RETROSPECTIVE OVERVIEW OF 2017

COMPARATIVE LABOUR LAW LITERATURE

RETROSPECTIVE OVERVIEW

MARIAPAOLA AIMO
Associate Professor - University of Turin, Law Department

RUDOLF BUSCHMANN
Maître de conférences associé à l'Université de Kassel
Ancien rédacteur en chef Arbeit und Recht

DANIELA IZZI
Associate Professor - University of Turin, Law Department

LABOUR LAW BEYOND NATIONAL BORDERS: MAJOR DEBATES IN 2017[1]

The present article will provide an overview – the sixth of its kind since 2013, when the first "edition" was published by *Lavoro e diritto* and *Revue de Droit comparé du Travail et de la Sécurité sociale* – on the main topics analysed in the majority of the journals belonging to the *International Association of Labour Law Journals* (IALLJ)[2] throughout 2017. More specifically, the article reviews the issues addressed in twenty-four out of the Association's thirty member journals. The remaining journals were not examined chiefly because of accessibility or language barriers[3].

As regards the subjects selected for consideration, the authors decided to focus on three topic groups that reflect the major interests shown by IALLJ scholars in the large number of articles under review. This overview is thus divided into three sections: I) Towards an inclusive working society?; II) The transformations of work: new challenges and new risks "test" the law; III) Perspectives for collective labour law.

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2 For a complete list see www.labourlawjournals.com. Besides, the list of all journals' abreviations mentioned in this article follows at the end of the chronicle.

3 We refer to the following journals: Análisis Laboral (Perù), Industrial Law Journal (South Africa), Labour and Social Law (Belarus), Labour Society and Law (Israel), Pecs Labour Law Journal (Hungary) and Russian Yearbook of Labour Law (Russia).

I – TOWARDS AN INCLUSIVE WORKING SOCIETY?

Numerous essays published in the journals under review dealt with different aspects of the efforts to build more inclusive societies, an ambitious aim in which labour law and social security systems at both national and international levels are deeply involved.

Among the steps required in order to move in this direction, an important role is undoubtedly played all over the world by anti-discrimination rules which seek to overcome the problem – widely experienced in the labour sphere – of the adverse treatment of individuals belonging to groups with certain "risky" characteristics. Indeed, a large number of 2017 IALLJ articles focussed on specific sections of anti-discrimination law, considering the negative impact on employment of gender, age, disability, race and religion (see §§ 1.1, 1.2 and 1.4), while other papers investigated the related theme of work-life balance, which was also examined from the perspective of gendered, ageing and incompletely healthy working societies (see § 1.3).

Attention was also devoted to the more general debate about the current obstacles to the legal fight against the various kinds of discrimination which have prevented substantial equality at work from being achieved. As the dialogue on this topic between scholars in different common law countries has shown, there are procedural or institutional shortcomings even in nations with long-standing experience in anti-discrimination protection such as the USA and UK. Even more far-reaching difficulties have emerged on this front in Australia, notwithstanding the legal reform of a few years ago that enabled workers to bring a claim alleging discrimination beyond the limited context of termination of the employment[4].

From the European standpoint, the «transformative effect» that the EU has had on UK anti-discrimination law is of particular interest in this international discussion. This effect was largely the result of the «purposive and right-centred approach» developed by the Court of Justice, whose «leavening influence» may survive the rupturing impact of Brexit[5]. Indeed, in the old continent the debate on the building of inclusive working societies also addressed

4 A. Chapman, B. Gaze, A. Orifici, "Substantive equality at work: Still elusive under Australia's Fair Work Act", *AJLL*, 2017, vol. 30, p. 214. These authors described the disappointing results produced in Australia by the 2009 amendment of the Fair Work Act, which had been perceived as an opportunity to provide better access to remedies for workplace discrimination and to reduce unlawful adverse treatment. On the specific problem of the subjective approach which has not been completely abandoned in the judicial management of workers' claims against discrimination and adverse action, see L. Meagher, "Australian courts' approaches to unconscious direct discrimination and adverse action", *AJLL*, 2017, vol. 30, p. 1 and E. Shi, "Adverse action protection for the right to complain or inquire in s 341 of the Fair Work Act", *AJLL*, 2017, vol. 30, p. 294.

5 O'Cinneide "Values, rights and Brexit - Lessons to be learnt from the slow evolution of United Kingdom discrimination law", *AJLL*, 2017, vol. 30, p. 236. As emphasized by O'Cinneide , however, a positive influence on the evolution of British equality law has also been exercised also by the ECHR. More in general, on the relevance to labour law of the prohibition of discrimination established by Article 14 of the Convention see E. Sychenko, "Individual Labour Rights as Human Rights. The Contributions of the European Court of Human Rights to Worker's Rights Protection", *BCLR*, 2017, vol. 96, p. 67.

many questions relating to the uncertain identity of the European Social Model in the time of Brexit[6].

A - The ongoing pursuit of gender equality

Not surprisingly, the old but still unresolved problem of gender inequalities continued to attract attention in IALL journals in 2017. As befits its global dimension, the classical question of pay equity received worldwide consideration. The various national jurisdictions take regulatory approaches that show many areas of difference[7], including the tests utilized to assess whether the objective of equal remuneration for work of equal value is met (here, the choice of comparator is a crucial issue[8]), whether they permit individual or collective complaints, and the scope of remedies available to applicants[9].

By contrast, reflections on maternity rights and anti-discrimination protection of working women during pregnancy, the postpartum period and breastfeeding have been more Eurocentric[10]. This discussion (concentrated in Spanish journals, but present also in Germany, where a new act on maternity protection was about to come into force) also considered the new legal questions posed by *in vitro* fertilization[11] and surrogate maternity[12].

An interesting essay concerning the prevention of women's occupational risks, in general rather than only in the maternity sphere, emphasized the urgency of overcoming the traditional androcentric standards adopted by regulations on workers' health and safety, in view of the significant gender differences that have come to light in biomedical studies[13]. This revision could be considered a striking example of application to labour law

6 See E. Ales, "Il Modello Sociale Europeo dopo la crisi: una mutazione genetica?", *DLM*, 2017, 3, p. 485. J. Kenner J., "Il potenziale impatto della Brexit sul Diritto del lavoro europeo e britannico", *DLM*, 2017, 1, p. 5. M. Weiss, "The future of labour law in Europe. Rise or fall of the European social model?", *ELLJ*, 2017, 4, p. 345. With a specific focus on the European Social Pillar, S. Laulom, J.P. Lhernould, "Quelle Europe sociale nous prépare le socle des droits sociaux?", *RDT*, 2017, 7-8, p. 455. K. Lörcher, "Die Europäische Säule Sozialer Rechte – Rechtsfortschritt oder Alibi?", 2017, 10, p. 387.

7 M. Smith, R. Layton, A. Stewart, "Inclusion, Reversal, or Displacement: Classifying Regulatory Approaches to Pay Equity," *CLL&PJ*, 2017, vol. 39, p. 211.

8 M. Smith, A. Stewart, "Shall I compare thee to a fitter and turner? The role of comparators in pay equity regulation", *AJLL*, 2017, vol. 30, p. 113.

9 From a different angle, for the potential of International Free Trade Agreements for improving the labour conditions of working women in global supply chains see T.J. Brooks, "Undefined Rights: The Challenge of Using Evolving Labor Standards in U.S. and Canadian Free Trade Agreements to Improve Working Women's Lives", *CLL&PJ*, 2017, vol. 39, p. 29.

10 K. Nebe, B. Graue, "Die Reform des Mutterschutzgesetzes", *AuR*, 2017, 11, p. 437. S. Rodríguez S. Escanciano, "La regulación de la lactancia en el ordenamiento laboral: algunas cuestiones pendientes", *DRL*, 2017, 5, p. 402. J.M. Serrano García, "La situación de discriminación directa de la mujer en situación de maternidad por incumplimiento de clausola convencionales de reconocimiento de derechos", *RDS*, 2017, 78, p. 149. M.V. Ballestrero, "Anna Kuliscioff, il lavoro e la cittadinanza delle donne. Uno sguardo dal presente", *LD*, 2017, 2, p. 187.

11 M.B. Cardona Rubert, "Discriminación por fecundación in vitro: la nueva frontera al derecho de la trabajadora a ser madre", *RDS*, 2017, 79, p. 185.

12 B.d.M.López Insua, "Maternidad subrogada y protección del menor desde una perspectiva integradora: el derecho laboral de nuevo a examen", *DRL*, 2017, 2, p. 166.

13 A. Garrigues Giménez, "Hacia un nuevo paradigma (no androcéntrico) en la prevención de riesgos laboral es la necesaria e inaplazable integración normativa y técnica del diferencial de sexo y de género", *DRL*, 2017, 8, p. 763.

issues of the feminist method, which it would be reductive to interpret as stemming solely from gender equality concerns, overlooking its broader conceptual utility for the social organization of work and its regulation[14].

B - Older and disabled persons in the labour market

The specific demands that an ageing population poses for labour law and social security systems were the central issue in several articles published in the IALL journals, especially but not exclusively in those emanating from Europe[15].

The authors focussed on the different tools that may prove useful in ensuring longer working careers and improving elderly people's chances of remaining in employment, even after retirement age. These tools include prohibiting age discrimination and strengthening the legal measures for preventing it[16] as well as incentives such as employer-provided training programmes[17]. Older persons' employment, in contrast with the "lump of labour" theory that in past decades encouraged the expansion of early retirement policies, is found to be positively correlated with youth employment[18]. There are thus no scientific reasons to oppose labour market protections for both older and younger people[19].

Demographic changes, on the one hand, and the stimulus provided by the UN Convention on the Rights of Persons with Disabilities (ratified by the EU in 2010), on the other, may explain IALLJ scholars' widespread interest in disability and the related anti-discrimination provisions.

