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**Article**

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# SOCIAL MEDIA SCREENING: IMPACT OF GDPR AND MACEDONIAN LEGAL FRAMEWORK

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## Abstract

*E-recruitment has been the focus both of research and commercial use in the past decade, with the addition of social media recruitment in the recent years. Public profiles and information on potential candidate have exploded with the emergence of profiles on social network web-sites, which is highly utilized by companies and recruiters in the employment process. Despite different ethical and practical issues, there are also legal ramifications for using personal data of candidates in the recruitment process. The paper focuses on the legal aspects of screening candidates, as part of the recruitment process, more specifically on the screening via social media.*

*Our research examines the introduction of the new GDPR Law which is in effect in EU countries since May 2018, and comparisons are made with the existing laws for data protection of candidates in the Republic of Macedonia, as a candidate member state for the EU. The research shows that screening through social media for reasons other than job performance is considered as a breach in principles through GDPR, as well as considered as discriminatory and illegal in the Macedonian Labor Law. The comparison between GDPR and Macedonian Labor Law shows strong points such as clear lines for direct and indirect discrimination, as well as weak points such as not enough guidelines for transparency, protection and control over candidate data in the Macedonian law. Companies are subject to GDPR regardless of whether they reside in an EU country, making the law of tremendous importance to Macedonian companies which employ or recruit candidates who are permanent residents of the EU. Recommendations are made to engage technology changes in a timely manner, as well as to introduce regular checks on companies for their process of screening candidates through social media.*

**Keywords:** Screening, GDPR, candidates, recruitment, social media

**JEL Classification:** M51, M54

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## 1. Introduction

The digitalization of the recruitment process has been the focus of research in the past decade, through both quantitative and qualitative analysis, as well as case studies in various companies. The focus of this paper is on candidate screening using the social media as a recruitment tool. This is done by examining the existing research, literature and statistics related to the subject, as well as comparing the laws implemented on the territory of the EU and Republic of Macedonia. This paper examines the legal aspects in utilizing social media during e-recruitment (more specifically when screening candidates).

## 2. Methodology

One of the basic methodologies used is theoretical research through the analysis of secondary sources of information and data: books, academic journals, scientific publications, empirical studies, publicly available statistics, Internet articles and other materials relevant to the subject matter. The method of induction and deduction was used to draw conclusions from existing laws regarding the use of social media in candidate screening, both on the territory of the EU and in the Republic of Macedonia. Finally, the comparative method was used to emphasize both similarities and differences between the laws in the EU and Republic of Macedonia, as well as to make recommendations for further improvement.

## 3. Literature review

Recruitment is defined as the process of attracting individuals on a timely basis, in sufficient numbers and with appropriate qualifications, to apply for jobs within an organization (Mondy, 2008), while e-recruitment is defined as the process of personnel recruitment using electronic resources, in particular, Internet technologies (Kaur, 2015). The term has been popularized in recent years, while its history dates back in the 1990s (Baillie, 1996), with the emergence of the first corporate web-sites and transcends into the new millennium incorporating the social media in the process. There is a clear distinction and link between recruitment and selection. Recruitment is the process of generating a pool of capable people to apply for employment in an organization. Selection is the process by which managers and others use specific instruments to choose from a pool of applicants a person or persons more likely to succeed in the job(s), given management goals and legal requirements (Bratton and Gold, 2007). Different authors define various (usually between 7 and 10) steps that encompass the recruitment, selection and hiring process, the most common being Job Vacancy, Job Analysis, Attracting Candidates, Screening Candidates, Interviewing Candidates, Selecting and Appointing Candidates, Induction and Training, as well as Employee Evaluation<sup>4</sup>. These steps have been heavily influenced by the emergence

<sup>4</sup> Failte Ireland, (2016), *Recruitment and Selection: A guide to help you review your existing approach to recruitment and selection*, whitepaper available at:

[http://www.failteireland.ie/FailteIreland/media/WebsiteStructure/Documents/2\\_Develop\\_Your\\_Business/1\\_](http://www.failteireland.ie/FailteIreland/media/WebsiteStructure/Documents/2_Develop_Your_Business/1_)

of digital technologies and have evolved through recent years to incorporate the benefits that Internet technologies and Web 2.0 offer. However, the notion still stands that laws cannot follow technology at a steady pace, as evident by the European Union not updating its Data Protection Directive 95/46/EC from 1995 until 23 years later, in 2018 with the emergence of the General Data Protection Regulation, also known as GDPR<sup>5</sup>.

