

LABOUR LAW

BACK TO BASICS

PUSH

Ilustração: João da Camara

17
September
2019

BREAK GLASS IN CASE OF CRISIS

Faculdade de Direito da Universidade do Porto

Invitation only conference

Working language **English**

09.30 Opening session

10.00 Conference
Essentials
Maria Regina Redinha,
Francisco Liberal
Fernandes
(U. Porto - FDUP/CIJE)
Portuguese Labour
Law: A Critical
Perspective

10.30 Masterclass
Manfred Weiss
(U. Frankfurt)
Labour Law
and Human Dignity

11.00 Tea-break

11.30 Masterclass
António Monteiro
Fernandes
(ISCTE - UNLisboa)
Labour Law and
Welfare State

12.00 Masterclass
Daiva Petrylaite
(U. Vilnius -
Constitutional Court)
Industrial relations
in 21st century:
challenges to the
classic trade union
movement

12.30 Break

14.30 Masterclass
Carolina San Martín
(URJC Madrid)
Spanish Labour Law:
A Critical
Perspective

15.00 Masterclass
Júlio Gomes
(STJ; UCP - Porto)
Are Strikes Outdated?
Strikes and Other
Means of Collective
Conflict

15.30 Tea-break

16.00 Masterclass
Martin Risak
(U. Viena)
The concept of worker
and the personal
scope of Labour Law

16.30 Conference Debate

17.00 Post-conference
Meeting of Labour
Law Professors

Organisers: Maria Regina Redinha, F. Liberal Fernandes

Informações: www.fd.up.pt

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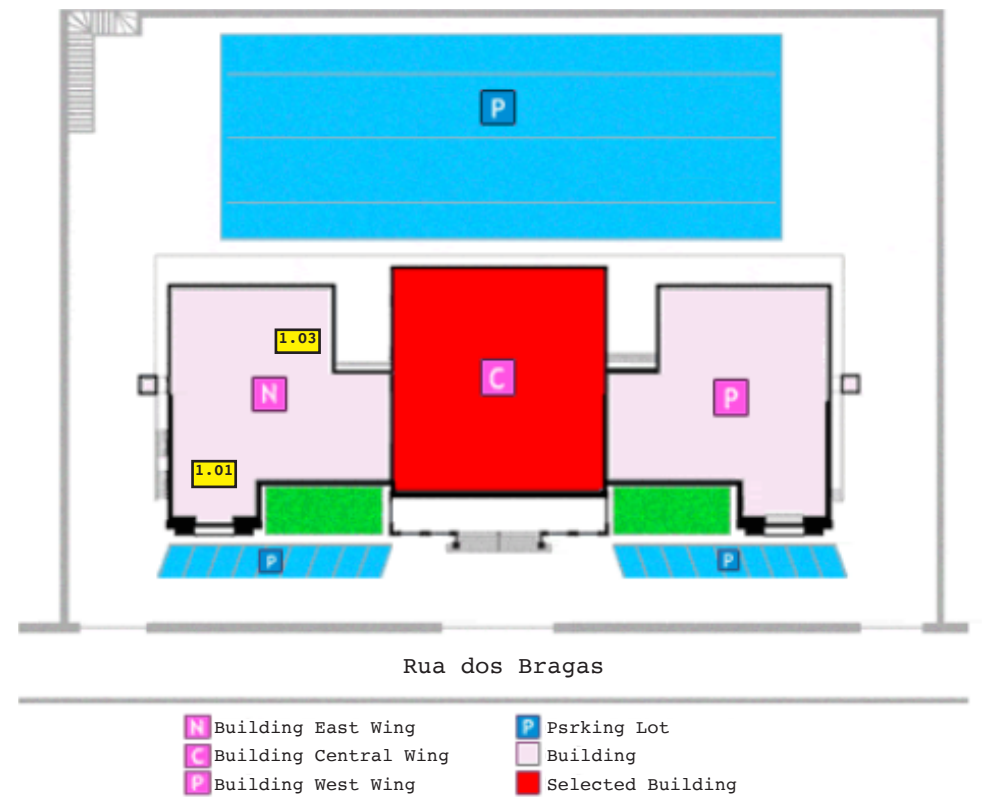
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4050-123 Porto
Portugal



