

UDK: 352.075.51:342.8

Znanstveni članek

# Volitve in odpoklic župana

Blaž Milavec, Ciril Ribičič

## POVZETEK

**V**olitve župana so eno najpomembnejših dejanj v življenju lokalne skupnosti. Članek obravnava to področje, saj je župan eden najpomembnejših organov na ravni lokalne samouprave in je ustrezno pravno urejen tudi njegov položaj, njegove pristojnosti in tudi način izvolitve. Z ureditvijo lokalnih volitev in s tem tudi sistema volitev župana pri nas, zlasti še z neposredno izvoljivostjo, se je položaj, ki ga zaseda župan v sistemu organov lokalne samouprave, močno okrepil. Prav to od pravnega sistema zahteva občutljivost pri urejanju tega vprašanja, saj je pravo, tako v procesnem kot tudi materialnem smislu na tem področju bistveno za spoštovanje vseh načel in pravil demokratične in pravne države. Avtorja poudarjata nekatere problemske vidike in ponudita tudi rešitve oziroma vsaj razmislek o njih. Med temi je bistveno vprašanje kohabitacije, ko sočasno občini vlada večina v svetu, ki ima drugačno ali bolj nasprotno politično usmeritev kot župan. Neposrednost volitev ne vzpostavlja neposredne vezi med županom in občinskim svetom, kar pomeni, da ne vzpostavlja neposredne vezi med voljo večine v občinskem svetu in voljo, ki jo izraža župan. Poleg tega se odpirajo tudi nekatera druga vprašanja ustreznih mehanizmov za zagotovitev ustreznega delovanja občine, a tudi vzpostavitev sistema zavor in ravnovesij ter omejitev, kot je na primer omejitev večkratne zaporedne izvolitve in možnosti odpoklica župana.

Članek obravnava odpoklic župana kot koristno, vendar izjemno možnost zamenjave nosilca županske funkcije, ki je izgubil temeljno zaupanje volivcev. T. i. vstajniki so na demonstracijah zahtevali odstop mariborskega župana, novomeški Čuvar pa je zbral 30.000 podpisov za uvedbo odpoklica, ki naj kot Damoklejev meč opozarja župane na predvolilne obljube, ki so jih dali. Kar dvakrat je bil neuspešen zakonski predlog za uvedbo odpoklica. Temeljna pozornost je namenjena oblikovanju predloga konstruktivnega odpoklica župana, ki poskuša pri oblikovanju načina odpoklica upoštevati načeli racionalnosti in ekonomičnosti in zato predlaga referendum o zamenjavi župana, na

katerem se spopadata aktualni župan in izzivalec. Tako bi po vzoru ameriškega *recall* in konstruktivne nezaupnice predsednika vlade po Ustavi RS zamenjavo opravili z enim samim glasovanjem in tako preprečili, da bi med odpoklicem župana in izvolitvijo novega nastala daljša časovna praznina.

*Ključne besede:* lokalna samouprava, občina, organi občine, župan, lokalne volitve, volitve župana, odpoklic župana, konstruktivna nezaupnica, reprezentativni mandat, test sorazmernosti, omejitev ponovne izvolitve.

UDC: 352.075.51:342.8

Scientific Article

# Election and Recall of the Mayor

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## ABSTRACT

The election of a mayor is one of the most important acts in the life of a local community. In this article, the authors highlight the concerned legal area because the role of the mayor is the most important at local government level and consequently his or her position, responsibilities and the way he or she is elected are appropriately and legally regulated. With the regulation of local elections, the election of the mayor in the Republic of Slovenia, especially his or her direct election and the position he or she occupies in the system of local government bodies was strengthened. It requires the sensitivity of the legal system in regulating the issue, because the law regarding procedural as well as substantial terms in this field is crucial in respecting all the principles and rules of a democratic state and the rule of law. In the article, the authors seek to highlight certain aspects of the problem and propose specific solutions, or at least encourage consideration about them. One of the key issues is the cohabitation, when at the same time the municipality is ruled by the majority in the council with a different political orientation than the mayor, or even represent an opposite political direction. The directness of the elections does not establish a direct link between the mayor and the municipal council, which means that it does not establish a direct link between the will of the majority in the municipal council and the will expressed by the mayor. In addition, some other issues of appropriate mechanisms to ensure the proper functioning of the municipality appear as well, such as establishing the system of checks, balances, and restrictions, for example restricting of re-election and the possibility of recalling the mayor.

