

UDK: 368:347(497.4)
Izvirni znanstveni članek

Uresničevanje načela kontradiktornosti v postopku odločanja o izdaji in o odvzemu dovoljenja za pridobitev kvalificiranega deleža v zavarovalnici

Bruna Žuber

POVZETEK

Ena od nalog Agencije za zavarovalni nadzor je odločanje o izdaji in o odvzemu dovoljenja za pridobitev kvalificiranega deleža v zavarovalnici, katere cilj je nadzorovati upravljanje zavarovalnice. Učinki odločb Agencije za zavarovalni nadzor nikakor niso le pravni, temveč tudi ekonomski. Nezakonita odločba Agencije za zavarovalni nadzor glede kvalificiranih deležev zato lahko povzroči težko popravljive škodljive posledice gospodarskim družbam, ki so ali bi želele postati kvalificirani imetniki. Vse to ter dodatno še dejstvo, da je sodni nadzor nad odločbami Agencije za zavarovalni nadzor omejen, kaže na to, da mora Agencija za zavarovalni nadzor v postopkih odločanja o izdaji oziroma o odvzemu dovoljenja za pridobitev kvalificiranega deleža ravnati procesno posebej skrbno in v tem okviru skrbeti tudi za vsestransko uresničevanje pravice do izjave.

Ključne besede: uresničevanje načela kontradiktornosti, pravica do izjave, kvalificiran delež v zavarovalnici, posebni upravni postopek, pravica do obrazložitve

UDC: 368:347(497.4)
Original Scientific Article

Implementation of Adversarial Principle in the Procedure of Deciding on Issuing and on Withdrawal of the Authorization for Acquiring Qualifying Holding in an Insurance Undertaking

Bruna Žuber

SYNOPSIS

One of the tasks of Insurance Supervision Agency, which aims to control corporate governance of insurance undertakings, is to decide on issuing and on withdrawal of the authorization for acquiring qualifying holding in an insurance undertaking. The effects of the Agency's decision are not limited only to legal implications but also to economic. Therefore, unlawful decision of the Insurance Supervision Agency regarding qualifying holding in an insurance undertaking may cause a difficult to repair damage for companies that are or intend to become qualified holders. All of the above and underlying the fact that the judicial review of decisions of the Insurance Supervision Agency is limited, indicates that the Insurance Supervision Agency in procedures regarding issuing or withdrawing the authorization for acquiring qualifying holding in an insurance undertaking is expected to act diligent from the procedural point of view and in this context to implement the right to be heard in all its dimensions.

Key words: implementation of adversarial principle, right to be heard, qualifying holding in an insurance undertaking, special administrative procedure, right to reasons for the decision

UDK: 336.22
Znanstveni članek

Dokazovanje v davčnih zadevah – razvoj teorije in sodne prakse

Jernej Podlipnik

POVZETEK

V davčnih zadevah je odgovornost za pravilno ugotovitev dejstev porazdeljena med davčno upravo in zavezanca. Da bi izpolnil svoj del odgovornosti, so zavezancu naložene številne obveznosti, denimo vodenje dokumentacije, izdaja računov, vlaganje obračunov in napovedi ipd. Če zavezanec izpolni naložene obveznosti, mora davčna uprava onkraj razumnega dvoma dokazati, da zavezančev obračun ali napoved izkazuje prenizke prihodke, promet ipd. Če pa davčna uprava onkraj razumnega dvoma dokaže, da je zavezanec kršil svoje dolžnosti, je upravičena oceniti davčno osnovo s stopnjo verjetnosti, zavezanec pa lahko nato dokaže, da je bila ta napačno ocenjena (obrnjeno dokazno breme). Gre za koncept, ki omogoča ustrezno ravnatežje med davčnim organom in zavezancem na področju dokazovanja. Toda ta koncept podre ureditev davka od nenapovedanih dohodkov, pri katerem se dokazno breme prevali na zavezanca že, ko davčna uprava zgolj domneva, da bi zavezanec lahko ne prijavil dohodkov v preteklih letih. V teh primerih se zavezanci pogosto znajdejo v dokazni stiski in v postopku ne uspejo zgolj zato, ker svojih trditev ne morejo dokazati in davčni organ odloča zgolj po dokaznem bremenu. Čeprav je torej slovensko Vrhovno sodišče v zadnjih letih na področju dokazovanja v davčnih zadevah naredilo velik korak k zagotovitvi ustavnih dokaznih standardov, se zdi, da se razvoj sodne prakse na dokaznem področju še ni ustavil.

