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Znanstveni članek

O »protivečinskem problemu« ustavnega sodišča

Andraž Teršek

POVZETEK

Vprašanje »protivečinskega problema« ustavnega sodišča se v ameriškem ustavnem pravu zgodovinsko naslavlja kot legitimno. Tudi v evropskem prostoru mu ne smemo odrekati legitimnosti kot take. Je pa znatno manj prisoten in stvarno utemeljen. Ustavno sodišče ima jasno začrtan ustavni in zakonski okvir delovanja. Sodnike in sodnice izvoli parlament, v katerem ima vlada večino, z nujnim sodelovanjem dela opozicije, kar pomeni s pravno določeno dvetretjinsko večino. Manevrski prostor za odločanje je zaradi obsežne in vsebinsko podrobnejše ustave, kot je tista v ZDA, znatno manjši. Tak pa je tudi zaradi narave političnega in volilnega sistema: tam dvostrankarski in večinski volilni sistem, tudi strankarsko številnejši, s proporcionalnim volilnim sistemom. Že samo teoretično ustavniško razumevanje ustavne demokracije (kot res demokracije, ne republike) v Evropi zmanjšuje ta problem, še bolj pa ga zmanjšuje model temeljske ustavne demokracije. Ta problem je zato pri nas zanemarljiv.

Ključne besede: ustavno sodišče, protivečinski problem, ustavna demokracija, legitimnost ustavnega sodstva.

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Scientific Article

On “Countermajoritarian Problem” of the Constitutional Court

Andraž Teršek

SYNOPSIS

In the U.S. constitutional law, the issue of the “countermajoritarian problem” of the constitutional court is historically addressed as legitimate. Even in Europe, its legitimacy as such should be acknowledged. The problem is, however, much less present and justified. The Constitutional Court’s constitutional and legal framework is clearly defined. The Justices are elected by the parliament in which the government holds a majority, necessarily co-operating with the opposition, which means a legally prescribed two-thirds majority. The manoeuvring space for decision-making is considerably tighter due to the more extensive and substantially more detailed constitution than the U.S. Constitution. This is also due to the nature of the political and electoral system. Namely, the U.S. has a two-party and majority electoral system. The only theoretical constitutionalistic understanding of constitutional democracy in Europe reduces this problem and is further reduced by the model of fundamental constitutional democracy. In Slovenia, this problem is, therefore, negligible.

Key words: constitutional court, countermajoritarian problem, constitutional democracy, legitimacy of constitutional judiciary.

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Znanstveni članek

Vzpon avtoritarnih režimov v Srednji in Vzhodni Evropi ter vloga Evropske skupnosti pri varstvu temeljnih vrednot EU

Tjaša Skočir

POVZETEK

Evropske države so se povezale v EU na podlagi nekaterih skupnih temeljnih vrednot, med katerima vidno mesto zavzemata demokracija in pravna država. Glede tega sta medijsko zelo izpostavljeni Madžarska in Poljska, ki sta v zadnjem času sprejeli več zakonov, ki nasprotujejo evropskim temeljem. Gradita neliberalno demokracijo, saj naj bi bila po njunem mnenju liberalna preživeta. EU pa pri varovanju svojih vrednot za zdaj ni najbolj uspešna, zato se avtorica sprašuje, kaj vse bi EU morala postoriti, da bi se države vrnila v evropske okvirje. Pri tem pa ne zagovarja niti ostrih posegov v posamezno državo niti ne visokih denarnih sankcij. Skozi nalogo ves čas opozarja, da je treba nasloviti problem pri njegovih vzrokih ter da je nujno, da se med vsemi vpletenimi stranmi vzpostavi dialog ter da se skupaj poišče rešitev in skupno pot naprej.

Ključne besede: avtoritarni režimi, Srednja in Vzhodna Evropa, neliberalna demokracija, temeljne vrednote EU, 7. člen PEU.

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Scientific Article

The Rise of the Authoritarian Regimes in the Central and Eastern Europe and the Role of the European Communities in Protecting the Fundamental EU Values

Tjaša Skočir

ABSTRACT

European countries have connected into the EU on the grounds of common fundamental values, most notably democracy and the rule of law. In regard to the latter two values, Hungary and Poland attract the most media coverage, as they have recently changed some laws that contradict the European foundations. In their own words, they are building an illiberal democracy, as they believe that the liberal one is outdated. EU is at present not very successful at protecting its values; this is why the author is wandering in the article what does the EU have to do to return the country back into the European framework. The author is not in favour of either any intervention into the country or of high financial sanctions. The problem, however, has to be addressed at its roots and all the actors involved have to run a dialogue to find a suitable solution together for a united path forward.