The evolution in the concept of disability called for by the Convention and reflected in recent CJEU case law involving situations of temporary work incapacity and long-term illness has put significant pressure on traditional labour rules, especially those on dismissals[20]. This pressure is also the result of the employer's obligation to provide reasonable accommodation for disabled workers: an obligation that plays a crucial role in the route towards full inclusion and equality for people with disabilities, and is

14 J. Conaghan, "Labour Law and Feminist Method", *IJCLLIR*, 2017, 1, p.93.

15 On the situation in Japan, for example, see K. Inamori, "Current Situation and Problems of Legislation on Long-Term Care in Japan's Super-Aging Society", *JLR*, 2017, vol. 14, 1, p. 8.

16 A. Vaitkeviciute, "Prohibition of Age Discrimination in the Labour Market – Case Study of Finland in the Context of European Union", *E&E*, 2017, 1, p. 9. This author is examining the Finland's advanced regulatory model.

17 P.B. Berg, M.K. Hamman, M.M. Piszczek, C.J. Ruhm, "The relationship between employer-provided training and the retention of older workers: Evidence from Germany", *ILR*, 2017, 3-4, p. 495. With somewhat different conclusions, F.G. Gommans, N.W.H. Jansen, D. Stynen, I. Kant, A. De Grip, "The effects of under-skilling on need for recovery, losing employment and retirement intentions among older office workers: A prospective cohort study", *ILR*, 2017, 3-4, p. 525.

18 For an in-depth analysis see E. Jeong, "The relationship between youth employment and older persons' employment in 20 OECD countries", *ILR*, 2017, 3-4, p. 425.

19 On the latter, see M. Rodríguez-Piñero y Bravo-Ferrer, "Discriminación por razón de edad y trabajadores jóvenes", *DRL*, 2017, 11, p. 1033.

20 L.J. Dueñas Herrero, "La situación de incapacidad temporal puede ser motivo de discriminación? La fuerza del concepto evolutivo de discapacidad integrado en la Directiva 2000/78/CE", *DRL*, 2017, 5, p. 425. S. Fernández Martínez, "L'evoluzione del concetto giuridico di disabilità: verso l'inclusione delle malattie croniche?", DRI, 2017, 1, p. 74. J. Moreno Gené, "El dificil recurso a la "enfermedad asimilada a la discapacidad" como límite del despido por absentismo del trabajador", *RDS*, 2017, 80, p. 163.

analysed chiefly in terms of the extent to which employers are required to reorganise the workplace[21].

Obviously, legal efforts to promote the inclusion of disabled persons in the workplace may contribute significantly to reducing public expenditure on disability benefits[22]. Even if classical active labour market policies are still the prevalent answer to the need to help disabled people return to work, a number of innovative «inclusive human resource management» policies have attempted in recent years to involve employers in this challenging task[23].

C - The widespread need for work-life balance

A very lively debate involving researchers from all over the world revolved around the multifaceted topic of reconciliation of work and private life. Here, private life mainly means family life and thus involves the workers' role as caregivers for dependent relatives: children, primarily[24], but also increasingly the elderly, as a result of the demographic changes[25].

The authors contributing to this debate advanced a very wide range of proposals, starting from the idea that work-life balance is not only an individual responsibility but requires support from policies at different levels[26]. The extreme variety of the issues addressed in the articles – from the more classical questions of working time arrangements and family leaves[27], to the unusual link established between work-life imbalance and short, irregular

21 E. Purdue, "Scoping reasonable adjustments in the workplace: A comparative analysis of an employer's obligation to accommodate a worker's disability under Australian and Canadian laws", *AJLL*, 2017, vol. 30, p. 185. J. Harmgardt, "Survival of the Fittest: The Failure to Accommodate and Compensate in the Canadian Armed Forces", *CL&ELJ*, 2017, vol. 20, p. 379. C. Spinelli, "La sfida degli "accomodamenti ragionevoli" per i lavoratori disabili dopo il Jobs Act", *DLM*, 2017, 1, p. 44.

22 N. Jakab, I. Hoffman,G. Konczei, "Rehabilitation of people with disabilities in Hungary - Questions and Results in Labour Law and Social Law" , *ZIAS*, 2017, vol. 31, 1, p. 23. J. Gorelli Hernández , "El problemático control de la incapacidad temporal en el régimen general" , *TL*, 2017, vol. 136, p. 13

23 I. Borghouts-van de Pas, C. Freese, "Inclusive HRM and Employment Security for Disabled People: An Interdisciplinary Approach," *E-JICLS*, 2017, vol. 6, 1.

24 See, *inter alia*, S. Bernstein, "Addressing Work-Family Conflict in Quebec: The Gap between Policy Discourse and Legal Response", *CL&ELJ*, 2017, vol. 20, p. 273. B. García Romero, "La conciliation des responsabilités professionnelles et familiales en cas de maladie grave des enfants à charge en Espagne", *RDCTSS*, 2017, 1, p. 82.

25 As stressed by Inamori, *op. cit.*, and M. Kurzynoga, "Working and Caring – Polish Regulations in the Context of Demographic Changes", *E-JICLS*, 2017, vol. 6, 1.

26 Specifically, the intention to "close the gap between research and policy by bringing together the academic findings from several disciplines" inspired the volume edited by S. De Groof, "Work-Life Balance in the Modern Workplace. Interdisciplinary Perspectives from Work-Family Research, Law and Policy", *BCLR*, 2017, vol. 98.

27 M. Basterra Hernández, "Las reducciones y adaptaciones de jornada en atención a las necesidades personales y familiares del trabajador, *RDS*, 2017, 78, p. 97. S. De Groof, "How Can Labour Law Contribute to Work-Life Balance? Recommendations for a Modern Working Time Law", *BCLR*, 2017, vol. 98, p. 51. N. Selberg, "Regulating Work-Life Balance: The Contemporary Swedish Experience", *BCLR*, 2017, vol. 98, p. 311. G. Vermeylen, A. Parent-Thirion , M. Wilkens, J. Cabrita, "Reconciliation of Work and Private Life as Key Element for Sustainable Work Throughout the Life Course", *BCLR*, 2017,vol. 98, p. 359.

and poorly paid jobs[28] – makes it difficult to convey their essential contents or conclusions in a few words. However, some general points should be mentioned, such as the suggestion that enterprises can play an important role in encouraging caregiver employees in their «management of care services and division of duties»[29], as well as the need to address the low level of take-up for care leaves provided by legislation and the associated risk of job quitting that has been found in Japan[30].

These points are in line with the need to overcome the conception of the ideal worker as one who has no family responsibilities, which continues to prevail in law and is reinforced on a daily basis by organizations[31]. A more realistic and sustainable normative model would certainly be helpful to working women and mothers, whose parental duties still curtail their opportunities on the labour market and in professional careers[32]. Less obviously, this conceptual revision would significantly benefit men and fathers, rejecting the masculine imperatives associated with the male breadwinner model, whereby deviations from men's traditional gendered roles jeopardize both their work status and their manly façade[33].

D - Multi-ethnic societies and work: the issue of the Islamic headscarf and the challenges of immigration

Considering the ongoing increase in labour migrations and their global relevance, it is not surprising that in 2017, as in previous years, a sizeable number of IALLJ articles dealt with the multiple legal implications of this phenomenon, which is undoubtedly challenging from many points of view. However, a new topic associated with our multi-ethnic societies began to command attention in 2017, viz., the conflict between employees' freedom of religion and employers' interest in pursuing a policy of neutrality triggered by wearing Islamic headscarves in the workplace.

Though the issue of protection from religious discrimination is also debated outside Europe (e.g., in Canada, where – again focusing on the dress of Muslim women – the model of multiculturalism adopted for diversity management is criticized by scholars for opposite

28 T. Warren, "Work-Life Balance, Time and Money: Identifying the Work-Life Balance Priorities of Working Class Workers", *BCLR*, 2017, vol. 98, p. 311. A. Reilly, A. Masselot, "Precarious Work and Work-Family Reconciliation: A Critical Evaluation of New Zealand's Regulatory Framework", *BCLR*, 2017, vol. 98, p. 285.

29 Y. Yajima, "Frameworks for Balancing Work and Long-Term Care Duties, and Support Needed from Enterprises", *JLR*, 2017, vol. 14, 1, p. 68.

30 See respectively Inamori, *op. cit.*, and S. Ikeda, "Family Care Leave and Job Quitting due to Caregiving: Focus on the Need for Long-Term Leave", *JLR*, 2017, vol. 14, 1, p. 25.

31 See Bernstein, *op. cit.*, I. Matzner-Heruti , "This Is Not an Ideal, Man": Restructuring the Ideal Worker Norm", *BCLR*, 2017, vol. 98, p. 183.

32 As noted by B. Kresal, "La conciliation travail-famille et l'égalité professionnelle entre les femmes et les hommes en Slovénie", *RDCTSS*, 2017, 1, p. 58. With specific regard to the adverse consequences of the decision to become a mother, S. Turki, "Work-Family Balance: Origins, Practices and Statistical Portrait from Canada and France", *E-JICLS*, 2017, vol. 6. G. Özcüre, N. Eryigit, H. Demirkaya, "Work-Life Balance in the Modern Workplace: A Comparative Analysis of the Turkish and European Multinational Companies Operating in Turkey", *BCLR*, 2017, vol. 98, p. 231.

33 In this connection, see Matzner-Heruti, *op. cit.* On the problematic interplay between masculinity and caregiving see also M. Saito, "Current Issues Regarding Family Caregiving and Gender Equality in Japan: Male Caregivers and the Interplay Between Caregiving and Masculinities", *JLR*, 2017, vol. 14, 1, p. 92.

reasons[34]), it is in the old continent that the discussion became particularly animated, and not by chance. In the *Achbita* and *Bougnaoui* judgments – two cases in which Muslim women were dismissed because they refused to remove their headscarves when coming into contact with customers – the CJEU had for the first time to address the delicate problem of the limits of the employees' rights to manifest their religion in the workplace. Following an approach largely based on human rights thinking from the ECtHR (whose achievements in protecting freedom of religion are actually rather modest[35]), the CJEU ruled that company policies prohibiting headscarves do not constitute direct discrimination on the basis of religion as banned by Directive 2000/78. The Court's reasoning and conclusions gave rise to many critical assessments[36], as well as widespread regret for a missed opportunity to serve both the equality aims of antidiscrimination law and the cause of European integration. Cases of dismissals or resignations of employees belonging to religious minorities, indeed, are by no means rare in the EU, as attested by a comparative investigation of the impact of these situations on claims to unemployment benefits[37].