Social media are defined by three criteria which the user has to meet: (1) construct a public or semi-public profile within a networked system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system (Boyd and Ellison, 2007). The widespread access of social media has been accepted by recruiters as a way not only to reach a larger pool of candidates, but to review specific traits (either related or unrelated to the job position) in the process of selection, thus helping them to shorten the process and eliminate candidates without the need for an interview. With the emergence of the new GDPR in the European Union, as well as the Republic of Macedonia's advances toward joining the Union, the question arises in terms of in what manner and to what extent the social media can be used in the recruitment process.

#### 4. Usage of social media in candidate screening

Job-seekers are becoming increasingly aware of the importance of having social media profiles to increase their chances of advancing in the screening process and being recruited. There were 3.419 billion active Internet users in 2017, of which 2.307 billion have some sort of social media presence, meaning a profile on at least one social media platform<sup>6</sup>. A recent survey by Robert Walters<sup>7</sup> demonstrates that 85% of respondents (employees) have a profile on the social network LinkedIn, followed by 73.5% on Facebook, 38.6% on Twitter and 15.6% on Instagram. LinkedIn is regarded as the world's largest professional network with more than 562 million users in more than 200 countries and territories worldwide<sup>8</sup>, which emphasizes the fact that employees are know that having a profile of this type on a social network can be advantageous. The research by Sterling Talent Solutions shows that over 90% of recruiters use the social media to screen candidates, 56% of recruiters state that some of their best candidates were sourced via the social media and 36% of UK employers have rejected a candidate based on their social media profile. Another research done by CareerBuilder<sup>9</sup> shows that 57% of employers are less likely to interview a candidate

StartGrow\_Your\_Business/Recruitment-and-Selection.pdf [accessed on 10.07.2018]

5 EUGDPR (2018) *GDPR Timeline of Events*, available at: <https://www.eugdpr.org/gdpr-timeline.html> [accessed 11.07.2018]

6 Sterling Talent Solutions, (2017), *Social Media Screening*, whitepaper, available at <https://assets.sterlingtalentsolutions.com/STS-UK/PDFs/Infographics/Social-Media-Screening.pdf> [accessed on 10.07.2018]

7 Robert Walters, (2017), *Using social media in the recruitment process*, whitepaper, available at <https://www.robertwalters.com/content/dam/robert-walters/corporate/news-and-pr/files/whitepapers/using-social-media-in-the-recruitment-process.pdf> [accessed on 12.07.2018]

8 LinkedIn (2018), *About LinkedIn*, available at: <https://about.linkedin.com/> [accessed 11.07.2018]

9 CareerBuilder (2017), *Number of Employers Using Social Media to Screen Candidates at All-Time High, Finds Latest CareerBuilder Study*, available at <http://press.careerbuilder.com/2017-06-15-Number-of-Em->

they can't find online, while 54% of employers have decided not to hire a candidate based on their social media profiles. The statistics in 2017 demonstrate that 70% of employers utilize social media in the recruitment process, up from 11% in 2006. Graphs 1 and 2 on the next page compare the viewpoint of employers and candidates regarding the usage of social media in the screening process.

### Graph 1. Utilization of screening via social media views on screening

Which of the following viewpoints describes your approach to researching prospective candidates on personal social media (eg Facebook and Twitter)?



- 11.4% We routinely check candidates out on personal social networking sites
- 50.4% We don't routinely use these sites but would if we thought they would provide us with useful information about the candidate
- 38.2% We do not and would not check social networking sites during the recruitment process

### Graph 2. Candidate

Do you think it's appropriate for employers to check your profiles on personal social media sites as part of the recruitment process?