The article considers the recall of the mayor as a useful, but extraordinary possibility of replacing of the mayor, which lost the fundamental confidence of the electorate. Dissatisfied residents of the municipality demanded the resignation of the mayor of Maribor at the demonstrations, while the Novo mesto Guardian collected 30,000 signatures for the introduction of a recall, which, as

“the Sword of Damocles”, warns the mayors of the pre-election promises they made. Twice, the unsuccessful legal proposal for the introduction of a recall was unsuccessful. The main attention is paid to the creation of a proposal for a constructive non-confidence of the mayor, which is trying to take into account the principles of rationality in the design of the method of recall, and therefore proposes a referendum on the replacement of the mayor, in which the current mayor and challenger are faced. In this way, following the example of the US “recall” and the constructive non-confidence of the Prime Minister under the Constitution of the Republic of Slovenia, the replacement would be carried out with a single vote, thus preventing a longer gaps in time between the recall of the mayor and the election of a new one.

*Key words:* local self-government, municipality, municipality bodies, mayor, local election, mayoral election, recall of the mayor, constructive non-confidence, representative mandate, test of proportionality, restricting the re-election.

UDK: 331.2:349.2/.3:005.955

Znanstveni članek

# Skladnost navodila ZZZS za izvajanje desetega odstavka 137. člena ZDR-1 z legalitetnim načelom

Špela Lovšin

## POVZETEK

**P**rispevek obravnava interni akt, ki ga je na podlagi Zakona o delovnih razmerjih (ZDR-1) izdal Zavod za zdravstveno zavarovanje Slovenije (ZZZS) kot nosilec javnega pooblastila, ki ureja postopek uveljavljanja delavčeve pravice do neposrednega izplačila nadomestila plače s strani ZZZS, če izplačila ne opravi delodajalec. Avtorica ugotavlja, ali je v konkretnem primeru prišlo do zlorabe internega akta in opravi preizkus skladnosti njegove vsebine z legalitetnim načelom, prav tako pa predstavi možnosti sodnega varstva, ki so na voljo delavcu.

*Ključne besede:* interni akt, zloraba, legalitetno načelo, nadomestilo plače.

UDC: 331.2:349.2/.3:005.955

Scientific Article

# Internal Act by the Health Insurance Institute of Slovenia for the Implementation of Article 137(10) of the Slovenian Labour Relations Act and Its Conformity with the Principle of Legality

Špela Lovšin

## SYNOPSIS

The article deals with an internal act, issued on the basis of the Labour Relations Act (ZDR-1) by the Health Insurance Institute of Slovenia (HIIS) as a holder of a public authorisation and which regulates the procedure of obtaining the salary's compensation pay-out directly from the HIIS in case of non-payment from the employer. The author discusses whether this is a situation of misuse of the internal act and performs the test of the act's conformity with the principle of legality. Furthermore, the author introduces the options of judicial protection that are at the worker's disposal.

*Key words:* internal acts, misuse, principle of legality, salary's compensation.

UDK: 349.44:336.22(497.4)

Znanstveni članek

# Pravna narava javnih dajatev v novi prostorski zakonodaji s poudarkom na taksi za neizkoriščena stavbna zemljišča

Jernej Podlipnik

## POVZETEK

**A**vtor obravnava pravno naravo javnih dajatev v novi prostorski zakonodaji Republike Slovenije, ki se je začela uporabljati 1. junija 2018, in sicer komunalni prispevek, takso za obravnavanje zasebnih pobud za spremembo namenske rabe prostora v občinskih prostorskih načrtih, takso za neizkoriščena stavbna zemljišča in nadomestilo za degradacijo in uzurpacijo prostora. Pri tem ugotavlja, da pravna narava javnih dajatev ne ustreza vselej njihovem poimenovanju. Članek vsebuje tudi podrobnejšo analizo takse za neizkoriščena stavbna zemljišča, ki je nova javna dajatev. Po avtorjevem prepričanju po pravni naravi ne gre za takso, ampak davek na premoženje, katerega glavni namen ni finančni (pridobivanje namenskih sredstev financiranja), temveč doseči, da se na zemljiščih, ki so pripravljena za gradnjo, tudi dejansko gradi.