cije.up.pt



cije@direito.up.pt

See the booklet online





PROGRAMME

09:30	Opening session
10:00	Conference Essentials Maria Regina Redinha, Francisco Liberal Fernandes (U. Porto - FDUP/CIJE) Portuguese Labour Law: A Critical Perspective
10:30	Masterclass Manfred Weiss (U. Frankfurt) Labour Law and Human Dignity
11:00	Tea-break
11:30	Masterclass António Monteiro Fernandes (ISCTE - UNLisboa) Labour Law and Welfare State
12:00	Masterclass Daiva Petrylaite (U. Vilnius - Constitutional Court) Industrial relations in 21st century: challenges to the classic trade union movement
12:30	Break
14:30	Masterclass Carolina San Martín (URJC Madrid) Spanish Labour Law: A Critical Perspective
15:00	Masterclass Júlio Gomes (STJ; UCP - Porto) Are Strikes Outdated? Strikes and Other Means of Collective Conflict
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16:30	Conference Debate
17:00	Post-conference Meeting of Labour Law Professors



ABOUT CIJE

The Centre for Legal and Economic Research (CIJE) is a Research and Development Unit based at the Faculty of Law of the University of Porto (FDUP). It was founded in 1998 and began its scientific activities in 1999, with recognition and financial support by the Foundation for Science and Technology (FCT). It was the first law R&D unit to be recognised by FCT in Portugal.

In 2015, CIJE underwent an organisational and scientific makeover that saw it have new articles of association, a new coordination team and renewed research groups.

Today CIJE is a dynamic centre that seeks to achieve these objectives by organising conferences and seminars, integrating different international networks and platforms, by building partnerships, courses, studies and disciplinary and multidisciplinary projects and also by the prolific and recognised bibliographic production of its researchers. In addition to its own editorial collection, the Centre also publishes its own journal, RED - *Revista Electrónica de Direito* (Electronic Law Review).

The main objectives of CIJE are:

- The promotion and development of primary derived and applied research in legal areas both at national and international levels;
- The transmission of knowledge and the dissemination of its activities results through publications;
- The provision of services to the community.

CIJE's purpose is to engage in research, study in several different legal domains with a special academic focus on those areas where economic and social incidence is prevalent. Approximately twenty integrated researchers, besides a large core of collaborators, currently work on several different lines of research and participate on several projects both national and international.



CIJE is also the main research interface of the University of Porto's Faculty of Law with whom it has a strong on-going collaboration actively promoting and participating in the latter's post-graduate courses, master and PhD degrees.

Many foreign researchers visit the Centre for short-term pre and postdoctoral residencies allowing the interweaving of different research cultures and procedures, broadening the Centre's personal and institutional network and extending the influence of its scientific output. The integration and cooperation within these residencies has been so successful that some have even become permanent collaborators.

CONFERENCE OVERVIEW

CIJE – Centre for Legal and Economic Research is the R&D unit of the Faculty of Law of the University of Porto (FDUP) whose main mission is to promote research in the legal area, both nationally and internationally.

One of its main research areas is Labour Law, which is part of the Law, Company and Market Research line.

For its 20th anniversary and within the “The Shape of Law to Come” project, CIJE, in partnership with ISPUP – Institute of Public Health of the University of Porto, organises on the 17th September at the Faculty of Law of the University of Porto, an international conference that will bring together some of the most influential scholars of current labour thinking.

This keynote conference aims to discuss some of the fundamentals of labour law and their conceptual elasticity because any substantial movement in the labour market can only be addressed by going back to basics and examining the way forward.



PARTICIPANTS



Paulo Tarso Domingues (Dean of the Faculty of Law - University of Porto)

Graduated from the Faculty of Law of the Portuguese Catholic University, Porto (1987), Master of Law, Faculty of Law, University of Coimbra, area of Legal-Business Sciences (1997), Doctor of Law from the Faculty of Law of the University of Porto (in the area of Law Commercial) (2009).

Associate Professor at the Faculty of Law of the University of Porto, since 1998, Director and Chairman of the Scientific Board from the Faculty of Law of the University of Porto, since February 2019.

President of the Corporate Law in Review Association, Member of IDET - Institute of Business and Labor Law, Faculty of Law of the University of Coimbra; Researcher of CIJE, Faculty of Law, University of Porto, Member of the executive board of "Company Law in Review"; Member of the executive board of RED - Revista Electrónica de Direito, Council Member of the editorial board of the "AB Instantia" journal - IAB - Abreu Advogados Knowledge Institute; Council member of the editorial board of RJLB - Luso-Brazilian Juridical magazine; Member of the Portuguese Arbitration Society.

