

BOOK OF ABSTRACTS

8TH MEETING OF YOUNG RESEARCHERS
OF UNIVERSITY OF PORTO





**ENCONTRO INVESTIGAÇÃO JOVEM
DA UNIVERSIDADE DO PORTO**

CREDITS

LIVRO DE RESUMOS IJUP'14

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VICE-REITORIA PARA A I&D

T. 22 040 81 46

IJUP@REIT.UP.PT

DESIGN

CARLA FERREIRA

SERVIÇO DE COMUNICAÇÃO E IMAGEM

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A4 **LAW & CRIMINOLOGICAL
SCIENCES**
PARALLEL ORAL SESSIONS VII

The influences of public law on private law and the correlations of the corporate social responsibility vs. the human rights

Fábio da Silva Veiga¹

Historically, the debate about the existing confrontation between Public and Private Law dates back to the middle twentieth century, primarily to the decision of the Federal Constitutional Court of Germany (FCCG) on the *Lüth* case of 1958. Since then, the discussion has been gaining some space, even being considered the “full Constitutionalization of Law” (*Vergrundrechtlichung des gesamten Rechts*), on one hand, and celebrated as the full accomplishment of the fundamental rights (Alexy, 2009)[1], on the other.

With the conflict between these two legal spheres (Public and Private Law), the legal protection of the fundamental rights was extended beyond its subjectivist affirmation, where individual rights were only confronted with the State. However, from that moment on, fundamental rights are seen as a consequence of the formation of objective principles, both determiners of legislative measures and inspirers of the legal order. They meant, therefore, the application of Law to individuals and, furthermore, allowed for the interpretation of the precepts of the German Civil Code (BGB) in direct harmony with fundamental rights. The *Drittwirkung* (irradiation of precepts) was acknowledged. Fundamental rights got free from the unilateral orientation towards the governmental intervention of the time and became universally valid (Grimm, 2006)[2].

Therefore, one might raise the following question: “how would the entailment of private law be applied to fundamental rights?”. German author Canaris (2003) [3] provides us with some orientation: the fundamental rights stand immediately given the norms of private law (dominant opinion), and this perspective is adopted by the FCCG, which has been trialling with a strong control of proportionality and of prohibition of the excess in light of the norms of fundamental rights in confrontation with the norms of private law.

In fact, how can we think the confrontation between the norms of Public Law and the ones of Private Law within Corporate Social Responsibility (CSR) – which, eminently, are not controlled by the Judiciary? This question is currently debated from the perspective of the purpose of the CSR: the business ethics. On the other hand, human rights are consecrated on the international order and its application is unquestionable within companies. All companies must respect human rights of stakeholders. Hence, is there any entailment between the norms of Public Law (here, human rights) and the ones of CSR? This is the debate we intend to present at this conference.

References:

- [1] ALEXY, R. “Derechos Fundamentales y Estado Constitucional Democrático”, in: *Neoconstitucionalismo(s)*, Editorial Trotta, Madrid, 4.^a ed., 2009.
- [2] GRIMM, D. *Constitucionalismo y Derechos Fundamentales*, Editorial Trotta: Madrid, 2006.
- [3] CANARIS, C.W. *Direitos Fundamentais e Direito Privado*, trad. Ingo Wolfgang Sarlet & Paulo Mota Pinto, Almedina, Coimbra, 2003.

¹ Visiting researcher in Corporate Law at the Law School of University of Porto. Teacher Advisor: Paulo de Tarso Domingues. Research line: Corporate Governance, Director’s Duties and Human Rights; Master’s degree in Law by the University of Minho (Braga, Portugal); researcher of the CAPES Foundation, Ministry of Education, Brazil. This research was conducted under the master.