*Ključne besede:* javne dajatve, davek, taksa, prispevek, komunalni prispevek, nadomestilo.

UDC: 349.44:336.22(497.4)

*Scientific Article*

# The Legal Nature of Public Levies in the New Spatial Legislation with a Special Emphasis on the Fee for Unused Building Land

Jernej Podlipnik

## ABSTRACT

The author discusses the legal nature of public levies in the new spatial legislation of the Republic of Slovenia introduced on 1 June 2018. These levies are: community infrastructure levy, fee for dealing with private initiatives for the change of dedicated land use in municipal spatial plans, fee for unused building land, and compensation for degradation and usurpation of space. The author establishes that the legal nature of the mentioned public levies is not always in accordance with their naming. A detailed analysis of the new fee for unused building land is included. The author believes that this public levy is actually a property tax by its legal nature and not a fee. The main purpose of this tax is not to acquire financial resources but to achieve actual construction on building land.

*Key words:* public levies, tax, fee, contribution, community infrastructure levy, compensation.



UDK: 347.918:346(497.4)

Znanstveni članek

# Arbitrabilnost koncesijskih sporov – analiza arbitražne prakse Stalne arbitraže pri GZS in slovenske sodne prakse

Marko Djinović, Peter Rižnik

## POVZETEK

Prispevek obravnava pojem in meje arbitrabilnosti v Republiki Sloveniji na splošno, posebej pa arbitrabilnost koncesijskih sporov v luči sporne avtentične razlage 40. člena Zakona o gospodarskih javnih službah (ZGJS), ki je bila sprejeta leta 2011 in je vnesla nemalo zmede predvsem na strani oseb javnega prava (koncedentov) kot strank arbitražnih postopkov ter prestrašila potencialne domače in tuje investitorje (koncesionarje). Prispevek proučuje ozadje sprejema avtentične razlage 40. člena ZGJS in razloge za njeno pravno neučinkovitost v praksi. Dodana vrednost prispevka je analiza arbitražne prakse Stalne arbitraže pri Gospodarski zbornici Slovenije in slovenske sodne prakse, ki sta se v zadnjih petih letih izoblikovali v zvezi s sporno avtentično razlago. Analizirana arbitražna in sodna praksa, vključno s prelomno odločitvijo Vrhovnega sodišča RS Cpg 2/2014 z dne 17. junija 2014 enotno priznava arbitrabilnost koncesijskih sporov v Republiki Sloveniji.

*Ključne besede:* Arbitraža; arbitrabilnost; koncesijska pogodba; koncesijski spori; avtentična razlaga zakona; gospodarske javne službe, ZGJS, Stalna arbitraža pri GZS.

UDC: 347.918:346(497.4)

Scientific Article

# Arbitrability of Concession Disputes – Digest of the case law of the Ljubljana Arbitration Centre and the Slovenian courts

Marko Djinović, Peter Rižnik

## SYNOPSIS

The article deals with the definition of and limitations to arbitrability in the Republic of Slovenia in general, and limitations to arbitrability of concession disputes in particular, focusing on the contested authentic interpretation of Article 40 of the Services of General Economic Interest Act (ZGJS). The interpretation was adopted by the Slovenian Parliament in 2011 and caused significant confusion, particularly to public law bodies (grantors of concession) as parties to arbitration proceedings, as well as dissuaded potential domestic and foreign investors (concessionaires). This article examines the reasons behind the authentic interpretation and its lack of legal effect. The added value of the article lies in the analysis of the case law of tribunals at the Ljubljana Arbitration Centre (LAC) as well as the Slovenian judiciary, established since the adoption of the authentic interpretation in 2011 concerning the contested authentic interpretation. All of the case law, including that of the Supreme Court (No. Cpg 2/2014 of 17 June 2014), recognizes the arbitrability of concession disputes in a uniform manner.