Has authored over 80 works including monographs and scientific articles published in national and international publications, specifically on corporate law. Of note, he participated in the publishing of the study manual "Estudos de direito das sociedades", Almedina, Coimbra, 2015 (12th edition), and his participation in the "Código das Sociedades Comerciais em Comentário", Almedina.

Referee and Legal Adviser.



MASTER CLASSES



Manfred Weiss (University of Frankfurt)

Born 1940. 1974 – 2008 full professor for labour law and civil law (first at the University of Hamburg and since 1977 at the Goethe University in Frankfurt). Professor emeritus since October 2008.

Visiting Professor at many universities all over the world. 2000 – 2003 President of the International Labour and Employment Research Association (ILERA). 1990 – 1995 President of its German Branch (GIRA). 1998 – 2002 Deputy President of German Lawyers' Association (DJT). For many years Consultant to the International Labour Organisation since 1980 and to the Commission of the EU since 1986. Many publications in German, European, International and Comparative Labour Law and Industrial Relations. Honorary Doctorates: Budapest (2005), Lima (2006), Bordeaux (2011), Northwest University (NWU) / South Africa (2015). Award of the Labour Law Research Network (LLRN) for outstanding contribution to Labour Law (2015).



António Monteiro Fernandes (ISCTE, Lisbon)

Jubilated Full Professor at ISCTE / IUL and at the Faculty of Law of the New University of Lisbon. Visiting Professor at the Bordeaux and Trento Law Schools. Author of numerous articles and books on labor law

topics, including an 18-edition university manual.



Daiva Petrylaitė (Vilnius University, Lithuania)

She is a professor at Vilnius University and the Head of the Institute of Collective Labour Law and Social Partnership, Law faculty, Vilnius University. Professor

of labour law, researcher on collective labour law,



industrial relations and social partnership in national and international levels. The author (co-author) of scientific monographs, textbooks, and numerous scientific articles on issues relating to labour law, social partnership, and public service. In March 2017, Daiva Petrylaitė was appointed a justice of the Constitutional Court of the Republic of Lithuania.



Carolina San Martín Mazzuccconi (Rey Juan Carlos University)

Has a Degree in Law at the Universidad Complutense de Madrid (1994) and a PhD in Law with extraordinary award from the Universidad Complutense de Madrid (1998).

She was a substitute Magistrate for the Labour Chamber of the High Court of Justice of Madrid (2010–2011) and a substitute Magistrate for the Labour Chamber of the National Court (2011–2013; since 2014). She is a University professor within the scope of Labour and Social Security Law since 1996, giving lessons at Undergraduate Degrees, Bachelor Degrees, Postgraduate Degrees, official Master Degrees and Doctorates. Currently, is a permanent professor at Rey Juan Carlos University since 2000 and Director of the International Doctoral School at Rey Juan Carlos University since 2017.

Moreover, she has more than one hundred conferences, lectures, courses and seminars given at national and foreign universities and other public and private institutions and is an author of numerous legal thematic monographs, papers, chapters in collective works and scientific articles.



Júlio Gomes (Supreme Court and Portuguese Catholic University)

Júlio Gomes obtained his D. Phil. at the University of Oxford, United Kingdom (1999) and a PhD in juridical sciences at the Portuguese Catholic University, Portugal (1998). Master in legal and civil sciences from the University of Coimbra, Portugal (1990) and LLM (Master in law) from the Columbia University (1989). Graduate in Law from the Portuguese Catholic University, Portugal (1984).

He is an associate professor at the Faculty of Law of the Portuguese Catholic University, since February 2007 and a Justice at the Supreme Court of Justice.

Author of seven thesis and monographs and of almost one hundred articles in national legal journals and chapters in national and international habilitations.



Martin Risak (University of Vienna, Austria)

He is Associate Professor at the Department of Labour Law and Law of Social Security at the University of Vienna (Austria) and since 2016 the chairman of Senate II of the Austrian Equal Treatment Commission.