- 37.3% Yes
- 62.7% No

Source: Robert Walters, (2017), *Using social media in the recruitment process, whitepaper*

Graph 1 demonstrates that only 11.4% of employers routinely check candidate profiles on social media, while the majority (50.4%) don't have routine checks but would utilize social media if they thought it would be beneficial in the screening process. From the candidate point of view, as demonstrated in Graph 2, the majority (62.7%) disagrees that employers should check their profiles on social media as part of the recruitment process. Background check through the Internet doesn't stop at social media – 69 percent of employers are utilizing online search engines such as Google, Yahoo and Bing to research candidates in 2017, compared to 59 percent in 2016<sup>10</sup>.

## 5. Legal framework on candidate screening in the EU and Republic of Macedonia

The evaluation of résumés, also known as candidate screening, is conducted prior to job interviews in almost every recruiting process. Candidate screening is a convenient and cost-effective process to review candidate's background (including education, work experience, and specific skills, as well as extracurricular activities and personality traits) (Frosch et al., 2012). As already discussed in this paper, the process of screening candidates has evolved and transcended past regular resume

employers-Using-Social-Media-to-Screen-Candidates-at-All-Time-High-Finds-Latest-CareerBuilder-Study [accessed on 12.07.2018]

<sup>10</sup> Ibid.

checks into detailed background checks involving profiles on social media. Dependent on the country, different laws are in place to protect candidate privacy and restrict certain types of employer's behavior. This paper focuses on the GDPR law introduced in EU countries and the existing laws in the Republic of Macedonia.

## 1.1 Impact of GDPR on screening candidates via social media

The most recent change in the EU member states is the introduction of the GDPR (General Data Protection Regulation), which came in effect in May, 2018. GDPR contains 99 articles mainly concerned with privacy of data and potential case scenarios of abuse by companies, also affecting actions taken in the screening process of candidates via their social media profiles. Work on GDPR started in 2012 and it went through several iterations before the final version was presented in 2018, illustrating that the law cannot keep up with technology and the fast changes it imposes<sup>11</sup>. GDPR applies to company processing data of EU residents, which in the context of screening candidates, applies to each candidate that has a permanent residence in the EU. This means that GDPR is not restricted only to companies operating in the EU countries. Companies should be compliant with this law from May 2018, while the fines can go up to 4% of their annual global turnover or 20 million euros, whichever is greater<sup>12</sup>. GDPR identifies three subjects in the process of recruiting:

- Candidates or “data subjects” – Entities that provide personal data to companies, not restricted to resumes, names and contact information.
- Employers or “data controllers” – Entities that determine the purpose and relevance of imported data from the data subjects. They are fully responsible for protecting the data and using it lawfully.
- ATS (Applicant Tracking Systems) or “data processors” – Software/service that processes candidate data on behalf of the company.

The initial idea of candidate protection was proposed by the “Data Protection Working Party” under Article 29 of GDRP, stating that “employers shouldn't assume that merely because an individual's social media profile is publicly available they are then allowed to process those data for their own purposes. A legal ground is required for this processing, such as legitimate interest. In this context, the employer should - prior to the inspection of a social media profile - take into account whether the social media profile of the applicant is related to business or private purposes, as this can be an important indication for the legal admissibility of the data inspection. In addition, employers are only allowed to collect and process personal data relating to job applicants to the extent that the collection of those data is necessary and relevant to the performance of the job which is being applied for (Schrieberg,<sup>2017</sup>). This type of implementation severely limits employer's access to profiles on social media, putting professional social networks such as LinkedIn at the forefront, because of its relevancy to the job performance. The restrictions would mean employers cannot check profiles on personal social media, such as Facebook, Twitter or Instagram, since in most cases they cannot be justified as “being relevant to the performance

11 EUGDPR (2018) *GDPR Timeline of Events*, available at: <https://www.eugdpr.org/gdpr-timeline.html> [accessed 11.07.2018]

12 InterSoft Consulting (2018), *General Data Protection Regulation GDPR*, available at: <https://gdpr-info.eu/> [accessed on 14.07.2018]



of the job applied for". The emergence of this article in GDPR encountered a lot of backlash from the business community and ultimately was toned down in the final version published in 2018.