*Key words:* Arbitration; Arbitrability; Concession contract, Concession Dispute; Authentic Interpretation; Services of General Economic Interest Act; ZGJS; Ljubljana Arbitration Centre.

UDK: 351:349.2(497.4)  
331.101.264.24:349.2  
Znanstveni članek

# Vzpostavitev kompetenčnega modela

## Študija primera

Urša Grm, Andrej Kohont, Janez Stare

### POVZETEK

Na pobudo institucij Evropske unije države članice nadgrajujejo procese kadrovanja, uvajajo sistem kompetenc in informatizacijo procesov. Ministrstvo za javno upravo je aprila 2015 sprejelo strategijo razvoja slovenske javne uprave, ki vključuje tudi izboljšave na področju upravljanja človeških virov. S tem namenom od tedaj za uslužbence državne uprave poteka projekt Vzpostavitev kompetenčnega modela. Vsebinska in metodološka merila v fazi snovanja projekta še niso bila dokončno določena, zato je bil namen študije primera z izvedbo raziskave preveriti ustreznost predvidenih meril v praksi, vzpostaviti metodologijo, ustrezno za vzpostavitev kompetenčnega modela tudi na osnovni množici ter opredeliti merilo za oblikovanje vrst dela in kompetenčnih profilov za posamezna delovna mesta.

*Ključne besede:* kompetence, kompetenčni model, javna uprava, razvoj slovenske javne uprave.

UDC: 351:349.2(497.4)

331.101.264.24:349.2

Scientific Article

# Setting up a Competency Model. A Case Study

Urša Grm, Andrej Kohont, Janez Stare

## ABSTRACT

Upon the European Union's initiative, the Member States are developing the field of human resource management, implementing the concept of competence and informatization of the processes. The development of the public administration of Slovenia was brought into force by the Ministry of Public Administration in April 2015. The list of fields to be developed includes human resource management. For this purpose, the Ministry has launched its Building a Competency Model project for public employees. Various substantive and methodological criteria had not yet been specified, thus the aim of the case study was to test them out in practice, to develop a methodology to build a competency model, and criteria to form competency profiles for the posts in the various governmental departments.

*Key words:* competence, competency model, public administration, Slovenian public administration development.

UDK: 349.44:351.778.511

Strokovni članek

# Legalizacije po Gradbenem zakonu

Aleksandra Velkovich

## POVZETEK

**N**ovi Gradbeni zakon (GZ) ki se je začel uporabljati 1. junija 2018, omogoča legalizacije objektov, zgrajenih pred novembrom 2017. Legalizacije so predpisane v 113. do 118. členu GZ in ne bodo potekale po uradni dolžnosti, ampak bo moral lastnik na pristojni upravni organ za gradbeno področje vložiti zahtevo in predpisano dokumentacijo ter plačati prispevke. Predpisani postopki se razlikujejo za objekte, zgrajene pred leti 1968, 1991 in 1998 ter pred novembrom 2017. Omogočene bodo tudi uporabe objektov, ki so bili v preteklosti zgrajeni z manjšimi odstopanji od gradbenega dovoljenja.

*Ključne besede:* Gradbeni zakon, gradbeno dovoljenje, uporabno dovoljenje, upravna odločba, legalizacija, legalizacija gradnje.

UDC: 349.44:351.778.511

*Professional Article*

# Legalisations According to the Slovenian Building Act

Aleksandra Velkoverh

## SYNOPSIS

The new Slovenian Building Act (*Gradbeni zakon* – GZ) which started to apply on 1 June 2018 allows for the legalisation of buildings built before November 2017. Legalisation is prescribed in Articles 113 to 118 of the GZ and will not take place *ex officio*, but the owner will have to submit the request to the administrative body competent for the construction and provide the prescribed documentation and pay the levies. The prescribed procedures differ for objects built before 1968, 1991, 1998, and before November 2017. The use of buildings that were built in the past with minor deviations from the construction permit will also be enabled.

*Key words: Slovenian Building Act, construction permit, operating permit, administrative decision, legalisation, legalisation of construction.*