

REVIEWS AND ANNOTATIONS

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The new issue of Prague Law Faculty's open source electronic periodical offers a set of working papers on various topics. The following provides a general outline of their content. Their full versions can be downloaded free of charge from <http://www.prf.cuni.cz>

Aleš Borkovec devotes his paper to the issue of **Anti-Usury Doctrine and the Evolution of Agency**. Thomas Aquinas is generally known as an opponent of usury, which means any interest on a loan (i.e. any payment over the principal capital). The author argues that the main reason for the rejection of interest was the effort to protect people from financial problems (difficulties), their debts caused by loans, or *mutuum*, the Roman institute of law. The consequence of the anti-usury doctrine was the disappearance of *mutuum*, or at least the effort to eradicate it. Aquinas' doctrine thus was not only anti-usury, but anti-debt too. It is also argued that the effects of the anti-usury (and anti-debt) doctrines caused the rise of the institute of agency. The author's hypothesis is based both on theoretical considerations about the concordance of agency with the victory of anti-usury and anti-debt policies, as well as on historical facts proving the existence of agency in the period of application of anti-usury (and anti-debt) doctrine. In symbiosis with the development of agency, there were (regulated) markets as a tool to combat crime and create legal certainty for which the institute of agency was important, and markets were important for the proper function of agency.

Václav Šmejkal writes about **High Tech Monitoring versus Privacy in the Workplace (Analysis of the Law and Case Law of the Czech Republic)**. Modern technologies ask anew the old question about how employees can be checked during working hours so that legitimate interests of their employers are safeguarded. To strike the right balance between legitimate interests of employers and fundamental rights of employees to privacy even in the workplace is by no means easy, as the present text tries to demonstrate by summarizing and analysing the existing Czech approach to the issue. On the one hand, Czech law on the protection of privacy of employees in the workplace, as well as the authorities applying it, are principally in line with generally accepted European standards. On the other hand, however, this basic consensus on values and their substantive and procedural legal safeguards does not mean that Czech law currently answers all questions and leads employers safely outside the restricted zone of prohibited ways of employee monitoring. The focus of the text is thus directed at those provisions of legal acts, decisions of the highest courts, opinions of supervisory authorities and arguments of commentators that influence the way in which the aforementioned rights and interest are balanced in the current Czech legal practice.

Harald Christian Scheu and **Alice Aupetit** focus in the common paper on **The Positive Perception of Disability as a Human Rights Principle and the Reality of Prenatal Testing**. In their paper they deal with the Convention on the Rights of Persons with Disabilities which as a rather new and important human rights instrument has introduced some innovative elements into the system of international human rights protection. The CRPD is intended to give full effect to rights of disabled persons by including them into society and influencing their positive perception by society. However, the issue of prenatal screening and selective abortion shows that there is a rather sharp contrast between the Convention's new approach and social reality. In the last part of the article we focus on a judgment of the French Council of State which highlights some contradictions and paradoxes characterizing the protection of persons with disabilities.

Jan Exner contributed a paper titled **Fixed Sanction Framework in the World Anti-Doping Code: Can Hearing Panels Go Below the Limits in the Pursuit of Proportionate Sanctions?** He argues that hearing panels should have the flexibility to impose sanctions for anti-doping rule violations even

below the limits of the current World Anti-Doping Code (Code), if the sanction set by the Code would be disproportionately harsh and if the purpose of the Code could be fulfilled even by a shorter period of ineligibility. According to the author, hearing panels should consider all objective elements of the case as well as subjective elements of the athlete or other person while determining the sanction. While he considers the fixed sanction regime of the Code itself a proportionate and suitable response to the legitimate aim of the fight against doping, there inevitably were, are and will be cases where the “one size fits all” solution does not work. If such an exceptional gap *de lege lata* occurs, hearing panels should have the power to fill the gap and prevent disproportionate consequences caused by the rigid application of the fixed sanctions.

Veronika Vanišová titled her paper **Current Issues in International Commercial Mediation: Short Note on the Nature of Agreement Resulting from Mediation in the Light of the Singapore Convention**. The paper deals with the present debate in the context of the current mediation scene within the scope of international commerce. It would seem that nothing prevents mediation from taking the place of the most popular method of resolving international commercial disputes and therefore becoming a successor of arbitration. However, serious doubts exist whether mediation can serve as an adequate substitute for arbitration, in particular within the scope of international commerce. One of the most common complaints is that mediation lacks the international legislative framework, such as international arbitration may benefit from. This view is based on the claim, that parties to the cross-border commercial conflicts would find mediation more appealing if the settlements resulting from mediation were subject to legal regime providing for direct enforceability. The paper further discusses this issue with particular focus on the nature of agreement resulting from mediation in the light of the proposal of the new international legal instrument prepared by UNCITRAL Working Group II, i.e. the Singapore Convention.

Veronika Strážová writes about **The Never-Ending Challenge of Defining COMI (This Time Due to Groups of Companies)**. She claims that regulating cross-border insolvency legislation at the EU-level is an ungratifying task. Not only is European insolvency law one of the most trending and ever-changing fields of law nowadays, but it is also constantly challenged by the human creativity and evolution of business strategies. Just within the past two decades, EU cross-border insolvency law has, (i) witnessed the introduction of COMI (Centre of Main Interests) as the unique connecting factor determining both jurisdiction and governing law and (ii) gone through a major revision, taking into account EU case law and resulting in an adjustment of the definition of COMI. (iii), it substantially shifted the course of resolving insolvencies from mandatory liquidation to the preferred reorganizations (maintaining the debtor's going concern value) and finally (iv), included groups of companies under the scope of the EIR. The paper aims to analyse the latter - the long-anticipated inclusion of groups with emphasis on the current definition of COMI, as well as whether or not this works well together with the concept of group insolvencies.

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