The final version of GDPR contains two areas of importance for recruiters regarding the screening of candidates. Article 6 specifies that processing shall be lawful only if and to the extent that at least one of the following applies<sup>13</sup>:

- the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data

Article 9<sup>14</sup> specifies that "processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited". However, it is overruled if the "processing relates to personal data which are manifestly made public by the data subject".

Companies must carefully screen candidates via social media if they want to be fully compliant with GDPR. Article 9 clearly states that processing of personal data is allowed if it is made public, however is superseded by Article 6, stating that candidate screening (personal data processing) must be correlated to the job performance, meaning personal information, religion, beliefs and other factors in most cases would not fall in this category, thus should be exempt from processing. In addition, companies need to have candidate consent to process sensitive data, as well as provide simple opt-out for them to withdraw their consent. Finally, companies should become more transparent in processing candidate data, including clear privacy policies that can be accessed freely by candidates.

## 1.2 Legal framework in Macedonia concerning the screening via social media

In contrast to the European Union and the implementation of GDPR, currently in the Republic of Macedonia only the Labor Law contains specific paragraphs that can be interpreted as correlated to candidate screening via the social media. However, the

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13 InterSoft Consulting (2018), *Art. 6 GDPR Lawfulness of processing*, available at: <https://gdpr-info.eu/art-6-gdpr/> [accessed on 18.07.2018]

14 InterSoft Consulting (2018), *Art. 9 GDPR Processing of special categories of personal data*, available at: <https://gdpr-info.eu/art-9-gdpr/> [accessed on 18.07.2018]



argument can be made that Macedonian companies operating and offering services to the EU countries, as well as recruiting and employing permanent residents of the EU, are under compliance with GDPR and should be bound by the previously discussed rules and principles. Article 6 of the Macedonian Labor Law states that<sup>15</sup>:

- (1) The employer may not place the candidate for employment or the employee in an unequal position for reasons of racial or ethnic origin, skin color, gender, age, health status or disability, religious, political or other belief, union membership, national or social origin, family status, property, sexual orientation or other personal circumstances.
- (2) Women and men must be provided with equal opportunities and equal treatment
- (3) The principle of equal treatment shall mean the prohibition of direct and/or indirect discrimination within the meaning of paragraphs (1) and (2) of this article.

This article can be viewed in the aspect of social media screening, as profiles on social media offer personal information that is included in the law and viewed as discriminatory towards candidates. This is similar to GDPR principles, wherein recruiters can examine candidate information that is publicly available, as long as it is related to the job performance. The principle of equal treatment is also mentioned in the article, which refers to the early labor laws in the US, dating back from the 1960s. The principle encompasses three different terms: protected group (groups that share certain demographic characteristics, such as age, race, gender, disability and etc.); different treatment (members of the protected group are treated differently in the process of recruitment) and different influence (members of the protected group are not represented sufficiently in the workforce). To preserve equal treatment, employers must not impose different treatment or different influence on the protected group, otherwise are subject to legal ramifications (Jackson and Mathis, 2008). Similar to GDPR, the Macedonian Labor Law puts professional networks such as LinkedIn in the forefront, because they mostly contain information that is job related, while personal networks such as Facebook or Instagram could reveal potentially discriminating information, such as skin color, ethnic origin, disability, religious or political views etc. Article 7<sup>16</sup> of the Labor Law states that:

- (1) The prohibition of direct or indirect discrimination in the cases referred to in Article 6 of this Law refers to the discrimination of the candidate for employment and the employee.
- (2) Direct discrimination, in the sense of paragraph (1) of this Article, is any action conditioned by some of the grounds referred to in Article 6 of this Law, with which the person was placed or could be placed in a less favorable position than other persons in comparable cases.
- (3) Indirect discrimination, in the sense of this Law, exists when a certain seemingly neutral provision, criterion or practice puts the candidate for employment or the employee in a less favorable position in relation to other persons, due to a certain status, status determination or beliefs referred to in Article 6 of this Law.