Ključne besede: davek, davčni postopek, dokazovanje, pravica do dokaza, dokazni elementi, davek od neprijavljenih dohodkov, cenitev davčne osnove

UDC: 336.22
Scientific Article

Proving Facts in Tax Matters – A Development of Legal Theory and Case-Law

Jernej Podlipnik

SYNOPSIS

The responsibility for correctness of fact finding in tax matters lies both on the tax administration and on taxpayers. To fulfil his or her responsibility many obligations are imposed on the taxpayer, such as keeping the books, issuing the invoices, submitting tax returns etc. If the taxpayer complies with his or her responsibilities, tax authority must prove beyond reasonable doubt that taxpayer's returns are incorrect and that he or she should have stated higher revenues, turnover etc., but when it is demonstrated without reasonable doubt that he or she does not, tax authority is entitled to estimate the probable tax base, and the taxpayer can prove that the tax base was wrongly estimated (reversed burden of proof). This concept enables an appropriate balance between tax authority and taxpayer when dealing with proving. But this balance is diminished in the so called tax on unreported income where the reversal of tax burden happens although it is only presumed that the taxpayer has perhaps not reported all of his or her income in recent years. In these cases, taxpayers often find themselves in evidence distress and they lose the case just because they are unable to prove their statements (the tax authority decides on the basis of the burden of proof). So although in recent years the Slovenian Supreme Court has done a lot to provide constitutional proving standards in the tax law cases, it is likely that the evolution of jurisprudence has not been finished.

Key words: tax, tax procedure, proving, the right to evidence, evidence elements, the tax on unreported income, estimation of tax base

UDK: 351:340.113=131.1
351:323.1(497.4)
Izvirni znanstveni članek

Uporaba jezika italijanske narodne skupnosti v javni upravi

Tadeja Pirnat Battelli

POVZETEK

Avtohtoni italijanski narodni skupnosti je v Republiki Sloveniji zagotovljeno uveljavljanje vseh pravic iz Ustave RS in mednarodnih pogodb tako, kot je to določeno v Temeljni ustavni listini o samostojnosti in neodvisnosti Republike Slovenije k Ustavi RS. V slovenskem pravnem redu je varstvo italijanske narodne skupnosti urejeno predvsem s področnimi zakoni (Zakon o javni rabi slovenščine, Zakon o državni upravi, Zakon o splošnem upravnem postopku itd.). Prispevek obravnava način uporabe italijanskega jezika pred državnimi organi, organiziranosti italijanske narodne skupnosti v RS, dejansko stanje poslovanja uradnih organov v jeziku italijanske narodne skupnosti in težave, s katerimi se ta sooča pri ohranjanju narodne identitete. Bistven namen prispevka je prikazati prepogoste posege Ustavnega sodišča in inšpekcijskega nadzora za potrebe spoštovanja ustavnopravnih pravic in neurejeno dvojezično poslovanje upravnih organov na območjih občin, v katerih prebivajo pripadniki italijanske narodne skupnosti. Pripadniki italijanske skupnosti se kljub dobremu zakonskemu varstvu za ohranjanje narodne identitete in procesne garancije v upravnem postopku soočajo z veliko težavami.

Ključne besede: italijanski jezik kot uradni jezik v javni upravi, ohranjanje narodne identitete, 223. člen Uredbe o upravnem poslovanju, Ustavno sodišče, nadzor upravne inšpekcije

UDC: 351:340.113=131.1

351:323.1(497.4)

Original Scientific Article

Utilization of Italian National Community's Language in the Public Administration

Tadeja Pirnat Battelli

SYNOPSIS

Autochthonous Italian National Community in the Republic of Slovenia (hereinafter referred to as RS) is guaranteed all rights under the Constitution RS and international treaties as provided for in the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia. Under the Slovenian legal and regulatory framework, the protection of the Italian National Community is covered mainly by sectoral laws (i.e. Law on Public Usage of Slovenian Language, State Administration law, The Law on Administrative Procedure etc.) and one Regulation on administrative procedures. The article addresses the usage of Italian language before public authorities, particularly the actual activity of administration offices, the organization of the Italian National Minority in Slovenia and the adversaries confronted when preserving national identity. The key purpose of this paper is to prove the need to repeatedly involve the Constitutional Court of the Republic of Slovenia to interpret the Constitution and the Public Sector Inspectorate – a body under the responsibility of the Ministry of Public Administration of the Republic of Slovenia; and low usage of the Italian language before the administrative bodies due to poor knowledge and/or complete lack of Italian documentation needed for administrative procedures. It seems that the Italian National Community members in spite of a sound regulatory framework, in preserving national identity, have to encounter numerous difficulties in order to ensure a treatment by the public authorities in accordance with the rule of law.

