

## INTRODUCTION

Mr. Immanuel Akpati is a mechanical Engineer at Red Dog Engineering Ltd, and has worked with the company for a period of 10 years. Red Dog is a large company of over 3000 employees which runs a 2-year promotion cycle for all employees above level 3. The Human Resource Department recently recommended an AI Algorithm tool to the company's Board of Directors that will speed up recruitment process, monitor employee input, evaluate performance, and recommend employees for promotion, among other employee relations processes. The Board reviewed and approved this tool to be used for evaluation and promotion recommendation to ease the process for the HR Department.

Mr. Immanuel was one of the employees evaluated by the AI tool and for the first time since his resumption at the company, he was not recommended for promotion since his engagement with the Company. Before implementation of the AI tool, he had been promoted twice and was now gearing towards his third promotion. As a result of the shocking non-recommendation, he applied to the HR Department for a re-evaluation of his progress. He was subsequently informed by the HR Manager that all processes were transparent and that human intervention or further analysis would be conducted to verify the conclusion by the AI Algorithm tool. On the basis of this, his request for re-evaluation was denied. He has now contacted Messrs. Light Grain LP to sue his employers for breach of his data privacy rights.

## FACTS AND FINDINGS

There is no current litigated matter on the scenario above. The Supreme Administrative Court of Austria recently decided that the use of an algorithm for categorizing job seekers qualifies as automated decision making under **Article 22 of the General Data Protection Regulation (GDPR)**. In this case, the Public Employment Service in Austria implanted algorithm with the specific purpose of assisting counsellors by categorizing job seekers based on various factors such as education, employment history, among others. The role of



the application was not to place people in employment but just to aid in providing targeted counseling. The Federal Administrative Court initially overturned the decision of the Data Protection Authority stating that this constituted automated individual decision making. On Appeal, the Supreme Administrative Court upheld the decision of the DPA stating that the algorithm's output affected the decision in the counselling process and could limit job seekers' opportunities.

The ruling laid down conditions precedent to apply automated decision making which include necessary legal basis under national and EU law. Secondly, there must be human involvement and evaluation of the decisions generated by the algorithm and entities using such systems must be transparent about it and train staff to limit the reliance on these systems. Article 22 provides that a data subject (in this case, employee) shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her. Although an exception is where it is necessary for the performance of a contract or based on the data subject's explicit consent, the data subject shall have the right to obtain human intervention on the part of the controller (the employer, in this case). The data subject shall also be granted the right to express his or her point of view and contest the decision.

## COMMENTARY

The Nigerian Legal System, though yet to process case law on these issues, provides for the data subject's right to object to automatic decision making. ***Section 34 of the Nigeria Data Protection Act*** provides that a data subject shall have the right not to be subject to a decision based solely on automated processing of personal data, including profiling, which produces legal or similar significant effects concerning the data subject. This provision more or less follows ***Article 22 of the GDPR***.

In the scenario above, Mr. Immanuel Akpati, and other staff of Red Dog Engineering limited were subject to automated decision making. As a standalone, the act of subjecting employees to the AI tool does not amount to a breach, however, the procedure carried out by the HR Department was in breach of extant laws. To fully comply with the provisions of the Data Protection Act, the HR Department is first expected to carry out a Data Protection Impact Assessment to determine the risk involved in the use of the AI technology. This would involve a concise evaluation of the nature of data collected by the employers, the retention period, how the data will be processed, the basis for processing and other similar data analytics. The employers will then carry out necessary sensitization to notify the employees that they will be subjected to an AI algorithm tool for the purposes of performance appraisal and promotion. The circular or memo conveying the information will educate the employees on the rights available to them which include the right to obtain human intervention, express employee's point of view and contest the decision. At Red Dog, Mr. Immanuel Akpati's rights were



breached because he was informed that the decision reached by the AI tool was independent of human intervention and that he could not contest the decision.

A major danger with the use of AI and other automated decision-making applications is the existence of algorithmic bias. This term refers to errors in a system that leads to unfair outcomes such as privilege to a group of users over others.<sup>1</sup> This usually occurs where the system has been trained by a particular category of persons during the building process. Where it is presented with another group of unidentifiable persons, it may misjudge such persons. The bias may stem from the designers or limitation in the data fed into the system.

The law, envisaging this, provides the need for human intervention and the right to contest. A major system malfunction occurred with Amazon where it built an AI tool to aid in the hiring process. The data fed into the system was CV application to Amazon spanning a 10-year period. It was discovered that the AI tool favored men because the CVs submitted mostly came from men.<sup>2</sup> This led to gender discrimination. In a revolutionary manner, the Illinois legislature recently amended the state's Human's Right Act to regulate automated decision making which will come into force January 1, 2026. The amended Act provides that employers commit a civil right violation if they use Artificial Intelligence with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment, where these AI systems have the effect of discriminating on the basis of protected classes.<sup>3</sup>

In conclusion, the use of AI tools and other emerging technologies deeply impacts the employment space and demands the preparedness of employers with consistent education on the trends in the evolution and application of these technologies. Employers are advised to educate themselves in order to avoid breach of employees' rights.

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<sup>1</sup> Abid Ali Awan, "What is Algorithmic Bias" (DataCamp, July 17 2023) '<https://www.datacamp.com/blog/what-is-algorithmic-bias>' accessed June 5 2025

<sup>2</sup> Jeffrey Dastin, "Insight-Amazon scraps secret AI recruiting tool that showed bias against women" (Reuters, October 11, 2018) '<https://www.reuters.com/article/world/insight-amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK0AG/>' accessed June 5 2025

<sup>3</sup> <https://ilga.gov/legislation/publicacts/fulltext.asp?Name=103-0804>



Lagos: 1, Perchstone & Graeys Close, off Remi Olowude, Lekki Epe Expressway, Lagos; Tel: +234- 1-3429131, 7611051  
Abuja: D3, Jima Plaza, 1627 Ahmadu Bello Way, Area 11, Garki Abuja; Tel: +234 92919191, 07045984792  
Benin City: 40, Adesogbe Road, Benin City, Edo State; Tel: +234 7068518650, 07045984776  
Email: [counsel@perchstoneandgraeys.com](mailto:counsel@perchstoneandgraeys.com)

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