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**Special Session Proposal**

**Title**: **Access to justice in labour disputes**

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**Summary**

In many countries in Europe, labour disputes are adjudicated by specialized labour courts or tribunals. These courts are distinct in their focus on counter-balancing the asymmetry of power between workers and employers. Most notably, they generally include lay judges appointed by workers’ and employers’ organizations, and focus on reduced formality and complexity, allowing in particular workers to be unrepresented or represented by a union rather than a lawyer.

In this special session, we problematise these labour courts and consider the following key questions: to what extent do labour courts, in practice, effectively guarantee equal access to justice for all parties? How accessible are these courts to various categories of workers? To what extent are inequalities between workers and employers but also among different categories of workers neutralized or, on the contrary, reflected or reinforced in legal proceedings before labour courts? And are the labour courts an effective dispute resolution mechanism?

Drawing together the answers to these questions, we are able to critically evaluate the cornerstone of labour justice to assess its ability to treat workers fairly and equitably.

**Participants**:

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**Paper abstracts**

**Alizée Mosseray, *Inequalities in Labour Justice: A State-of-the-art***

Inequalities in the justice system have been extensively studied since the 1960s. A large part of this research has focused on criminal justice and on the US context. Yet inquiries into inequalities in civil justice proceedings and on European countries have also been developed, especially since the years 2000s. Various studies have shown how factors like gender, class, or race, impact on the resources available to litigants to assert their rights. Such resources include access to a lawyer, familiarity with the legal system, and knowledge of the law.

Inequalities in labour courts proceedings, however, have received little attention. Research on the subject remains scattered. The proposed presentation will argue that although findings about inequalities in proceedings relating to other areas of law (in particular, criminal law, family law, and tort law) are relevant to explore inequalities in labour justice, this latter issue raises some specific questions that calls for dedicated research. Two specificities of the labour justice context, in particular, will be discussed. First, studying inequalities in labour justice requires considering whether disparities between workers observed on the labour market (i.a. depending on employment status or whether they belong to a vulnerable category of worker) are reduced, reproduced or amplified by the justice system. Second, most industrial countries have created specialized labour courts, with a number of features designed to facilitate access to justice and promote equality of arms, such as the inclusion of lay judges appointed by workers’ and employers’ organization and the possibility for workers to be represented by a union. This raises the question whether in practice these features allow to counter-balance inequalities both between workers and employers and between workers.

**Laura William and Jenny K Rodriguez, *Intersectionality as a Silent Force: Interrogating British Employment Tribunal Discrimination Claims***

Is justice *really* being served in British Employment Tribunals (ET)? This paper takes an intersectional lens to explore how multiple social identities shape experiences of discrimination and the ability of the ET to provide efficiency, equity and voice when dealing with intersectional ET claims.

Research (see William et al., 2024) has found those with mental health conditions commonly claim race and disability discrimination. However, the context of these cases is unclear because, despite claims that combine two types of discrimination (e.g. race/disability, sex/age, sex/disability, etc.) being provided for in law (see Section 14, Equality Act 2010), this section is not enacted given the government’s view that it would be costly for employers (Adams et al, 2021: 595). More examination is needed to substantiate British legal shortcomings regarding intersectional claims.

This gap framed the research questions: how does the regulatory system force separation in people’s identities through the way they adjudicate claims for discrimination? What are the implications of this separation for efficiency, equity and voice?

Drawing on an intersectional thematic analysis of ET claims in England and Wales in 2022 where race as well as disability discrimination was claimed, the study identifies the intersectional features of the claims and assesses the ET’s ability to provide effective dispute resolution for intersectional claims.

References

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William, L, Corby, S and Pauksztat, B. (2024) *Disability Discrimination: Access to Justice?* London: Palgrave.

**Julie Ringelheim, Olivier Struelens, and Jogchum Vrielink, *Exploring Inequalities between Plaintiffs in Work Discrimination Cases. Belgium as a Case-Study***

Our proposed paper is based on a socio-legal investigation into the adjudication of workplace discrimination cases in Belgium. It serves to offer critical and novel insights into systemic disparities between plaintiffs and divergences in judicial interpretation.

Drawing on a dataset of 612 judgments delivered by Belgian employment tribunals from 2010 to 2019, a quantitative analysis reveals significant differences in plaintiffs’ success rates based on key factors, including the grounds of discrimination (gender, race, disability, religion, age, sexual orientation), the alleged type of discrimination (direct, indirect, denial of reasonable accommodation, harassment, victimization), the (non)involvement of an equality body as a party to the case and the type of legal representation (by a lawyer, by a trade-union, not represented) the plaintiff resorts to.

Complementing this statistical overview, a qualitative content analysis of 257 judgments, coupled with 29 in-depth interviews with judges, lawyers, and equality body legal officers, sheds light on three core explanatory factors for these disparities. First, certain variations can be explained by varying attitudes of employers toward different grounds of discrimination and types of workplace disputes, which influence the kind of evidence available to plaintiffs. Second, other variations are correlated to varying levels of legal protection against different forms of discrimination. Third, certain variations can be traced back to divergent judicial interpretations of key legal concepts.

By uncovering these systemic and interpretive variations, our study casts new light on the multifaceted challenges of addressing workplace discrimination through litigation.

**Aude Lejeune, *A Gendered Legal Mobilization? The Uses of Legal Services by French Private Sector Employees***

In France, men are more likely than women to turn to an employment tribunal to address a dispute related to paid productive work. In 2017, 16% of men who experienced a conflict at work took it to the employment tribunal, called in France the “Conseil des prud'hommes”, while only 10% of women did so (N=552). This gap has also been established in other countries, notably the UK (Fox 2004). This paper aims to shed light on the different dimensions of these gender inequalities that occur during the 'pre-legal' phase (Pinto 1989; Morrill et al. 2010): when do employees experience injustice and respond to them? When do they talk to their hierarchy? And when do they seek legal advice? It relies on a quantitative analysis of a survey administered to 1,290 private sector employees, combined with an ethnographic investigation in a legal service and in employment tribunals in France.

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