Another wider subject involving competing visions of an inclusive society is the management of economic migration flows and the alien workforce: a global phenomenon which, as was mentioned earlier, proved to be of particular interest to experts in labour law and social security.

Though international migration law[38] promotes respect for the rights of immigrant workers, national regulations and practices often contradict this trend[39]. Indeed, many articles investigated the interaction of migration controls and labour rules, focusing on the specific situations of different countries around the world, including Australia, Canada, South Korea and

34 V. Narain, "Gender, Religion and Workplace: Reimagining Reasonable Accommodation", *CL&ELJ*, 2017, vol. 20, p. 307. L.P. Lampron, "Religious discrimination, diversity, interculturalism, accommodation: The Charter of Quebec Values and the Workplace and Competing Visions of an Inclusive Society", *CL&ELJ*, 2017, vol. 20, 2, p. 339.

35 See Sychenko, *op. cit.*, p. 121.

36 G. Busschaert, S. De Somer, "You Can Leave Your Hat on, but Not Your Headscarf: No Direct Discrimination on the Basis of Religion", *IJCCLLIR*, 2017, 4, p. 553. F. Dorrsemont, "Freedom of religion in the workplace and the Court of Justice of the European Union: A return to the principle of cuius regio, eius religio?", *RDCTSS*, 2017, English Electronic Edition, 4, p. 200. L. Vickers, Achbita *and* Bougnaoui. "One step forward and two steps back for religious diversity in the workplace", *ELLJ*, 2017, 3, p. 232. From different perspectives see also J.L. Bianco, N. Cadène, C. Wolmark C., "Peut-on concevoir la neutralité dans l'entreprise?", *RDT*, 2017, 4, p. 235.

37 K. Alidadi, "Religion and unemployment benefits: Comparing Belgium, the Netherlands and Great Britain", *ELLJ*, 2017, 1, p. 67.

38 Its utility and current shortcomings are discussed by J.M. Servais, "Le droit international social des migrations ou les infortunes de la vertu", *RDCTSS*, 2017, 1, p. 94.

39 F. Elorza Guerrero, "The Regulation of Immigrant Labour in Spain: Ordinary Migration & Selective Migration", *E-JICLS*, 2017, vol. 6, 2.

Japan[40] and, in Europe, the United Kingdom, Ireland and Spain[41]. However, the most extensive analysis was undoubtedly centred on Italy, the state with the most critical geographical position in the EU, where IALLJ scholars attempted to clarify the protection granted to immigrant workers in the light of the principle of equality between *cives* and *non cives*, taking the multilevel legal framework into account[42]. In general, the different national regulations on temporary labour migration attracted a good deal of attention[43], while the scientific debate did not neglect the particularly vulnerable condition of irregular migrant workers[44].

II – THE TRANSFORMATIONS OF WORK: NEW CHALLENGES AND NEW RISKS "TEST" THE LAW

Sweeping changes in the labour market – driven by the technological and organizational innovation associated with the so-called digital world, as well as by demographic, geographical and environmental factors – have brought new business models, new forms of work organization and new working relationships to the fore.

On this general subject, the 2017 IALLJ articles address many heterogeneous sub-topics, and some of them are of particular interest for this overview. They can be divided into four main areas: the first deals with the issue of non-standard work and precariousness; the second focuses on the "grey" area between employment and self-employment and is thus related to the third, which deals with the role of labour law protection for the emergent "digital workforce"; while the fourth and last topic addresses the impact of the expanding use of ICT on workers' rights.

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40 See respectively C.F. Wright, S. Clibborn, "Back Door, Side Door, or Front Door? An Emerging De-Facto Low-Skilled Immigration Policy in Australia", *CLL&PJ*, 2017, vol. 39, 1, p. 165. J. Fudge, J.C. Tham, "Dishing Up Migrant Workers for the Canadian Food Services Sector: Labor Law and the Demand for Migrant Workers", *CLL&PJ*, 2017, vol. 39, p. 27. E.A. Chung, R.I. Hosoki, "Disaggregating Labor Migration Policies to Understand Aggregate Migration Realities: Insights from South Korea and Japan as Negative Cases of Immigration", *CLL&PJ*, 2017, vol. 39, p. 83.

41 See respectively C. Bales, "Immigration Raids, Employer Collusion and the Immigration Act 2016", *ILJ*, 2017, 2, p. 279. C. Murphy, "Tackling Vulnerability to Labour Exploitation through Regulation: The Case of Migrant Fishermen in Ireland", *ILJ*, *2017,* 3, p. 417. E. Guerrero, *op. cit*.

42 See above all A. Garilli, "Immigrati e diritti sociali: parità di trattamento e tutela multilivello", *DLM*, 2017, 1, p.13. McBritton, "Lavoro extracomunitario, mercato del lavoro, contratti", *RGL, 2017,* 4, I, p. 582. S. Bologna, "Eguaglianza e welfare degli immigrati: tra self-restraint legislativo e aperture giurisprudenziali e contrattuali", *RGL, 2017,* 4, I, p. 63.

43 S. Ariyawansa, "A Red-Tape Band-Aid or a Solution? Lessons from the United Kingdom's Gangmasters (Licensing) Act 2004 for Temporary Migrant Workers in the Australian Horticulture Industry", *AJLL*, 2017, vol. 30, 2, p. 158. K.L. Griffith, S.M. Gleeson, "The Precarity of Temporality: How Law Inhibits Immigrant Worker Claims", *CLL&PJ*, 2017, vol. 39, 1, p. 111. C. Janda, "We Asked for Workers…". Legal Rules on Temporary Labor Migration in the European Union and Germany", *CLL&PJ*, 2017, 1, p. 143. P. Martin, "Guest or Temporary Foreign Worker Programs", *CLL&PJ*, 2017, vol. 39, 1, p. 189. V. Papa, "Dentro o fuori il mercato? La nuova disciplina del lavoro stagionale degli stranieri tra repressione e integrazione", *DRI*, 2017, 2, p. 363.

44 L. Calafà, "Lavoro irregolare (degli stranieri) e sanzioni. Il caso italiano", *LD*, 2017, 1, p. 67. C. Faraldo Cabana "Emplear a ciudadanos extranjeros o menores sin permito de trabajo: un nuevo delito contra los derechos de los trabajadores?", *RDS*, 2017, 78, p. 127. F. Monereo Pérez, Vila Tierno, "La (des)protección social del trabajador extranjero en situación irregular. La incidencia de las autorizaciones administrativas previas respecto al reconocimiento de la prestación por desempleo", *DRL*, 2017, 11, p. 1073.

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A - Atypical work and precariousness

In 2017, as in recent years, a number of articles in IALLJ member journals dealt with the issue of non-standard work and precariousness, which has been broadly discussed in past overviews.

As we know, the standard employment contract (defined as a stable, open-ended and direct arrangement between a dependent, full-time employee and his/her unitary employer) has been the prevalent model for regulating work, while non-standard forms of work have been presented as exceptions to the norm. As such, they have often received different treatment: the debate on how to adjust existing regulation to keep pace with the rise and spread of the non-standard workforce worldwide continued in 2017 IALLJ journals, both in general[45] and with regard to issues relating to social security and collective rights. Regarding social security guarantees, different flexible forms of work may put workers at a disadvantage: either in acquiring entitlement to social insurance benefits, as their instability may prevent them from reaching the required minimum period for accessing certain benefits such as unemployment insurance or a full pension, or because their lower and slower-growing wages may be reflected in the level of these benefits[46]. Concerning the regulation of collective rights, many of the existing limitations and restrictions on the freedom of association, the right to collective bargaining and the right to strike (such as antitrust bans on collective bargaining, mandatory strike ballots, the distinction between political and economic strikes, etc.) disproportionately affect non-standard workers, putting the meaningful exercise of collective rights at risk. In this connection, it has been argued that existing restrictions and limits on collective rights must be revised to ensure that they are compatible with a human rights approach[47].

Regarding the so-called atypical work relationships, IALLJ scholars most frequently examined fixed-term contracts on the one hand, and temporary agency work on the other (apart from the so-called platform work which will be examined below, in § 1.4). Some authors have also considered other non-standard forms of employment, such as seasonal work[48], "zero hours contracts" or casual work in the UK[49], occasional work in Slovenia[50],

45 M.E. Casas Baamonde, "Precariedad del trabajo y formas atípicas de empleo, viejas y nuevas ¿Hacia un trabajo digno?", *DRL*, 2017, 9, p. 867. A.O. Goldín, "Huida, desestandarización y debilitamiento subjetivo del derecho del trabajo. Ensayo sobre un itinerario", *RDL*, 2017, 10, p. 977. T. Treu, "Una seconda fase della flexicurity per l'occupabilità", *DRI*, 2017, 3, p. 597.

46 See P. Schoukens, A. Barrio, "The changing concept of work: When does typical work become atypical?", *ELLJ*, 2017, 4, p. 306, who addressed the need to adapt the basic principles of social security to the atypical features of non-standard work.

47 V. De Stefano, "Non-Standard Work and Limits on Freedom of Association: A Human Rights- Based Approach", *ILJ*, 2017, vol. 46, 2, p. 185.

48 Above all of non-EU migrant workers, see Papa, *op. cit.* M.E. Zoeteweij-Turhan, "The Seasonal Workers Directive", *ELLJ*, 2017, 1, p. 28. Janda, *op. cit*.