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<sup>15</sup> Labor Law (2015), Official paper of R.M. no.167

<sup>16</sup> Ibid

In comparison to GDPR, this clearly identifies that discrimination of any kind, meaning abuse of personal information, even if publicly made available by the candidate, which could lead to unequal opportunities for employment, is punishable by Law. Finally, Article 8 states the instance which precedes Article 6 and 7<sup>17</sup>:

- (1) It shall not be considered discriminating, excluding or giving priority over a particular matter, when the nature of the work is such, or the work is performed in such conditions that the characteristics related to some of the cases referred to in Article 6 of this Law are genuine and present crucial requirements for the performance of the work, provided that the objective that they seek to achieve is justified and the requirement is proportionate.

This is similar to GDPR, where the purpose of social media profile screening can be justified if relevant to the job position and job performance. However, employers provide specific details regarding the process of employment of a certain candidate only if legal actions are taken in regard to discrimination. This is the one point of strength in GDPR, where processing personal data has to be transparent and the candidate must be notified of this process, even if the data is made publicly available.

## 6. Discussion and conclusion

Comparing GDPR and Macedonian Labor Law in areas regarding the screening of candidates, we can define the main differences in handling candidate data and principles involved, as detailed in Table 1 on the following page.

**Table 1.** Comparison of GDPR and Macedonian Labor Law in screening candidates via social media

	GDPR	Macedonian Labor Law
Definition of terms	High	Medium
Transparency of screening	High	Low
Abuse-case scenarios	Defined	Defined
Allowed instances	Defined	Defined
Candidate consent	High	Low
Protection of candidate data	High	Low
Candidate insight in available data	High	Low
Application to social media	Medium	High

*Source: Own research*

Regarding the terms for data processing, GDPR clearly defines the three entities involved, while the Macedonian Labor Law does it in the context of employment, which is understandable since the focus is not directly on data protection as the former. However, since Macedonia doesn't have any data protection law in place, candidate

<sup>17</sup> Ibid.

rights are put at a potential disadvantage. Differences can be seen in the transparency of screening, where GDPR clearly defines that the candidate must be made aware of screening of their personal data, while Macedonian Labor Law indicates that screening is allowed if not deemed discriminatory towards the candidates, without the need to notify them if the information is available to the employers. Both GDPR and Macedonian Labor Law clearly define abuse-case scenarios, where the Macedonian Labor Law includes both direct and indirect discrimination that can occur. Allowed instances or exclusions to certain articles regarding the processing of personal data on social media are also well defined in both laws. Candidate consent, protection of candidate data and candidate insight in available data held by companies is outlined in GDPR and non-existent in the Macedonian Labor Law. The single area where the Macedonian Labor Law outperforms GDPR is the application to social media, because the clear definition of direct and indirect discrimination is clearly applicable to the process of screening profiles on the social media.

The point remains that laws cannot keep up with the pace of technology. GDPR was introduced 23 years after the previous data protection act and was 6 years in the making starting from 2012. On the other side, in Macedonia, the only references to the protection of candidate data are found in the Labor Law, which is not directly concerned with these issues, although it governs them. This entails the notion that certain laws connected with technological advances should be subject of constant change, with new drafts introduced on a regular basis to reflect the new issues that arise. For the time being, both GDPR and the Macedonian Labor Law protect the right to equality during the screening process and fight discrimination on a moderate basis, meaning that issues are resolved only if the candidate undertakes legal actions. The research of this paper can be broadened by examining the ethical issues when screening candidates via social media, through advantages, disadvantages and barriers when in use. Further research can be done to incorporate changes in the Macedonian Labor Law which would reflect social media screening and protection and transparency of candidate personal data.

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