He was an associate with the international law firm CMS Reich-Rohrwig Hainz, Professor of Labour Law and Civil Law at the University of Passau (Germany) and a Marie Curie-Fellow at the University of Otago (New Zealand). Prof. Risak is a member of the editorial board of the (Austrian) Journal of Labour Law and Social Law and the national expert for Austria of the European Centre of Expertise ('ECE') in the field of labour law, employment and labour market policies that advises the European Commission. He has published and edited 25 Books and more than 250 articles and book chapters on Austrian and European Labour Law and Social Security, Industrial Relations and Alternative Dispute Resolution.



ORGANIZING COMMITTEE



Maria Regina Redinha

Graduate and post-graduate studies: Faculdade de Direito da Universidade de Coimbra – Faculty of Law – University of Coimbra. PhD from Faculdade de Direito da Universidade do Porto – University of Porto.

Professor at Porto Law Faculty for Labour and Civil Law
Senior Researcher and Director of CIJE (Centre for Legal and Economic Research of University of Porto).

Research Fields: Labour Law principles and theory; atypical employment and special employment contracts, digital workplace, worker's fundamental and personal rights, including protection against mobbing at the workplace, impact of technology on the working conditions and the right to equality and non discrimination.

Director of CIJE – Centre for Economic and Legal Research of Porto Law Faculty; Coordinator of Research Projects; Portuguese Labour Law Review editor ("Questões Laborais"); Editorial Board of RED – Revista Electrónica de Direito; Chairperson of Portuguese Labour Law Society (APODIT); Member of Labour Law Studies Society (AEL); Director of PAHCS – Platform for Arts, Humanities and Social Sciences of the University of Porto National and international conference presentations Peer reviewer.

More than 40 publications including Books on Temporary Work, Atypical Employment and Portuguese Labour Legislation; Chapters in Law Books and papers both Portuguese and International, especially in Spanish.



Francisco Liberal Fernandes

Francisco Xavier Liberal Fernandes, Assistant Professor at the Faculty of Law of the University of Coimbra and Porto, holds a degree, a Master in Legal-Civil Sciences in Law (1995) and PhD in Law (2009) from Faculty of Law of the University of Coimbra.

Since 1998, at the Faculty of Law of the University of Porto, he teaches courses on Labour Law and Real estate law in the 1st Cycle of Studies in Law and Labour Law in the Master's Degree in Law (Area of Legal-Civil Sciences).

He supervises master's and doctoral dissertations, as well as taking part in jury of academic tests in various Portuguese and foreign higher education institutions. He has been invited to participate, as a speaker, in numerous lectures, conferences and seminars both in Portugal and abroad.

He is member of CIJE—Centro de Investigação Jurídico-Económica.

He has published more than five dozen titles among monographs, articles in national legal journals and chapters of national and foreign collective works in the field of Labour Law.



FACILITATORS



Maria Raquel Guimarães

Obtained her PhD in Civil Law at the University of Porto, Portugal (2010). She is also a Master in Banking and Corporate Law, University of Coimbra, Portugal (1998) and a Postgraduate in Banking Law, University of Salamanca, Spain (2002).

She is a Professor of Law at the Faculty of Law, University of Porto, Portugal, teaching civil law (general part) since 1997 and contract law since 2002 on the grade course, and Contracts & Consumer's Law and *Practicum* in Private Law on the master course.

Researcher and Co-Coordinator at CIJE and General Editor and member of the Editorial Board of UP's electronic law journal RED – Revista Electrónica de Direito.

She has conducted research in the areas of civil and contract law, and her main research fields of interest are contract law, consumer law, electronic means of payment, e-commerce, personality rights, privacy, digital law, data protection.



David Carvalho Martins

Invited Professor at the Faculty of Law of the University of Lisbon and at the European University, Master and PhD in Law, Lawyer.



ABSTRACTS

Manfred Weiss | Labour Law and Human Dignity

Already in the early days of labour law the founding fathers stressed that labour law is to be understood as a fight for human dignity. This is as true today as it was in the formative era of labour law. It is the key concept of the ILO's decent work agenda and in the European Union (EU) it is the overarching right of the Charter of fundamental rights of the EU as a whole but particularly mentioned in the chapter on solidarity which contains the fundamental social rights.

The reference to human dignity is not an empirical description of labour law. It is a normative concept which is indicating the way on how to develop labour law. This is not an easy task, in particular since labour law has to react to changes in the world of work. Labour law is a product of industrialization. It has been developed in view of a social and economic reality which is no longer the reality of today. The lecture tries to give examples on what human dignity means for modern labour law.