49 A. Sanders, "Fairness in the Contract of Employment", *ILJ*, 2017, vol. 46, 4, p. 508. A.C.L. Davies, "Getting More Than You Bargained for? Rethinking the Meaning of 'Work' in Employment Law", *ILJ*, 2017, vol. 46, 4, p. 477.

50 N. Scortegagna Kavčnik, "Placilo in drugi pravni vidiki študentskega dela", *E&E*, 2017, 2/3, p. 243.

"association in participation" contracts in Italy[51], as well as some traditional forms of precarious work such as domestic work in Spain[52].

With regard to fixed-term employment, the majority of articles were published in Spanish journals or in journals of EU-wide interest.

First, some of the articles under review analysed the Framework Agreement on Fixed-term Work, later transposed into Council Directive 1999/70, discussing CJEU case-law[53] and questioning, in particular, whether the Directive has achieved its goal of bringing about the approximation of the domestic laws on successive fixed-term employment contracts in the EU Member States[54]. In the latter connection, Kamanabrou's comparative study of fifteen Member States showed that, despite substantial differences in the details, the level of protection in the Member States is essentially comparable. Nevertheless, protection against abuse of successive fixed-term contracts is still rather low, but this is due to the fact that the Framework agreement can offer protection to workers only within the limits of its provisions.

Second, the debate in the Spanish journals concentrated on the current regulation on fixed-term contracts in Spain (where the temporality rate is very high, i.e., 26.3% in 2016), emphasizing the inadequacy of this regulation and calling for its urgent reform[55]. The law does not distinguish, as it should, between the temporary contracts that meet real seasonal and conjunctural needs of the production system and their improper, fraudulent or abusive use as an unwarranted technique of contractual flexibility[56]. More specifically, several authors focused on the CJEU ruling in the *De Diego Porras* case and its "sequel" in Spain. Here, the Court of Justice declared that the difference between the termination regime for temporary replacement contracts and permanent contracts is discriminatory inasmuch as compensation is provided only for the latter. This judgement set off a real "tsunami"[57] in Spanish judicial doctrine and raised questions about whether the *De Diego Porras* decision applies to other temporary contractual arrangements[58].

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51 A. Allamprese, *L'associazione in partecipazione con associato d'opera: un tipo contrattuale «sospetto»*, *LD*, 2017, 2, p. 325.

52 G. García González, "Derechos sociales y empleados del hogar: reformas jurídicas inaplazables para la dignificación del trabajo doméstico en España", *RDS*, 2017, 77, p. 83. E. García Testal, "La necesidad de una protección por desempleo para los trabajadores domésticos en España", *RDS*, 2017, 79, p. 93.

53 S. Krebber, "Die unionsrechtlichen Vorgaben zur Zulässigkeit der Befristung von Arbeitsverhältnissen", *EuZA*, 2017, 1, p. 22.

54 S. Kamanabrou, "Successful Rules on Successive Fixed-Term Contracts?", *ICLLIR*, vol. 33, 2017, 2, p. 221.

55 T. Sala Franco, E. López Terrada, "Propuestas para un debate sobre la reforma de la contratación temporal", *DRL*, 2017, 11, p. 1090.

56 M.E. Casas Baamonde, "La contratación temporal: problemas y soluciones. Un debate necesario", *DRL*, 2017, 11, p. 1098. A. Goldin, *op. cit*.

57 T. Sala Franco, "Acerca de la Directiva comunitaria 1999/70, sobre el trabajo de duración determinada y de la sentencia del Tribunal de Justicia comunitario de 14 de septiembre de 2016", *DRL*, 2017, 3, p. 217.

58 A. López Hernández, "La contratación laboral temporal a partir del caso de Diego Porras (asunto C-596/2014) ", *DRL*, 2017, 10, p. 998.

Third, the IALLJ journals also devoted space throughout 2017 to the development of fixed-term employment in connection with certain legal systems[59] or specific categories of workers, such as public and private managers[60], construction workers[61] and researchers[62].

With regard to temporary agency work, various authors provided detailed discussions of the German reform that came into force in 2017[63], questioning its compliance with the Temporary Agency Work Directive 2008/104 and underlining such critical points as the prerogative granted to the collective parties to diverge from the maximum period of time for hiring out employees as well as from the basic principle of equal treatment between temporary workers and comparable permanently employed workers[64].

B - Between employment and self-employment

One can certainly say that «determining whether a person performing work falls within the scope of the notion of "employee" has become increasingly difficult due to the complexity of work arrangements in the grey area between employment and self-employment»[65].

With regard to this topic, many articles in the 2017 IALLJ journals examined the national legislation and case-law in many areas of the world.

The Italian regulation of employment and self-employment attracted considerable attention, especially in the Italian journals, where essays focused mainly on the legislative reforms introduced in 2015 and 2017. The 2015 reform extended the protection afforded to classic subordinate employment to the so-called "employer-organised work"[66], while in 2017 a new law on self-employment introduced new protective measures for independent

59 See, for example, M. Debono, V. Marmarà, "Perceived Precarious Employment in Malta", *E-JICLS*, 2017, vol. 6, 2.

60 P. Monda, "Il lavoro a tempo determinato del dirigente privato e pubblico", *DRI*, 2017, 4, p. 1081.

61 C. Dechristé, "Le contrat de chantier ou d'opération: le grand retour ?", *RDT*, 2017, 10, p. 633.

62 M.D. Ferrara, "La ricerca a termine: problemi e prospettive del reclutamento dei ricercatori universitari", *DLM*, 2017,1, p. 61.

63 W. Hamann, E. Klengel, "Klengel Die Überlassungsdauer des reformierten AÜG im Lichte des Unionsrechts", *EuZA*, 2017, 2, p. 194. W. Hamann, E. Klengel, "Die AÜG-Reform 2017 im Lichte der Richtlinie Leiharbeit", *EuZA*, 2017, 4, p. 485. M. Maul-Sartori, P. Remy, "La réforme de la loi allemande relative au prêt de main-d'oeuvre: des rapprochements avec le droit français, notamment à la faveur de la transposition de la directive 2008/104"? *RDT*, 2017, 2, p. 148. J. Ulber, "Die AÜG-Reform oder besser: Neuregelung zur Diskriminierung und zum funktionswidrigen Einsatz von Leiharbeitnehmern", *AUR*, 2017, 6, p. 238.

64 Cf. J. Uber, *ibid*. On the implementation of the principle of equal treatment see also B. Kresal Šoltes, "Razmejitev obveznosti med agencijo in podjetjem uporabnikom ter načelo enakega obravnavanja – je lahko model tudi za druge nestandardne oblike dela", *E&E*, 2/3, p. 199.

65 Schoukens, Barrio, *op. cit.*, 2017, p. 309.

66 F. Martelloni, "I rimedi nel «nuovo» diritto del lavoro autonomo", *LD*, 2017, 3/4, p. 517. S. Bini, "Para-subordinación y autonomía. El derecho del trabajo italiano en transformación", *TL*, 2017, 136, p. 49. D. Mezzacapo "L'incerta figura delle collaborazioni organizzate dal committente", *RGL*, 2017, 1, I, p. 49. A. Riccobono, "Sulla «Carta dei diritti» della Cgil. La riforma dei contratti e dei rapporti di lavoro: privato e pubblico a confronto", *RGL*, 2017, 1, I, p. 63.

contractors which are deeply rooted in contract law (Perulli called this reform "the return of self-employment to contract law"[67]).

The German situation was also studied, discussing the legal position of "solopreneurs" (i.e., the growing number of entrepreneurs who do not employ other persons) to understand ways of providing them with more protection, and more generally analysing the notion of employee under § 611a *BGB* as amended in 2017 and the failed attempt to introduce the first indicators in the German Civil Code to be used by the courts when determining whether an employment relationship exists[68]. Employee status is a particularly sensitive area in most countries. In the UK, for instance, studies examining the problem of "availability", when workers are not actively engaged in core work tasks at the workplace but are not fully at liberty either, were of particular interest[69], while in Spain a reform regarding self-employed work was introduced in 2017, resulting in a rather contradictory regulation[70].

The question is also open in the US: Treu, for example, analysed American case-law concerning the status of workers for the so-called platform economy firms (see below, *§* 1.3), arguing that the remedial approach adopted by common law may also be interesting for other judges and lawmakers because it is better able than the traditional classifying approach to identify the set of protections and rights applying to these "platform" workers[71]. In this regard, the fact that platforms provide companies with the attractive opportunity to divide permanent tasks into internet-based "microtasks" which can be offered to an indefinite number of interested parties could bring about a further increase in self-employment in the near future[72]. Most of these workers will still be precarious and vulnerable: what is new about the platform economy is the development of technologies which enable companies «to claim not to employ those that work for them» and create «a pseudo employment market where workers are said to be independent self-employed receiving work from and providing services via a digital platform created by the company»[73].

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67 A. Perulli, "Il lungo viaggio del lavoro autonomo dal diritto dei contratti al diritto del lavoro, e ritorno", *LD*, 2017, 2, p. 25. See also, S. Giubboni, "Il Jobs act del lavoro autonomo: commento al capo I della legge n. 81/2017", *DLRI*, 2017, 155, p. 471. Marteloni, *op. cit*. G. Santoro-Passarelli, "Lavoro etero-organizzato, coordinato, agile e telelavoro: un puzzle non facile da comporre nell'impresa in via di trasformazione", *DRI*, 2017, 3, p. 771.

68 B. Waas, "What role for solopreneurs in the labour market?", *ELLJ*, 2017, 2, p. 154. R. Wank, "Der Arbeitnehmer-Begriff im neuen § 611a BGB", *AUR*, 2017, 4, p. 140.

69 Davies , *op. cit*. See also M. Böttcher, "Der Employment Status im englischen Arbeitsrecht", *EuZA*, 2017, 3, p. 370. On the question of the employment status of limited liability partnership (LLP) members, E. Berry, "When Is a Partner/LLP Member Not a Partner/LLP Member? The Interface with Employment and Worker Status", *ILJ*, 2017, vol. 46, 3, p. 309.

