consequences of the COVID-19 [ILO oraz społeczne konsekwencje COVID-19]*, “Roczniki Administracji i Prawa” [Annals of The Administration and Law] 2021, Vol. XXI
- Śledziwska K., Włoch R., *Cyfrowy klucz do przyszłości zawodowej. Kobiety na rynku pracy w kontekście kryzysu gospodarczego*, <https://www.delab.uw.edu.pl/wp-content/uploads/2020/09/Raport-Woman-Update-Cyfrowy-klucz-do-przyszlosci-zawodowej.pdf> (accessed 13 January 2022)
- Visual display units: Radiation protection guidance*, prepared by the International Non-Ionizing Radiation Committee of the International Radiation Protection Association in collaboration with the International Labour Organization, International Labour Office, Geneva 1994, [https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS\\_218609/lang--en/index.htm](https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS_218609/lang--en/index.htm) (accessed 12 January 2022)
- Voss A., *Draft report on artificial intelligence in a digital age*, European Parliament, Special Committee on Artificial Intelligence in a Digital Age (2020/2266(INI)), file:///F:/prace/dyskr%20cyfr/AVoss\_AIDA-draft-report-full-version.pdf (accessed 13 January 2022)
- Voss E., Riede H., *Digitalisation and workers’ participation: what trade unions, company level workers and online platform workers in Europe think. Report to the ETUC*, <https://www.etuc.org/en/publication/digitalisation-and-workers-participation-what-trade-unions-and-workers-think> (accessed 13 January 2022)
- Wasielewska K., *Cyfrodziewczyny. Pionierki polskiej informatyki*, Warszawa 2020