Key words: authoritarian regimes, Central and Eastern Europe, illiberal democracy, fundamental EU values, Article 7 TEU.

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Znanstveni članek

Obnova upravnega postopka zoper sklep

Bruna Žuber

POVZETEK

V praksi je obnova postopka eno izmed najpogosteje uporabljenih izrednih pravnih sredstev v upravnem postopku. Eden izmed temeljnih pogojev za obnovo postopka je, da je bil postopek končan z dokončno odločbo, zoper katero v upravnem postopku ni rednega pravnega sredstva. Pravilo o tem, da obnova postopka zoper sklep, izdan v upravnem postopku, ni dopustna, bi moralo brez izjem veljati za vse procesne sklepe, drugačna obravnava pa bi morala veljati le za tiste sklepe, ki so po svoji vsebini odločbe. Presoja o tem, ali je določen sklep po vsebini odločba, bi bilo potrebno opraviti izključno na podlagi izreka določenega akta ob hkratnem zavedanju, da ekstenzivno širjenje dovoljenosti obnove postopka za konkretne primere zoper sklepe, ki so sicer procesne narave, ni dopustno. Ureditev, ki ne dopušča obnove postopka zoper sklep, v ničemer ne predstavlja nerazumne omejitve dostopa do pravnega sredstva.

Ključne besede: obnova upravnega postopka, procesni sklep, sklep, ki je po svoji vsebini odločba.

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Scientific Article

The Renewal of Administrative Proceeding Completed by Order

Bruna Žuber

ABSTRACT

In practice, the renewal of the proceeding is one of the most frequently used extraordinary legal remedies in the administrative procedure. One of the basic conditions for a renewal of a proceeding is that the proceeding was completed with a final decision on the merit against which there is no regular remedy in the administrative procedure. The rule that the renewal of a proceeding against an order issued in an administrative procedure is inadmissible should, without exception, apply to all procedural orders. Different treatment should apply only to those orders that are decisions on the merit in their content. An assessment on a legal nature of an order should be performed exclusively on the basis of operative part of the decision with awareness that extension of a renewal of the proceeding in concrete cases against procedural orders is not permissible. An arrangement that does not provide the renewal of proceedings against an order does not constitute an unreasonable restriction to the access to a legal remedy.

Key words: the renewal of administrative proceeding, procedural order, order with content of a decision.

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Kratki znanstveni članek

Izzivi varstva prava beguncev in notranje razseljenih oseb na poti Črne Gore k članstvu v Evropski uniji: primer razseljenih iz Albanije v Črno goro

Ivana Jelić

POVZETEK

Članek obravnava pravno rešitev problema dolgotrajnega zavračanja dostopa do črnogorskega državljanstva za begunce iz albanske regije Vraka, ki so leta 1991 v Črno goro prišli na podlagi meddržavnega sporazuma med Socialistično federativno republiko Jugoslavijo in Ljudsko socialistično republiko Albanijo. Ta problem je posledica napačne uporabe mednarodnih standardov o statusu beguncev s strani črnogorskih upravnih organov konec devetdesetih let 20. stoletja. Zato so imele te osebe v obdobju dvajset let več različnih pravnih statusov, med njimi pa je bila tudi apatridnost. Črna gora je na poti v članstvo v Evropsko unijo z dopolnitvijo zakonodaje omogočila dostop do črnogorskega državljanstva osebam, ki so pred prihodom v Črno goro živele v Albaniji kot avtohtona črnogorska manjšina

Ključne besede: državljanstvo, notranje razseljene osebe, črnogorska javna uprava, begunci, Vraka.

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Short Scientific Article

Challenges on the Protection of Refugees' and IDP's Rights on the Way of Montenegro towards the EU Membership: Case of Displaced Persons from Albania to Montenegro

Ivana Jelić

ABSTRACT

The article focuses on the legal solution for the issue of long-lasting denial of the access to Montenegrin citizenship for the refugees from Albania, Vraka region, who came to Montenegro in 1991, on the basis of an interstate agreement between Socialist Federal Republic of Yugoslavia and People's Socialist Republic of Albania. The issue had been caused actually by an error in application of international standards on determination of the status of refugees, done by public administration bodies of Montenegro in late 1990s. Consequently, within the period of twenty years, there have been several types of legal statuses of those persons, among which the statelessness. In order to apply international standards on its way towards the EU membership, Montenegro amended its legislation providing the access to Montenegrin citizenship for the persons who, before arriving to Montenegro, used to live in Albania as an autochthonous Montenegrin minority.

Key words: citizenship, internally displaced persons, Montenegrin public administration, refugees, Vraka.