70 C.L. Alfonso Mellado, G. Fabregat Monfort, R. Pardo Gabaldón, "Reformas urgentes en materia de trabajo autónomo: medidas laborales", *RDS*, 2017, 80, p. 27. See also A. Todolí-Signes, "Los falsos autónomos en el contrato de franquicia", *RDS*, 2017, 77, p. 105 and A. Duval, O. van Maren, "The Labour Status of Professional Football Players in the European Union. Unity in/and/or diversity?", *ELLJ*, 2017, 3, p. 258.

71 T. Treu, "Rimedi, tutele e fattispecie: riflessioni a partire dai lavori della Gig economy", *LD*, 2017, 3/4, p. 367.

72 Waas, *op. cit*.

73 M. Sargeant, "The Gig Economy and the Future of Work," E-*JICLS*, 2017, vol. 6, 2. A. Todolí-Signes, "The End of the Subordinate Worker? The On-Demand Economy, the Gig Economy, and the Need for Protection for Crowdworkers", *IJCLLIR*, 2017, vol. 33, 2, p. 241.

However, workers still need protection, and throughout 2017 many authors debated how labour law could answer this need.

C - Work on platforms in the digital age

In all IALLJ journals, there was extensive debate on the role of labour law protections for the heterogeneous "digital workforce" arising from the new economy (interchangeably called the "platform", "gig", "sharing", "on demand" or "collaborative" economy, among other names), where the use of digital platforms to perform or organise work is growing apace. Interest in how labour law changes in the platform economy has spread among scholars, who wondered (in many articles and in several special issues of IALLJ journals such as Italy's *RGL* and Spain's *TL*) how labour law can rethink its borders and adapt its protection to the «challenge of "uberisation"»[74].

There has been litigation around the world on the employment classification of workers in the "gig economy"[75]. It is not surprising that many articles in IALLJ journals dealt with the recent suits brought against the colossus Uber by its drivers and which led to some interesting judgments (in particular by courts in the UK, in the US and by the CJEU)[76].

For employment law, a very important question is whether platform workers count as employees[77], and whether the platforms can be held responsible as employers[78]. The matter has also been tackled by the EU Commission's Communication on "A European agenda for the collaborative economy", which warned that the more flexible work arrangements generated within the collaborative economy create uncertainty as to the applicable rights and the level of social protection. However, the guidance that the Communication provides to EU Member States (particularly on how the traditional distinction between self-employed and workers applies in the collaborative economy) has been found to be quite useless[79].

Chinese courts and lawmakers have also addressed issues that are directly or indirectly relevant to determining the status of drivers in the ride-hailing sector, as reported by a

74 A. Fabre, M.C. Escande-Varniol, "Le droit du travail peut-il répondre aux défis de l'ubérisation ?", *RDT*, 2017, 3, p. 166. See, for a general labour relations perspective on these major changes, Villalon, *op. cit*.

75 S. González Ortega, "Trabajo asalariado y trabajo autónomo en las actividades profesionales a través de las plataformas informáticas", *TL*, 2017, 138, p. 85. T. Pasquier, "Sens et limites de la qualification de contrat de travail", *RDT*, 2017, 2, p. 95. Sargeant, *op. cit*. L. Ratti, "Online Platforms and Crowdwork in Europe: A Two-Step Approach to Expanding Agency Work Provisions", *CLL&PJ*, 2017, vol. 38, 2, p. 477.

76 S. Auriemma, "Impresa, lavoro e subordinazione digitale al vaglio della giurisprudenza", *RGL*, 2017, 2, I, p. 281. V. De Stefano, "Lavoro «su piattaforma» e lavoro non standard in prospettiva internazionale e comparata", *RGL*, 2017, 2, I, p. 241. J. Prassl, "Uber devant les tribunaux", *RDT*, 2017, 6, p. 439. F. Trillo Párraga, "Uber, ¿sociedad de la información o prestadora de servicios de transporte?", *RDS*, 2017, 80, p. 127.

77 A. Perulli, "Lavoro e tecnica al tempo di Uber", *RGL*, 2017, 2, I, p. 195. Todolí-Signes, *op. cit*. V. De Stefano, *op. cit*.

78 J. Prassl, M. Risak, "Le piattaforme di lavoro on demand come datori di lavoro,", *RGL*, 2017, 2, I, p. 219.

79 A. Perulli, "Il lungo viaggio del lavoro autonomo dal diritto dei contratti al diritto del lavoro, e ritorno", *LD*, 2, p. 25. See also Ratti *op. cit.* M.E. Casas Baamonde, *op. cit.* M. Rodríguez-Piñero Royo M., "La agenda reguladora de la economía colaborativa: aspectos laborales y de seguridad social", *TL*, 2017, 138, p. 125.

scholar who suggested adopting a purposive approach to the existing criteria in Chinese labour law for establishing the status of these workers, arguing that such an approach will be more useful for addressing the basic question of whether drivers should be protected than creating new categories of employment classification would be[80]. Studies of the distribution of risks between platforms and platform workers were also of particular interest and suggested that the social rights of workers who perform their work using digital platforms should be determined on the basis of their social risk exposure, independently of how they are classified in their contract[81]. Special attention was also devoted to the issues that have arisen in the legal framework for industrial relations, collective bargaining and strikes[82], and to the role that could be played by trade unions[83].

D - ICT AND WORKERS' RIGHTS: RIGHT TO DISCONNECTION AND RIGHT TO PRIVACY

Technological innovation is increasingly affecting the "world of work" and aspects such as working time and place, health and safety, instruments of employer control, etc.[84]. Accordingly, the articles which, from different perspectives, addressed the impact of information and communication technologies on two sensitive workers' rights (the so-called right to disconnection and the right to privacy) will be grouped into two subtopics.

It is not surprising that the majority of the IALLJ articles on employees' right to disconnection, i.e., the right to be unavailable outside of normal working hours, focused on recent French and Italian legislation on the matter. The French "droit à la déconnexion" introduced from 1st January 2017 by the "Loi Travail" (amending the French Labour Code), which required companies of a certain size to negotiate the right to non-availability with the representative unions, was analysed in detail in some interesting articles[85]. In addition, comparisons were made with the Italian 2017 regulation on "lavoro agile" or "smart work", viz., work performed partly outside the employer's premises through the use of technological tools, which – more than traditional forms of work – raises the question of the distinction between working time and rest periods and hence the workers' right to disconnect[86].

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80 M. Zou, "The Regulatory Challenges of 'Uberization' in China: Classifying Ride-Hailing Drivers", *IJCLLIR*, 2017, vol. 33, 2, p. 269. For the US, see T. Treu, *op. cit*.

81 P. Loi, "Il lavoro nella Gig economy nella prospettiva del rischio", *RGL*, 2017, 2, I, p. 259.

82 M. Faioli, "Jobs «App», Gig economy e sindacato", *RGL*, 2017, 2, I, p. 291.

83 S. Engblom, "Una prospettiva sindacale su digitalizzazione e Gig economy", *RGL*, 2017, 2, I, p. 357. M. Mensi, "Lavoro digitale e sindacato", *RGL*, 2017, 3, I, p. 525.

84 C. Sánchez-Rodas Navarro, "Poderes directivos y nuevas tecnologías", *TL*, 2017, 138, p. 163. J. Cruz Villalon, "El futuro del trabajo y su gobernanza ", *TL*, 2017, 137, p. 13.

85 P.H. Cialti, "El derecho a la desconexión en Francia: ¿más de lo que parece?", *TL*, 2017, 137, p. 163. E. Durlach, M. Renaud, "Das Recht auf Nichterreichbarkeit – Droit à la Déconnexion – nach der Loi Travail», *AUR*, 2017, 5, p. 196. C. Molina Navarrete, "Jornada laboral y tecnologías de la info-comunicación: «desconexión digital», garantía del derecho al descanso", *TL*, 2017, 138, p. 249. D. Senčur Peček, "Delovni čas v dobi stalne dosegljivosti", *E&E*, 2017, 2/3, p. 155.

86 See the *DRI* special issue on "lavoro agile", particularly. E. Dagnino, "Il diritto alla disconnessione nella legge n° 81/2017 e nell'esperienza comparata ", *DRI*, 2017, 4, p. 1024. See also A. Allamprese, F. Pascucci, "La tutela della salute e della sicurezza del lavoratore «agile»", *RGL*, 2017, 2, I, p. 307. R. Casillo, "La subordinazione 'agile'", *DLM*, 2017, 3, p. 529.

From a second perspective, technological innovations can also affect the inviolable rights of the human person, especially the employee's privacy and dignity: we well know that, with firms' expanding use of new technologies, the worker is potentially subject to constant, delocalized, indiscriminate and increasingly pervasive control[87]. IALLJ scholars devoted special attention to the ECtHR Grand Chamber judgment in the case of *Bărbulescu II v. Romania* held in September 2017, in which the Strasbourg Court, examining a case concerning the monitoring of an employee's electronic communication by a private employer, found a violation of Article 8 of the Convention and reversed the previous 2016 Chamber judgment[88]. In particular, several authors in Spanish IALLJ journals compared ECtHR case-law with that of the Spanish Supreme Court and Constitutional Court, particularly with regard to the scope of employees' information rights[89], while other authors discussed the need for Spanish privacy legislation and case-law to comply with the EU General Data Protection Regulation (GDPR), which came into force on May 25, 2018[90]. The issue of monitoring employees in the workplace is also quite problematic in other countries, such as Italy and the US[91], because of the difficulty in balancing the opposing interests at stake and securing adequate protection of any employee within the inherently unequal employment relationship.

