

Editorial

This issue contains five interesting and individually submitted papers, all addressing equality and non-discrimination law from diverse and challenging international, European, comparative and theoretical perspectives, giving testimony to the key role played by non-discrimination law in current labour law and industrial relations. The articles discuss the ILO Decent Work Agenda and its relation to gender equality, the role of Alternative Dispute Resolution (ADR) in discrimination disputes, the principle of non-discrimination in the European Union (EU) Part-Time and Fixed-Term Work Directives, pregnancy discrimination and disability discrimination.

The first article, ‘The Decent Work Agenda and the Advancement of Gender Equality: For Emerging Economies Only?’, by Sara Charlesworth and Fiona Macdonald, aims at a topical analysis of how the Decent Work Agenda, and its relation to gender (in)equality is understood and operationalized, by government and other stakeholders in four developed economies, i.e., Australia, Canada, the Netherlands and the United Kingdom. In addition to analysing ILO sources and policy documents at international and national level, the article draws on interviews with key government, employer, trade union and civil society stakeholders. The authors conclude that the emphasis on gender equality in the Decent Work Agenda provides ‘an important opportunity to mainstream gender equality in employment regulation’, and that in ‘developed economies the challenge will be to move beyond narrow historical framings of minimum standards to gender-inclusive ones and a positive duty to promote gender equality’.

In the second article, ‘The Role of Mandatory ADR and Agency Engagement in Resolving Employment Discrimination Complaints: An Australian Perspective’, Therese MacDermott conducts an interesting comparative analysis of Australian and UK law in relation to institutional structures and practices, such as mandatory ADR, involved in resolving discrimination complaints. The fragmentation into multiple pathways in Australia is contrasted with the Employment Tribunal emphasis in the UK, and recent legislative reforms in this area in both countries are discussed. One important conclusion put forward by MacDermott is that ‘pushing complainants towards resolution by ADR is not the panacea for resolving enforcement and compliance difficulties in

the employment discrimination context'. Rather, '[m]aking timely advice and legal resources available to potential claimants [...] should be given greater priority in the overall framework'.

In the remaining three articles, EU non-discrimination and labour law is central to the analysis, and the case law of the Court of Justice of the EU is frequently the focus of attention.

Hanna Pettersson's article, 'Discrimination against Part-Time and Fixed-Term Workers: A Critical Legal Positivist Analysis', aims at an analysis of the principle of non-discrimination in the Part-Time and Fixed-Term Work Directives, case law from the Court of Justice of the EU in this area and in relation to concepts such as direct and indirect discrimination, and notions of comparability and justification. Her theoretical starting points are Kaarlo Tuori's theory of critical legal positivism and François Ewald's concept of social law, and non-discrimination law is creatively analysed as an expression of a conflict between the actual and formal subordination of the employee and an inherent legal presumption of individual autonomy. By way of conclusion, Pettersson finds that 'the legal assessment of individual cases finally come down to a weighing of different interests against each other', and argues that to 'make this balancing of interests [...] more transparent, assessments of possible discrimination should focus on whether it is possible to justify unequal treatment'.

In Jule Mulder's article, 'Pregnancy Discrimination in the National Courts: Is There a Common EU Framework?', the focus is on the important topic of EU law on pregnancy and gender discrimination and its transposition, interpretation and application in two EU Member States – the Netherlands and Germany. The comparative analysis is set against the backdrop of different national cultural contexts, namely the Dutch 'culture of tolerance' and the German 'constitutional patriotism'. After an analysis and comparison of national legislation and case law, Mulder concludes that '[i]f the CJEU wants to ensure that EU non-discrimination law harmonizes national equality law and fosters substantive equality irrespective of the national context of the Member State, it needs to be consistent and challenge national courts to venture beyond familiar legal terrain and engage with the broader equality framework and inequalities beyond specific cases'.

Finally, the aim of the article, 'Danish and British Protection from Disability Discrimination at Work – Past, Present and Future', by Jackie Lane and Natalie Videbæk Munkholm, is to compare Danish and UK law on disability discrimination and the national implementation and application of the (2000/78/EC) Employment Equality Directive. Recent important case law from the CJEU on disability discrimination (to which several referrals for a preliminary ruling have been made by the Danish courts) is also analysed. The

authors conclude that ‘there is still much work to be done in the pursuit of equal opportunity in the form of equal access to employment for all, as required by the Directive, and both Denmark and the UK have some way to go before true equality for people with disabilities in the workplace becomes a fact of life’.

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