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Kratki znanstveni prispevek

Delegirana zakonodaja – nastanek in razvoj na območju Anglije

Iztok Rakar

POVZETEK

Prispevek obravnava nastanek in zgodovinski razvoj delegirane zakonodaje na območju Anglije, in sicer v obdobju od poznega srednjega veka do sredine 20. stoletja. Avtor ugotavlja, da je delegirana zakonodaja v Angliji predvsem rezultat boja za moč med monarhom in parlamentom (notranji dejavnik), po vzpostavitvi ravnotežja pa je postala predvsem orodje za reševanje nujnih zadev, pred katerimi se je znašla država (zdravje, vojna, javni red itd. – torej odzivanje na spremembe okolja; zunanji dejavnik). Ne glede na to je v času nujnih zadev razvidna težnja izvršilne oblasti, da prekoračuje vsebinski in časovni okvir podeljenih pooblastil, praviloma skupaj s parlamentom. Enkrat dosežena stopnja delegacije se je težko, če sploh, vrnila v prejšnje stanje. Iz razvojnega pregleda izhaja tudi, da je pomen delegirane zakonodaje v Angliji rasel v obeh razsežnostih, tako v kvantitativni kot tudi v kvalitativni. Čeprav je na prvi pogled urejala zgoljpodrobnosti, pa je bil njen pomen v praksi precej večji.

Ključne besede: upravno pravo, zgodovina, pravna zgodovina, delegirana zakonodaja, Anglija.

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Short Scientific Article

Delegated Legislation – An Emergence and Development in England

Iztok Rakar

SYNOPSIS

The article deals with the emergence and historical development of delegated legislation in the area of England from the late Middle Ages to the mid-20th century. The author notes that the delegated legislation in England is the primary result of the struggle for power between the monarch and the parliament (an internal factor). After equilibrium was reached, it has become a tool for solving urgent matters that the state has faced (health, war, public order, etc. – that is, a reaction to environmental changes; an external factor). Nevertheless, at the time of urgent matters, the tendency of the executive power to transgress the scope and time-frame of the powers granted, as a rule, is hand-in-hand with Parliament. The level of delegation once achieved is difficult, if at all possible, to return to its former state. The developmental review also indicates that the importance of delegated legislation in England has grown in both dimensions – quantitatively and qualitatively. Despite the fact that at first glance it regulated only details, its significance in practice was considerably higher.

Key words: administrative law, history, legal history, delegated legislation, England.

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Strokovni članek

Pomen (moč) ljubezni pri vodenju in pri zavzetosti zaposlenih v javni upravi

Senko Pličanič

POVZETEK

Avtor v razpravi obravnava pomen ljubezni (do sebe) za vse, kar počnemo. Izhaja iz predpostavke, da ljubezen in sreča lahko dosežemo le ob uravnoveženosti duhovne in materialne plati naših življenj. Zaradi enostranske usmeritve naše civilizacije v materialni razvoj smo iz svojih življenj skoraj v celoti izrinili prizadevanje za duhovni razvoj. Avtor predlaga dopolnitev načela trajnostnega razvoja in oblikovanje celovitega načela trajnostnega razvoja, ki poleg gospodarske rasti zajema tudi duhovno. Meni, da je to model, ki ponuja izhod iz trenutnih (slabih) razmer – v svetu in v Sloveniji. Glede na pomembnost javnega sektorja in znotraj njega še posebej javne uprave je posebej pomembno, da duhovno plat našega bivanja vgradimo v vseživljenjsko usposabljanje zaposlenih v javnem sektorju. In s tem zaposlenim omogočimo, da se podajo na pot k ljubezni (do sebe). Glede na pomembnost vodenja pa je treba posebno pozornost nameniti voditeljem v politiki, javnem sektorju in javni upravi. Pri tem bi moral biti naš cilj imeti voditelje z visoko stopnjo ljubezni (do sebe).

Ključne besede: ljubezen, sreča, vodenje, javni sektor, politika, trajnostni razvoj.

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Strokovni članek

The Role of Love in Leadership and Public Sector Employees Engagement

Senko Pličanič

SUMMARY

The author discusses importance of love (self-love) in our life. Love and happiness could only be achieved through the balance between spiritual and material dimensions of our life. The spiritual dimension has been removed from our lives in the last centuries. The author, therefore, suggests to modify the sustainable development principle to incorporate spiritual development as well as in order to establish a comprehensive sustainable development principle – as an exit plan for the humanity. Due to the importance of public sector and public administration it is very important to incorporate spiritual development into all-life training of public sector employees. Due to the importance of leadership, spiritual development and self-love as a result should be considered as one of the key qualifications for leaders in politics and public administration. *Key words:* love, happiness, leadership, public sector, politics, sustainable development.