III - PERSPECTIVES FOR COLLECTIVE LABOUR LAW

As in previous years, also in 2017 collective labour law had a very special focus in the IALLJ journals. One common feature of these publications is their historical perspective. The presentations sometimes have gone back a long way, such as: early academic research on Australian labour law: 1920-60[92]. *AuR* has even instituted a special column figuring as "work and legal history" issued every two months with contributions to: Strikes in the public service[93]; Arbeit-Nordwest and METALL NRW (employers' association)[94]; the (US) Wagner

87 M.J. Cervilla Garzón, "Efectos del uso de la aplicación "whatsapp" en el marco de las relaciones laborales", *TL*, 2017, 136, p. 73. C. Colapietro, "Tutela della dignità e riservatezza del lavoratore nell'uso delle tecnologie digitali per finalità di lavoro", *DLRI*, 2017, 155, p. 439.

88 R. Gallardo Moya, "Un límite a los límites de la vida privada y de la correspondencia en los lugares de trabajo", *RDS*, 2017, 79, p. 141. B. Ancel, "Big Brother au bureau: impératif sécuritaire ou crépuscule du droit à la vie privée? Regards croisés États-Unis - Europe", *RDT*, 2017, 3, p. 219.

89 M.E. Terradillos Ormaechea, "El principio de proporcionalidad como referencia garantista de los derechos de los trabajadores en las últimas sentencias del TEDH dictadas en materia de ciberderechos", *RDS*, 2017, 80, p. 139. F. Valdés Dal-Ré, "Doctrina constitucional en materia de videovigilancia y utilización del ordenador por el personal de la empresa", *RDS*, 2017, 79, p. 15. E. González Biedma, "Derecho a la información y consentimiento del trabajador en materia de protección de datos", *TL*, 2017, 138, p. 223.

90 J. Goñi Sein, "Nuevas tecnologías digitales, poderes empresariales y derechos de los trabajadoresanálisis desde la perspectiva del Reglamento Europeo de Protección de Datos de 2016", *RDS*, 2017, 78, p. 15.

91 See, respectively, V. Aniballi, "La regulación italiana de los controles a distancia: el «nuevo» art. 4 del Estatuto de los trabajadores", *DRL*, 2017, 8, p. 795 and Ancel, *op. cit*.

92 R. Naughton, "Early academic research in Australian labour law: 1920-60", *AJLL*, 2017, vol. 30, 1, p. 58.

93 B. Keller, "Arbeit und Rechtsgeschichte, Die großen Streiks im öffentlichen Dienst, Verlauf und Erklärung", *AuR*, 2017, 1, p. G 1.

94 L. Mallmann, "Arbeit-Nordwest und METALL NRW, Kontinuität oder Diskontinuität?", *AuR*, 2017, 3, p. G 5.

Act[95]; the Emergence of the statutory accident insurance [96]; the History of the Employment Promotion Acts[97]; the general strike in Mössingen of 31 January 1933[98]. Numerous essays in other journals illuminated important judgements or developments of the last twenty years such as: The Strasbourg Court judgment *Svenska Transportarbetareförbundet andSeko v. Sweden*[99]; lessons from the 2009-2010 USW Local 6500 Strike in Sudbury, Ontario[100]; the impact of the Law on Industrial Disputes Revisited: A Perspective on Developments over the Last Two Decades[101] ; establishing the Right to Bargain Collectively in Australia and the UK[102] ; the reform of Greek Labour Law by Memoranda I, II and III [103].

In 2017, similar questions and challenges have arisen worldwide. Often, structural changes in workers' representation were subject to academic discussions, including new trade union strategies in a changing political and working environment. Numerous essays, especially in southern European qualified journals, tended to focus on structural issues of collective bargaining, changing forms and contents of collective bargaining agreements (CBA). On the one hand, they reacted to consequences of legislative intervention, and on the other, to changes in the social framework and forms of production. A global discussion has been going on about the diverse forms of industrial action and guarantees of the right to strike. While collective bargaining autonomy and the right to strike have come under considerable political pressure, new perspectives have opened up, above all, through an increased reliance on international catalogues of human rights and comparative law.

95 T.C. Kohler, "Der Wagner Act", *AuR*, 2017, 5, p. G 9.

96 M. Fuchs, "Ein sozialrechtlicher Quantensprung: Die Entstehung der gesetzlichen Unfallversicherung", *AuR*, 2017, 7, p. G 13.

97 R. Buschmann, "Geschichte der Beschäftigungsförderungsgesetze", *AuR*, 2017, 9, p. G 17.

98 W. Däubler, "Der Mössinger Generalstreik vom 31.1.1933 – praktiziertes Widerstandsrecht?", *AuR*, 2017, 11, p. G 21.

99 K.D. Ewing, J. Hendy, "The Strasbourg Court Treats Trade Unionists with Contempt: Svenska Transportarbetareförbundet and Seko v. Sweden", *ILJ*, 2017, vol. 46, 3, p. 435.

100 A.D.K. King, "Memory, Mobilization and the social Basis of Intra-Union Division: Some Lessons from the 2009-2010 USW Local 6500 Strike in Sudbury, Ontario", *E-JICLS*, 2017, vol. 6, 3.

101 J. Elgar, B. Simpson, "The Impact of the Law on Industrial Disputes Revisited: A Perspective on Developments over the Last Two Decades", *ILJ*, 2017, vol. 46, 1, p. 6.

102 A. Forsyth, J. Howe, P. Gahan, I. Landau, "Establishing the Right to Bargain Collectively in Australia and the UK: Are Majority Support Determinations under Australia's Fair Work Act a More Effective Form of Union Recognition?", *ILJ*, 2017, vol. 46, 3, p. 335.

103 D. Sideris, C. Triadafillidis, "Die Reform des griechischen Arbeitsrechts durch Memoranda I, II und III", *ZIAS*, 2017, vol. 31, 1, p. 66.

RETROSPECTIVE OVERVIEW

A - Dynamic structures of collective workers' representation

Profound observations addressed the applicability of collective law[104], the relationship between individualism and collectivism[105] and the new perspectives on Collective Labour Law, Trade Union Recognition and Collective Bargaining[106]. Like individual labour law (see above), collective labour law is always seeking new solutions for precarious[107] and non-standard employees who are largely denied collective human rights[108]. Different views were expressed on whether legislators should open up new forms of collective action outside the union context[109]. For some countries, authors registered a tendency to shift from national to sectoral, from branch to company collective agreements.

Mostly, this tendency was not based on the concepts of shop floor collective bargaining that were discussed years ago with the intention of involving rank and file union members in shaping their own affairs. Today it is rather a predominantly government-induced decentralization, with the consequence of concession bargaining on behalf of the unions and widening unprotected sectors. The trade union pluralism issues already known in the past have led to a greater attention given to union representativeness as a legal category[110]. The open questions and consequences associated with these developments were also subject to legal observations in 2017.

Collective labour law has just fallen into a heavy sea. Neoliberal "reforms" have vehemently tried to influence the structure and the results of collective bargaining, often in the sense of a trend towards downsizing. Consequently, some fundamental labour law reforms were presented and analyzed with reference to France[111], Brazil[112], Spain[113]) and Italy[114]. In Spain, the normative validity of CBAs was weakened by the amendment to Art. 82 of the *Estatuto de los Trabajadores*, in which, under certain circumstances, derogations

104 M. Freedland, N. Kountouris, "Some Reflections on the 'Personal Scope' of Collective Labour Law", *ILJ*, 2017, vol. 46, 1, p. 52. O. Levannier-Gouël, "L'intégration étroite et permanente à la communauté de travail, Condition d'accès et de maintien des salariés dans leurs fonctions représentatives", *RDT*, 2017, 1, p. 19. S. Banerjee, Z. Mahmood, "Judicial Intervention and Industrial Relations: Exploring Industrial Disputes Cases in West Bengal", *ILJ*, 2017, vol. 46, 3, p. 366.

105 A. Bogg, "'Individualism' and 'Collectivism' in Collective Labour Law", *ILJ*, 2017, vol. 46, 1, p. 72.

106 K. Ewing, J. Hendy, "New Perspectives on Collective Labour Law: Trade Union Recognition and Collective Bargaining", *ILJ*, 2017, vol. 46, 1, p. 23.

107 A.J. Rolland, "Recent Developments in Unionizing the Precarious Workforce: The Exemption Regimes of Care Workers and Farm Workers in Quebec", *CLELJ*, 2017, vol. 20, 1, p. 107.

108 V. De Stefano, *op. cit*.

109 B. Rogers, S. Archer, "Protecting Concerted Action Outside the Union Context", *CLELJ*, 2017, vol. 20, 1, p. 141. D. Taras, "Nonunion Representation in Law and Practice", *CLELJ*, 2017, vol. 20, 1, p. 175.

110 J.I. Pérez Infante, "La estadística de convenions colectivos y la medición de la cobertura de la negociación colectiva", *TL*, 2017, 136, p. 159. De Val Tena, "El convenio colectivo de empresa", *RDS*, 2017, 79, p. 205.

111 A. Jeammaud, "La "Reforma Macron" del Código del Trabajo Francés", *TL*, 2017, 139, p. 13.

112 J. Cavalcanti Boucinhas Filho, "La reforma laboral de 2017 y la negociación colectiva en Brasil/ The labour reform of 2017 and collective bargaining in Brazil", *TL*, 2017, 139, p. 159.

113 R. Bodas Martí, "Cuestiones jurisprudenciales sobre la negociación colectiva", *TL*, 2017, 139, p. 55. E. Carrizosa Prieto, Il impacto de las normas de concurrencia tras las reformas legales, *TL*, 2017, 140, p. 75. M. García Jiménez, "Ámbitos de la negociación colectiva", *TL*, 2017, 140, p. 17.

114 U. Romagnoli, G. Cazzetta, "Sobre la crisis del derecho laboral (una entrevista"), *RDS*, 2017, 80, p. 13. M. Lai, "Una "norma di sistema" per contrattazione e rappresentanza", *DRI*, 2017, 1, p. 45.

are permitted[115]. Legal structural reforms are usually justified with a labour market policy objective. Often, however, amendments to the law have achieved their stated objectives only to a limited extent. Instead, new problems were raised, such as in Germany. Here, the controversial amendment to the Collective Agreements Act (in cases of union plurality in an establishment, CBAs of a minority union should no longer be applicable there) has provoked a ruling of the Federal Constitutional Court[116] and an application to the ECtHR, the result of which is eagerly waited for.

