Platform work & algorithmic management:
strategic litigation in 16 European countries

Christina Hiessl

Professor of Labour Law, KU Leuven

christina.hiessl@kuleuven.be

Where do we stand?

Outcomes of litigation on worker status, subcontracting and/or algorithmic management in Europe

Study I: ~ 600 administrative and judicial decisions on the status of platform workers

	AT	BE	CH	DE	DK	ES	FI	FR	HU	IE	IT	LU	NL	NO	SE	TR	UK
1st	4	4	8		4	22	4	2		1	1	1	1	1	3		2
2nd			1		1	8	1			1				1			
1st	1	1	1	2		97	1	119	1	1	23	1	6		4	1	10
2nd	5	2	17	2		77		106	1	1	4		5		1	1	7
3rd			**2**	**1**		19 (**12**)		**17**			**1**		**1**				3
4th			**2**														**2**

KU LEUVEN

Study II: ~ 20 decisions on algorithmic management

	DE	IT	NL	PT	UK
1st	1	2			1
2nd					
1st		3	4	1	2
2nd	1	1	3	1	
3rd					
4th					

… & many pending cases!

KU LEUVEN

Points of interest for litigation strategies

1. Who brings the claims?

Claimants in cases against platform companies

State institutions

- Social security institutions (AT, BE, CH, DK, ES, FI, FR, LU, NL)
- Labour inspections/ OSH bodies (BE, ES, FR, LU, NL, NO, SE)
- Admin./ employment offices (CH, FI, LU)
- Police/ public prosecutors (ES, FR, IT)
- Data protection agencies (DE, IT)
- Tax offices (IE)
- Postal commissions (CH)
- Traffic authorities (UK)
- Competition authorities (DK)

Platform workers

- Drivers (AT, BE, CH, FR, TR, UK)
- Riders (BE, DK, ES, FI, FR, HU, IT, NL, UK)
- Crowdworkers (DE)
- Inspectors (FR)
- Plumbers (UK)

KU LEUVEN

Claimants in cases against platform companies

Trade unions

- CH, ES, IT, NL, UK

Competitors

- Taxi companies: BE, ES
- Other platforms: ES (Uber vs. Glovo)

Multi-claimant litigation

- BE: labour inspection (with social security, unions & 27 riders) vs. Deliveroo; drivers & social security institutions vs. Uber
- ES: regular cooperation labour inspection, social security, unions & workers (e.g. Glovo, Amazon)

KU LEUVEN

Points of interest for litigation strategies

2. Identifying a defendant

Defendants in cases against platform companies

Lawsuits with up to 16(!) defendants

- Cabify (ES)

Platform's (multinational) business structure

- Usually: national subsidiary sued
- Exception: Uber
  - CH: only Uber B.V., not other members of Uber group
  - UK: Uber London
  - FR: changing approach (joint liability)
  - IT: close cooperation within "Uber galaxy" – Uber Italy can be held liable
  - ES: immense complexity even at national level

Defendants in cases against platform companies

Subcontractors
- AT & (some) FR courts; CH state secretary opinion: temporary agency work
- FR: (bogus) self-employed drivers usually sue only subcontractors; courts rejecting lawsuits for misidentifying defendant
- ES: most claims exclusively bilateral; existence of "group of employers" regularly rejected
- IT: criminal case reveals usually hard-to-prove practices

Temporary work agencies
- Joint / subsidiary liability

Clients
- Notably household-related work: different outcomes in DK, ES, NL, NO, SE
- Delivery riders: overruled (BE, CH)

Liquidators & guarantee institutions

Points of interest for litigation strategies

3. International cross-fertilisation & cooperation

Cross-border aspects

Courts (expressly) taking foreign experience into account

- French Cassation Court (BE, CH, IT); Spanish (IT) & UK Supreme Court (CH, IE), Amsterdam Appeals Court (BE), CJEU (ES, IT, NL, UK)

Active cross-border cooperation of claimants: algorithmic management cases

- Lawsuits in NL
- DPA complaints in LU
- Unions, NGOs, individuals

Points of interest for litigation strategies

4. Strategic litigation on both sides

Points of interest for litigation strategies

5. Relevance of outcomes

Relevance beyond individual case

Platforms with constantly changing terms & conditions

- Majority of cases focus on individual worker
- Notably last-instance cases concern long outdated platform models
- Most valuable: social security, collective labour rights & GDPR cases!

Unequal challenge

- Key role of national procedural law, collective bargaining system
- Commitment of different groups of claimants
- National employee definition

KU LEUVEN

KU LEUVEN

Questions?

Do not hesitate to ask: christina.hiessl@kuleuven.be

Christina Hiessl

Professor of Labour Law, KU Leuven

christina.hiessl@kuleuven.be