Key words: Italian language an official language in public administration, preserving national identity, Article 223 of Regulation on administrative procedures, the Constitutional Court, Public Sector Inspectorate

CDU: 351:340.113=131.1

351:323.1(497.4)

Pubblicazione scientifica originale

L'uso della lingua italiana nella pubblica amministrazione

Tadeja Pirnat Battelli

SOMMARIO

La Comunità Nazionale Italiana Autoctona della Repubblica di Slovenia (di seguito RS) vede riconosciuti i suoi diritti dalla Costituzione RS e dai Trattati internazionali, come previsto dalla Carta Costituzionale Fondamentale sull'Autonomia e sull'Indipendenza della Repubblica di Slovenia. Nell'ordinamento giuridico sloveno i diritti della Comunità Nazionale Italiana Autoctona sono tutelati principalmente da leggi settoriali (c.d. Legge sull'uso pubblico della lingua slovena, Codice amministrativo, Codice di procedura amministrativa, ecc.) e dal Regolamento sulla procedura amministrativa. L'articolo si sofferma sull'uso effettivo della lingua italiana presso le Autorità pubbliche, in particolare sull'effettiva attività degli uffici amministrativi sloveni nei confronti della minoranza italiana, sull'organizzazione della minoranza italiana in Slovenia e sulle numerose difficoltà, soprattutto di natura politica, che la minoranza stessa affronta nel preservare la propria identità nazionale. Lo scopo principale dell'articolo è di comprovare la continua necessità di doversi rivolgere alla Corte Costituzionale RS per l'interpretazione delle leggi fondamentali del diritto pubblico e della Costituzione nonché la continua necessità di coinvolgere il c.d. Ispettorato del Settore Pubblico – organo istituito presso il Ministero della Pubblica Amministrazione. Inoltre, si dimostra un limitato utilizzo della lingua italiana dinanzi gli organi amministrativi a causa della scarsa conoscenza e/o totale mancanza di documentazione italiana necessaria per le procedure amministrative. Sembra che i membri della Comunità Nazionale Italiana Autoctona, sebbene tutelati da un solido quadro normativo, debbano affrontare numerose difficoltà, nel preservare la loro identità, per veder garantito un trattamento conforme alla legge da parte delle Autorità pubbliche slovene.

Parole chiave: Lingua italiana, una lingua ufficiale dinanzi le autorità pubbliche, preservare l'identità nazionale, articolo 223 del Regolamento sulla procedura amministrativa, Corte Costituzionale, Ispettorato del settore pubblico presso il Ministero della Pubblica Amministrazione.

UDK: 342.9:347.92:061.1EU

349.9:351.95

Znanstveni članek

Smernice evropeizacije upravnega procesnega prava

Polonca Kovač

POVZETEK

Evropeizacija javne uprave in upravnih procesov je nenehno odvijajoč se pojav, ki temelji zlasti na harmonizaciji in izvrševanju temeljnih načel upravnega prava prek Sveta Evrope in Evropske unije. V tem prispevku je podana analiza splošnih evropskih upravnih načel v kontekstu doktrine dobre uprave kot vrednostnega okvirja evropeizacije na področju varstva javnega interesa in pravic strank v upravnih zadevah na nacionalni ravni. Analizirani so pogloblitni dejavniki, viri in posledično smernice evropeizacije. Slednje so redefinicija ciljev upravnega postopka in razširitev njegovega dometa z bolj holističnim in abstraktnim kodificiranjem. Nadalje je poudarjen pomen bolj odprtega in participativnega reševanja sporov v upravnih razmerjih. Avtorica zaključuje, da naj bo evropeizacija kot stalen konvergenčni proces, čeprav so nekateri njeni viri formalno nezavezujoči, za Slovenijo vodilo sprememb upravnega procesnega prava in potencial, da bomo proaktivno sooblikovali evropski upravni prostor.

Ključne besede: upravno procesno pravo, evropeizacija, temeljna načela, smernice razvoja

UDC: 342.9:347.92:061.1EU

349.9:351.95

Scientific Article

Trends of Europeanisation of Administrative Procedure Law

Polonca Kovač

SYNOPSIS

The Europeanisation of public administration and administrative processes is a continuous phenomenon, driven by the harmonisation in regulation and implementation of fundamental administrative law principles as developed by the Council of Europe and EU. The article provides an analysis of general European administrative principles within the context of the good administration doctrine as a value-based framework of Europeanisation in the field of protection of public interest and the rights of the parties in administrative matters at the national level. It presents the main guidelines, sources and consequent trends of Europeanisation, such as redefinition and extension of the *ratio* of administrative procedures, the various approaches to codification. It is emphasised that administrative affairs should be resolved in a more transparent and participative way. The author concludes that Europeanisation, as a continuous convergence process, should be seen as a – albeit formally non-binding – framework and potential also in Slovenia, thus enabling a pro-active co-shaping of the European Administrative Space.