A whole series of articles raised the question of whether the traditional forms and contents of the collective organization should be continued or re-thought[117] or redefined. Requirements for equality have set conditions for unions to shape social policy, but at the same time have opened up new fields of responsibility for them[118]. In view of the economic crisis, especially in southern European countries, several authors[119] addressed the question of whether and what contributions unions can make to tackle them. Finally, the unions also have gained new opportunities for information, consultation and internal presence by using new electronic media[120]. Although the TFEU has opened a special procedure for social partner negotiations and agreements, there has been little progress here in recent years. In particular, the European Commission failed to pass on agreements negotiated by social partners in several sectors to the Council of Ministers. Thus, they could not acquire the status of directives. The so-called autonomous social partner agreements at European level do not have the same validity in the Member States. In order to promote social dialogue, there is need for more commitment to the results found[121] .

Only few countries know a work constitution as it has been established in Germany, combined with works councils' rights to co-determination. The widespread perception that a cordial social partnership is taking place here has already been refuted by the large number of litigations between works councils and employers over the scope and the exercise of rights to co-determination. Some articles traced these debates and above all critically accompanied the jurisdiction on subjects like: Works council's general right and duties[122]; works council's co-determination on working time[123] ; agreements on working

115 C. Sáez Lara, "Descuelgue convencional y arbitraje obligatorio", *TL*, 2017, 140, p. 311.

116 K. Bepler, "Ein Zwischenurteil? – Bemerkungen zum Tarifeinheitsurteil des Bundesverfassungsgerichts", *AuR*, 2017, 10, p. 380.

117 G. Sateriale, "Ripensare la contrattazione", *DRI*, 2017, 3, p. 710.

118 D. Gagne, M.J. Dupuis, "Constitutionnalisation du droit du travail et transformation du devoir de représentation syndicale: quelques questionnements concernant les clauses «orphelin», *CLELJ*, 2017, vol. 20, 1, p. 1.

119 L. Valente, "I ruoli del sindacato e delle istituzioni per la soluzione delle crisi occupazionali", *DRI*, 2017, 3, p. 729. A. Baylos Grau, "Notas sobre la regulación de la huelga en los servicios esenciales en Castilla-La Mancha", *RDS*, 2017, 78, p. 195.

120 F. Navarro Nieto, "El ejercicio de la actividad sindical a través de las tecnologías de la información y de las comunicaciones", *TL*, 2017, 138, p. 49.

121 V. Franca, "Bodo od evropskega socialnega dialoga ostali samo še nezavezujoči dogovori? Pregled in analiza obstoječih praks", *E&E*, 2017, 4, p. 475.

122 H. Zimmermann, "Zum Stellenwert der allgemeinen Aufgaben des Betriebsrats gemäß § 80 Abs. 1 BetrVG und seinen sich daraus ergebenden Handlungspflichten," *AuR*, 2017, 5, p. 192.

123 M. Eylert, "Mitbestimmung des Betriebsrats bei der Arbeitszeit im Spiegel der aktuellen Rechtsprechung", *AuR*, 2017, 1, p. 4.

time – the role of power in operational bargaining[124] ; Act on European Works Councils – *status quo* and further development[125] ; amendments to the act on European Works Councils with regard to seafarers – participation in works council meetings via videoconference[126]. Thannisch[127] gave an overview on board level Co-determination.

Despite all differences in national procedural laws, a couple of essays focused on subjects that are certainly of interest also outside the scope of the respective journal's readers. The Additional Protocol to the European Social Charter on Collective Complaints was signed on 9 November 1995 and has been ratified by most (not all) of the European states. Lukas[128] described the collective complaint mechanism contained therein[129]. Further procedural paths standing besides the usual court proceedings and mentioned in contributions were grievance arbitration[130] or alternative labour dispute resolutions[131]. Judicial Intervention and Industrial Relations in West Bengal were presented by Banerjee, Mahmood[132]. Rataj[133] drew a comparison on Selected Best Practices of EU Member States' Supreme Courts and Possibilities of Their Use in Labour and Social Disputes.

B - Collective Bargaining

The landscape of CBAs is diverse and shows different facets in the national states. Some authors discussed different structures of collective bargaining. They distinguished for example bargaining at different levels[134], in centralized or decentralized structures[135], in transition from national to sectoral collective agreements[136]. New economic structures have led to new levels of negotiation, such as the group level, the results of which can be evaluated ambivalently[137]. Questions of borderlines were raised between CBAs and statutory law[138]. Particular problems have emerged with regard to collective bargaining and

124 M. Halgmann, "Betriebsvereinbarungen zur Arbeitszeit – Die Rolle von Macht in Verhandlungsprozessen", *AuR*, 2017, 3, p. 106.

125 V. Zu Dohna-Jaeger, "20 Jahre EBRG – Status quo und Weiterentwicklung", *AuR*, 2017, 5, p. 194.

126 R.P. Hayen, "Änderung des EBRG für Seeleute – Sitzungsteilnahme per Videokonferenz möglich!", *AuR*, 2017, 10, p. 394.

127 R. Thannisch, "Unternehmensmitbestimmung: Aktuelle Herausforderungen und Reformoptionen", *AuR*, 2017, 11, p. 480.

128 K. Lukas, "Der Kollektivbeschwerdemechanismus der Europäischen Sozialcharta - aktuelle Entwicklungen", *ZIAS*, 2017, vol. 31, 1, p. 113.

129 R. Buschmann, "Review on Bruun/Lörcher/Schömann/Clauwaert: The European Social Charter and the Employment Relation", *AuR*, 2017, 3, p. 27.

130 E. Shilton, "Public Rights and Private Remedies: Reflections on Enforcing Employment Standards through Grievance Arbitration", *CLELJ*, 2017, vol. 20, 1, p. 201.

131 I.C. Maggio, "La conciliazione e l'arbitrato nel diritto del lavoro: lo stato dell'arte", *DRI*, 2017, 1, p. 98.

132 See Banerjee, Mahmood, *op. cit*.

133 P. Rataj, "Izbrane dobre prakse vrhovnih sodišč držav clanic EU in možnosti njihove uporabe v delovnih in socialnih sporih", *E&E*, 2017, 2-3, p. 299.

134 M. Milan, Y. Ferkane, "Faut-il désormais craindre la négociation de groupe?", *RDT*, 2017, 2, p. 76.

135 V. Bavaro, "Sulla prassi e le tendenze delle relazioni industriali decentrate in Italia (a proposito di un'indagine territoriale)", *DRI*, 2017, 1, p. 13.

136 See Carrizosa Prieto, *op. cit*.

137 M. Milan, Y. Ferkane, *op. cit*.

138 M. Magnani, "Il rapporto tra legge e autonomia collettiva", *DRI*, 2017, 1, p. 1. Lai, *op. cit*.

CBAs for civil servants[139] ; a problem that we will face again and more sharply with regard to civil servants' rights to strike. Not all countries have passed statutory regulations on the conclusion and operation of CBAs. However, even informal bargaining and agreements should enjoy the protection of freedom of association[140]. Finally[141], Liu described the special relationship between The State, The Unions, and Collective Bargaining in China mentioning the Sergio Leone's well-known movie title "The Good, the Bad and the Ugly".

Not surprisingly, legal guidelines also have a considerable impact on the content of regulations in CBAs. There is an indication that, for example, an economically and politically induced flexibilisation of working time will result in an increased need for collective regulation through CBAs[142]. The same effects have occurred with the regulation of temporary work. In view of the special risks related to temporary agency work, which in many countries has the potential to destroy established structures of collective representation, collective bargaining policy also could have a corrective function[143]. In some countries, statutory law, subject to optional deterioration by CBAs, has proved particularly problematic. One might ask oneself whether it is at all the task of trade unions to lower social standards. However, in times of trade union weakness, they could be inclined to make concessions that they would not have accepted years ago. In this respect, the notions of reasonableness and the proportionality principle could serve as a tool to limit the excessive power that could be exerted through collective agreements[144]. Also problematic are the so-called "orphelin" clauses, i.e. wage disparity clauses based solely on the different hiring dates of the persons concerned[145]. Tiraboschi[146] rather recognized deficits of legislation and collective bargaining policy as regards "agile work". Klein[147] described the protection of the *Sozialkassenverfahren* in the building industry, a specific German institution which - based on collective agreements declared generally binding - guarantees to employees in the construction industry the effectiveness of their entitlement to holidays and a company pension scheme. This system was recently confirmed by landmark judgments of the European Court of Human Rights and the German Federal Labour Court. The legal concept of a "negative freedom of association" (whether this exists is still disputed) does not stand in the way either.

C - Right to strike

The right to strike has come under pressure worldwide. Discussions on this issue are going on in international organizations as well as at national level. Numerous authors examined the interventions in the right to strike by national legislators or courts. Others

139 M.L. Pérez Guerrero, "Los medios de solución extrajudicial de conflictos laborales en el sector público : problemática", *TL*, 2017, 140, p. 399.

140 E. González Biedma, "La negociación collectiva informal", *TL*, 2017, 140, p. 121.

141 M. Liu, S. Kuruvilla, "The State, The Unions, and Collective Bargaining in China: The Good, the Bad and the Ugly", *CLL&PJ*, 2017, vol. 38, 2, p. 187.

142 See De La Flor Fernández, *op. cit*.

143 F. Vila Tierno, "Modalidades de contratación y empleo", *TL*, 2017, 140, p. 199.

144 R. Santagata De Castro, "Indisponibilità del tipo, ragionevolezza e autonomia collettiva. Sul nuovo articolo 2, comma 2, decreto legislativo n. 81/2015", *DRI*, 2017, 2, p. 397.