The first and most important implication is that the protection of the worker as human being is put in the centre of all reflections on labour law as the recently published report of the Global Commission on the Future of Work stresses. This is a contrast to the neo-liberal approach by which workers' protection is denounced as intolerable disturbance of the markets and whose primary focus is on economic efficiency.

A second implication of human dignity as a core human right is the fact that it is universal. This means that labour law all over the world has to meet standards which are in line with this ideal. This task mainly is to be fulfilled by the ILO. But it will be shown that still there are many problems, in particular as global supply chains are concerned.

A third implication of the respect for human dignity is the fact that workers are not supposed to be mere objects



of management's decisions but must have an opportunity to influence this decision-making. This leads to the necessity of workers' participation in management's decision-making and to democratisation of the workplace.

A fourth and final implication of the respect for human dignity is the claim that all workers in need of protection irrespective of their status have to be included in protective schemes. This leads to the question whether the scope of labour law application has to be extended. The different possibilities are to be discussed.

The few examples will demonstrate that human dignity as the overarching point of orientation for labour law is more urgent than ever before. However, as also is shown by these examples, much remains to be done to meet this ambitious goal.

Daiva Petrylaite | Industrial relations in 21st century: challenges to the classic trade union movement

In a modern society, legal labour relations are very complicated and heterogeneous. They reflect both the existing situation in the market economy and general rules of social life. Even the smallest social or economic changes first of all send ripples through labour (industrial) relations and inevitably condition antagonism, disagreements and conflicts between/among the parties to such relations. The increasing role of labour relations and individual elements thereof are illustrated by new categories characterising contemporary social phenomena and processes. Reality of the 21st century determines new challenges for labour law. Increasing globalisation processes, technological revolution, development of new forms of employment, business relocation to other countries or continents, nearly unlimited potential of using information technologies in labour processes – all this have formed preconditions for the individualisation of labour relations.



Carolina San Martín | Spanish Labour Law: A Critical Perspective

The legal reforms that took place on the last decade have meant a paradigm shift in Spanish Labour Law. They were a revulsion, which made us rethink the basic dogmatic categories of our legal system, and altered the structure of sources and consolidated labour concepts. We believed that it was a passing anomaly, that Labour Law would regain its balance over time and the rationalizing help of the Courts, and the basis of Labour Law would slowly reclaim their space, redirecting the situation.

We have reached some advances in this regard, but behind the local efforts there is a conceptual tsunami that we were not expecting, exceeding our frontiers. Today it is the bases themselves that blur, because reality makes us question something as essential as the concept of worker, or the dimensions of working time; both subjects that reside in the heart of what we know as Labour Law.

We attend a conceptual revolution with an expansive tendency. We must refocus our regulations, taking care of their essence, to modernize them according to the current profiles of the labour conflict.

Júlio Gomes | Are Strikes Outdated? Strikes and Other Means of Collective Conflict

Industrial conflict and strike are not equivalent concepts. The freedom to choose other means of conflict. Concerted action.

Why is it that strikes are becoming less and less effective in many cases.

and even when effective they tend to be divisive? Strikes as weapons of choice of some categories of workers but practically useless to others.

Strike and freedom of expression. Picketing.



General and political strikes.

Boycott and Flashmob. Internet Blockade.

Martin Risak | The concept of 'worker' and the personal scope of labour law

In the changing world of work and the emergence of new forms of employment that are often in the grey zone between traditional employment and self-employment the question of the scope of protection of labour and employment law becomes again more urgent. Although defining the concept of worker is thus of utmost (and growing) importance, in many countries it is not legally defined or, if so, the definition is very open and jurisprudence takes an important role.

Using example of EU labour law, this talk will analyze the jurisprudence of the European Court of Justice and explore whether the underlying concept of worker is able to adapt to the changes in the world of work and is still fit for purpose to protect those who are in need of protection. It will develop a European concept of worker which would be adapted to the new forms of employment namely to the self-employed that are in need of protection to a similar extent as traditional employees. The opposition to have even a conservative definition of 'worker' included in the new Directive (EU) 2019/1152 on transparent and predictable working conditions in the EU shows well that this discussion will be ongoing for the times to come.

The study this talk will be based upon is available at <https://www.etui.org/Publications2/Reports/The-concept-of-worker-in-EU-law-status-quo-and-potential-for-change>.

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NOTES

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