Key words: administrative procedure law, Europeanisation, fundamental principles, trends

UDK: 352:711.4
334.72:347.2(497.4)
Strokovni članek

Izvedba urbanih projektov po modelu javno-zasebnega partnerstva v Sloveniji: pogledi občin in investitorjev

Sabina Mujkić, Matej Nikšič

POVZETEK

Članek obravnava rezultate prve faze enoletnega raziskovalnega projekta Analiza možnosti za izvajanje urbanih projektov z uporabo javno zasebnega partnerstva. Predstavi ključne rezultate intervjujev z lokalnimi oblastmi na eni in investitorji na drugi strani, katerih namen je bil preveriti obstoječo prakso na področju javno-zasebnega partnerstva (JZP) v Sloveniji. Avtorja identificirata motivacije in prednosti pri uporabi mehanizma JZP v mestnih občinah ter tveganja in splošne ovire pri izvajanju urbanih projektov po modelu JZP v Sloveniji. Hkrati predstavita poglede javnega in zasebnega partnerja na projekte JZP in načine za premagovanja ovir. Na osnovi pregleda primerov prakse in opravljenih intervjujev s predstavniki mestnih občin ter investitorjev se kaže, da načelni interes za izvajanje urbanih projektov po mehanizmu JZP v Sloveniji obstaja, hkrati pa uporaba tega mehanizma ni splošno razširjena oziroma se uporablja le za izvajanje manjših urbanih projektov. Kot najpogostejši tipi izvedenih urbanih projektov ali projektov v izvajanju z JZP v Sloveniji se pojavljajo naslednje vrste projektov: energetska prenova objektov v javni lasti, izvajanje mestnih infrastrukturnih projektov, gradnja oskrbovanih stanovanj ter gradnja objektov za vzgojo in izobraževanje. Ob pregledu razmer na tem področju avtorja opozarjata tudi na nekaj odprtih vprašanj in dilem, ki se pojavljajo pri finančnem izvajanju projektov JZP na občinski ravni.

Ključne besede: javno-zasebno partnerstvo, urbani projekti, javna korist, tveganja, lokalne oblasti, občine, investicije, investitorji

UDC: 352:711.4
334.72:347.2(497.4)
Professional Article

Implementation of Urban Projects According to the Model of Public-Private Partnership in Slovenia: The Municipalities' and investors' Perspectives

Sabina Mujkić, Matej Nikšič

SYNOPSIS

The article analyzes the results of the first phase of a one-year research project Analysis of the Options For Implementing of Urban Projects Using Public-Private Partnership. It presents the key results of interviews with local authorities on one hand and investors on the other. The interviews' aim was to verify the existing practices in the field of Public-Private Partnerships (PPP) in Slovenia. The authors identify the motivations for and benefits of using the PPP mechanism in urban municipalities, and the risks and general obstacles to the implementation of urban projects according to the PPP model in Slovenia. They outline the public and private partners' perspectives on PPP projects and the approaches for overcoming the obstacles. The review of existing practices and interviews conducted with the representatives of Slovenian city municipalities and investors demonstrates the existence of a general interest in the implementation of urban projects using the PPP mechanism in Slovenia. However, the mechanism has not been adopted widely, but it is used only for the implementation of smaller urban projects. The most common types of executed urban projects or projects in the process of implementation of PPP in Slovenia are: energy renovation of publicly owned facilities, implementation of urban infrastructure projects, construction of sheltered housing, and the construction of facilities for education. In reviewing the situation in the field, the authors also emphasize some outstanding issues and dilemmas that arise in the financial implementation of the PPP projects at the municipal level.

Key words: public-privat partnership, urban projects, public benefit, risks, local authorities, municipalities, investment, investors

UDK: 351.82:338.465

Strokovni članek

Ureditev lokalnih gospodarskih javnih služb in njihovo financiranje

Irena Prodan

POVZETEK

Zakon o gospodarskih javnih službah (ZGJS) opredeljuje način in oblike izvajanja gospodarskih javnih služb ter njihovo financiranje. V 1. členu določa, da so gospodarske javne službe namenjene zagotavljanju materialnih javnih dobrin, katerih trajno in nemoteno izvajanje v javnem interesu zagotavlja Republika Slovenija oziroma občina ali druga lokalna skupnost zaradi zadovoljevanja javnih potreb, kadar in kolikor jih ni mogoče zagotavljati na trgu.

Ključne besede: gospodarske javne službe, lokalne gospodarske javne službe, obvezne gospodarske javne službe, izbirne gospodarske javne službe, financiranje

UDC: 351.82:338.465

Professional article

Regulation of Utilities and Their Financing

Irena Prodan

SYNOPSIS

Slovenian Public Utilities Act sets out the manner and form of provision of public services and their financing. In Article 1 the Act provides that utilities intended to provide substantive public goods, whose continuous and uninterrupted production is in the public interest, are ensured by the Republic of Slovenia or a municipality or other local authority in order to meet public needs when and so far they cannot be guaranteed by the market.

Key words: utilities, local utilities, mandatory utilities, optional utilities, financing