145 See Gagne, Dupuis, *op. cit*.

146 M. Tiraboschi,"I lavoro agile tra legge e contrattazione collettiva: la tortuosa via italiana verso la modernizzazione del diritto del lavoro", *DRI*, 2017, 4, p. 921.

147 T. Klein, "Die Sicherung der Sozialkassenverfahren im Baugewerbe", *AuR*, 2017, 2, p. 48.

rather discussed national deficits in the implementation of global or European standards or the requirements for the national guarantees of freedom of association. Finally, numerous authors dealt with particular questions concerning the exercise of the right to strike.

In Germany, the law on temporary agency work was slightly reformed. In recent years, the use of temporary workers as strikebreakers had become an effective weapon for employers to undermine trade union industrial action. This has now been limited, although gaps do remain[148]. In particular, Spanish authors expressed their concern about the rising interventions in the right to strike. Lopez Lopez[149] noted a dangerous tendency to weaken trade union bargaining power, for example by criminalizing pickets, based on the domestic labour market reform in 2012: Pérez Rey[150] viewed a technological strike-breaking following a ruling by the Spanish Constitutional Court, while Sánchez[151] put the focus on the freedom of expression in connection with trade union actions, also following a ruling by the Supreme Court.

Supranational guarantees of the right to strike result above all from the law of the International Labour Organization (ILO), the international Covenant on Economic, Social and Cultural Rights, the (Revised) European Social Charter (RESC) and the European Convention on Human Rights (ECHR). This context in the "multi-level system" of various catalogues of human rights has gained importance since the ECtHR, in its jurisdiction, has pursued the so-called comprehensive approach since the fundamental judgement of the Grand Chamber *Demir and Baykara* on Art. 11 ECHR, i.e. it takes greater account of the rulings of other bodies responsible for the interpretation of the different supranational norms. The Convention and the case law of the ECtHR, on the other hand, have a considerably greater binding force than other instruments of international law and the case-law of the committees responsible for their interpretation. This could also serve as a counterweight to the "traumatism" of the ECJ rulings *Viking* and *Laval*[152]. This conflict is intensively going on in sectors formerly organized under public law, such as railways and air traffic, as well as strikes in the public sector, in particular by civil servants. Some European countries such as Germany have not yet fully internalized the clear ECtHR case-law, according to which restrictions are only permissible in a few areas of direct state administration. The arguments put forward against the right to strike in these areas often have used terms such as "essential services" or "general interest" as well as a specific requirement of loyalty for civil servants. Thus, numerous authors have discussed these doctrines. Another occasion was the conference *Zur Fundierung des Streikrechts im ILO-Normensystem* (Foundations of the right to strike within the ILO legal system) in Berlin on 1 and 2 April 2016 with the participation of scholars from all over the world giving lectures which were later published in IALLJ journals.

148 T. Klein, D. Leist, "Kein Einsatz von Leiharbeitnehmern als Streikbrecher – Die Neuregelung in § 11 Abs. 5 AÜG n.F. im Hinblick auf Auslegung, Schutzlücken, Rechtsfolgen und Durchsetzung", *AuR*, 2017, 3, p. 100.

149 J. Lopez Lopez, "Diminishing Unions' Agency: Weakening Collective Bargaining and Criminalizing Picketing in the Spanish Case", *CLL&PJ*, 2017, vol. 38, 2, p. 169.

150 J. Pérez Rey, "El Tribunal Constitucional ante el esquirolaje tecnológico (o que la huelga no impida ver el fútbol)", *RDS*, 2017, 77, p. 151.

151 R. Sánchez Iago, "Acción sindical y conflicto de derechos", *DRL*, 2017, 4, p. 361.

152 J.P. Marguénaud, J. Mouly, C. Nivard, "Que faut-il attendre de la Cour européenne des droits de l'homme en matière de droits sociaux?", *RDT*, 2017, 1, p. 12.

In *CLL&PJ*[153], Novitz analyzed the ILO case-law on the Public Sector and Essential Services, similarly as in *AuR*[154]. Strikes in essential services in terms of international law were also subject to an essay by Schlachter[155] with regard to Germany as well as by Baylos Grau[156] with regard to Castilla-La Mancha. In all these analyses the case-law of the ILO Committee of Experts (CEACR) on essential services played an important role. The Right to take Industrial Action and the ILO Supervisory Mechanism Future[157] and the International Developments Regarding the Implementation of the Right to Strike[158] were further important subjects. The background to the newly flared up disputes is the quarrel in the ILO over the guarantee of the right to strike under ILO Convention 87, which has been erupting for several years. Pursuant to Art. 37 of the ILO Constitution, the International Court of Justice in The Hague would have to give a final clarification of the matter, although it has not yet been called on[159].

Strikes in civil aviation and at airports, especially in Germany, have led to a couple of court rulings critically monitored from a scholarly or practical point of view. The background to this is that previously uniformly managed public services have become privatized and decentralized. The results are new organizational forms and disputes, such as strikes only by pilots, cabin crews or air traffic controllers. This has created completely new confrontations. The topics were: Compensations for third party companies' damages caused by strikes[160]. Trade union liability for damage amounting to millions[161], Current aspects of procedural law concerning industrial action's interim legal protection[162], Judicial findings concerning the genuine objectives of a strike and the scrambled eggs theory[163]. The so called scrambled eggs theory argues that a spoiled egg spoils a whole scrambled egg. This impressive, but certainly oversimplistic parable is the basis for the doctrine according to which a trade union claim that a court assesses as unlawful should have the effect to illegalize a whole labour dispute, even though the union has brought along a bundle of other absolutely legitimate demands. At least that was the view of the German Federal Labour Court, in clear contrast with the ECtHR judgment no. 36701/09, *Hrvatski Liječnički Sindikat (HLS) v. Croatia*. There the European Court has confirmed that a labour dispute in which the union had put forward an ordinary demand for salary increase in addition to two legally problematic claims was lawful.

153 T. Novitz, "The Restricted Freedom to Strike: "Far-Reaching" ILO Jurisprudence on the Public Sector and Essential Services", *CLL&PJ*, 2017, vol. 38, 3, p. 353.

154 T. Novitz, "Beamtenstreikrecht, Streik in der Daseinsvorsorge und das Recht auf politischen Streik – Teil 1", *AuR*, 8/9, p. 324; – *Teil 2*, *AuR*, 10, p. 376.

155 M. Schlachter, "Streiks in der Daseinsvorsorge aus völkerrechtlicher Sicht",*AuR*, 2017, 1, p. 10.

156 A. Baylos Grau, "Sindicato y crisis: conexiones y correspondencias", *DRL*, 2017, 2, p. 119.

157 J.M. Servais, "The Right to Take Industrial Action and the ILO Supervisory Mechanism Future", *CLL&PJ*, 2017, vol. 38, 3, p. 375.

158 N. Smit, "International Developments Regarding the Implementation of the Right to Strike", *CLL&PJ*, 2017, vol. 38, 3, p. 395.

159 C. La Hovary, "Article 37 of the ILO Constitution: An Unattainable Solution to the Issue of Interpretation?", *CLL&PJ*, 2017, vol. 38, 3, p. 337.

160 U. Wendeling-Schröder, "Schadensersatz drittbetroffener Unternehmen bei Streiks?", *AuR*, 2017, 3, p. 96.

161 W. Däubler, "Haftung der Gewerkschaft für Millionenschäden?", *AuR*, 2017, 6, p. 232.

162 R. Bram, "Aktuelle prozessrechtliche Fragen im einstweiligen Rechtsschutz von Arbeitskampfmaßnahmen", *AuR*, 2017, 6, p. 242.

163 A. Bücker, "Richterliche Erkenntnisse über wahre Streikziele und die Rühreitheorie", *AuR*, 2017, 8/9, p. 328.

RETROSPECTIVE OVERVIEW

List of journal abbreviations

Arbeit und Recht (Germany) = AUR
Australian Journal of Labour Law (Australia) = AJLL
Bulletin of Comparative Labour Relations (Belgium) = BCLR
Canadian Labour & Employment Law Journal (Canada) = CLELJ
Comparative Labor Law & Policy Journal (United States) = CLLPJ
Derecho de las Relaciones Laborales = DRL
Diritti Lavori Mercati (Italy) = DLM
Diritto delle Relazioni Industriali (Italy) = DRI
Employees & Employers: Labour Law & Social Security Review (Slovenia) = E&E
E-journal of International and Comparative Labour Studies (Italy) = E-JICLS
Europäische Zeitschrift für Arbeitsrecht (Germany) = EuZA
European Labour Law Journal (Belgium) = ELLJ
Giornale di Diritto del Lavoro e delle Relazioni Industriali (Italy) = DLRI
Industrial Law Journal (UK) = ILJ
International Journal of Comparative Labour Law & Industrial Relations (The Netherlands) = IJCLLIR
International Labour Review (ILO) = ILR
Japan Labor Review (Japan) = JLR
Lavoro e Diritto (Italy) = LD
Revista de Derecho Social (Spain) = RDS
Revue de Droit Comparé du Travail et de la Sécurité Sociale (France) = RDCTSS
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Pour toute correspondance ou proposition de contribution écrire à :

COMPTRASEC - UMR CNRS 5114 - Université de Bordeaux
16, avenue Léon Duguit - CS 50057 - F 33608 PESSAC cedex

E-mail : isabelle.daugareilh@u-bordeaux.fr
Téléphone : 33 (0)5 56 84 85 42 - Télécopie : 33 (0)5 56 84 85 12
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Michel Coutu, Gilles Auzero et Isabelle Daugareilh (Introduction), *Dominique Méda* (France), *Isabelle Ferreras* (Belgique), *Christoph Teichmann et Justin Monsenepwo* (Allemagne), *Bernard Johann Mulder* (Norvège), *Wolfgang Däubler* (Allemagne), *J.M.B. (Jan) Cremers* (Pays-Bas), *Julie Bourgault et Michel Coutu* (Canada), *Sylvain Niquège (France)* et *Gilles Auzero* (France).

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