Uvodnik
UDK: 347.991(497.4)"1918/2018"

Sto let slovenskega vrhovnega sodstva: od 14. novembra 1918 do 14. novembra 2018

Damijan Florjančič

POVZETEK

Prispevek se začenja z obdobjem po prvi svetovni vojni, ko so na ozemlju nekdanjega Avstro-Ogrskega cesarstva nastale nove državne entitete in vzpostavljale svoje lastne državne strukture. Tako je tudi nova država Slovencev, Hrvatov in Srbov (SHS) morala poskrbeti za delovanje sodnega sistema kot enega od temeljev organiziranosti državne oblasti. Prva demokratično oblikovana slovenska vlada, Narodna vlada SHS, je zato 14. novembra 1918 sprejela poseben akt, s katerim je Višjemu deželnemu sodišču v Ljubljani podelila položaj in pristojnosti vrhovnega sodišča. S tem je bila začeta pot slovenskega vrhovnega sodstva, ki je peljala skozi ne vedno mirne čase Kraljevine Jugoslavije, druge svetovne vojne in SFR Jugoslavije do osamosvojitve Slovenije leta 1991, ko je Vrhovno sodišče Republike Slovenije lahko šele v polni meri začelo izvrševati vse pristojnosti, ki pripadajo najvišjemu sodišču v državi. V nadaljevanju se avtor zaustavi ob dosežkih (vrhovnega) sodstva v zadnjih desetletjih in se dotakne nekaterih poglavitnih nalog, ki sodstvo opredeljujejo danes, in tistih, ki ga čakajo v prihodnosti. Pri tem je in ostaja osnovno vodilo v delovanju sodstva zagotavljanje načel pravne države, kar je neločljivo povezano z načelom neodvisnosti sodstva kot enega od treh vej oblasti.

Ključne besede: slovensko vrhovno sodstvo, Višje deželno sodišče v Ljubljani, slovenski jezik, Stol sedmorice v Zagrebu, Vrhovno sodišče v Ljubljani, sodstvo v drugi svetovni vojni, montirani politični procesi, Vrhovno sodišče Republike Slovenije, Evropska konvencija o človekovih pravicah in temeljnih svoboščinah, slovensko sodstvo v EU, postopkovna pravičnost, načela pravne države, neodvisnost sodstva.

Editorial
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One Hundred Years of the Slovenian Supreme Judiciary: From 14 November 1918 to 14 November 2018

Damijan Florjančič

SYNOPSIS

The contribution begins with the period after the First World War when new state entities emerged on the territory of the former Austro-Hungarian Empire and established their own state structures. Thus, the newly founded State of Slovenes, Croats and Serbs (SHS) had to take care of the functioning of the judicial system as one of the foundations of the organization of state power. Therefore, on 14 November 1918 the first democratically formed Slovenian government, the National Government of SHS, adopted a special act granting the Higher County Court of Ljubljana the position and powers of the Supreme Court. This was the beginning of the path of the Slovenian supreme judiciary, which led through the turbulent times of the Kingdom of Yugoslavia, the Second World War, and the SFR Yugoslavia, until the independence of Slovenia in 1991. It was only than, that the Supreme Court of the Republic of Slovenia was able to exercise fully all the powers belonging to the highest court in the country. Afterwards the author presents the achievements of the (supreme) judiciary in recent decades and touches on some of the main tasks of the judiciary for today and for the future. There is and remains a fundamental guideline in the functioning of the judiciary, to ensure the principles of the rule of law, which is inseparable from the principle of the independence of the judiciary, as one of the three branches of government.

Key words: Slovenian Supreme Judiciary, Higher County Court in Ljubljana, Slovenian language, Table of Seven in Zagreb, Supreme Court in Ljubljana, Judiciary during World War II, political show trials, Supreme Court of the Republic of Slovenia, European Convention on Human Rights and Fundamental Freedoms, Slovenian judiciary in the EU, procedural justice, the principles of the rule of law, the independence of the judiciary.

UDK: 342.565.4:351.9
Znanstveni članek

Pomen glavne obravnave pri odločanju v upravnem sporu polne jurisdikcije

Nežka Dekleva

POVZETEK

Upravni spor predstavlja neodvisen nadzor sodne veje oblasti nad upravnopravnim delovanjem, v okviru katerega sodišče presoja zakonitost sprejetih odločitev uprave. Pri tem je pomembno, da lahko sodišče presoja ne le pravna, temveč tudi dejanska vprašanja, in da glede tega lahko samo ugotavlja dejstva in okoliščine, izvaja in ocenjuje dokaze ter samo odloči o posameznikovi pravici, obveznosti ali pravni koristi. Tako je prav pooblastilo sodišča za odločanje v sporu polne jurisdikcije pomembno za zagotavljanje polnega sodnega nadzora nad upravo, varstva posameznikovega pravnega položaja pred oblastnim delovanjem izvršilne (upravne) veje oblasti in nenazadnje učinkovitega reševanja upravnih zadev. Prispevek obravnava upravni spor polne jurisdikcije glede na pogoje, ki morajo biti izpolnjeni za tak način odločanja. V tem okviru je poudarjeno še odločanje v upravnem sporu po opravljeni glavni obravnavi, v primerjavi s sprejemanjem odločitev na seji. Pri tem se avtorica osredotoča na izvedbo glavne obravnave in na njen pomen pri uporabi reformatoričnega pooblastila v upravnem sporu.

Ključne besede: sodni nadzor nad upravo, upravni spor, spor polne jurisdikcije, glavna obravnava.

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Scientific Article

The Importance of the Main Hearing in the Administrative Dispute of Full Jurisdiction

Nežka Dekleva

SYNOPSIS

Administrative dispute is an independent control of the judicial branch over administrative acts in which the court reviews the legality of the decisions taken by the administration. In this respect, it is important that the court has jurisdiction to assess issues of law and fact and in this regard to determine facts and circumstances, to assess and interpret evidence, and also to rule on an individual's right, obligation, or legal interest. Thus, the court's power for deciding in a dispute of full jurisdiction is important for ensuring full judicial review of the administration, protecting legal position of the individual against authoritative decisions of the executive (administrative) branch and, last but not least, effective resolving of administrative matters. The article deals with the administrative dispute of full jurisdiction with regard to the conditions, which must be satisfied for such decision-making process. In this context, the emphasis is on administrative dispute with the main hearing, compared to the trial at a session. The focus is on the main hearing and its importance in the application of the court's reformative power in the administrative dispute.

Keywords: judicial control over the administration, administrative dispute, dispute of full jurisdiction, main hearing.

Znanstveni članek
UDK: 340.134:351:342

Determinante in funkcije postopka oblikovanja podzakonskih predpisov

Iztok Rakar

POVZETEK

Pomen podzakonskih predpisov raste tako v kvantitativnem kot tudi v kvalitativnem smislu, zato se logično odpira vprašanje postopka njihovega oblikovanja. Avtor se v prispevku omejuje na dva sklopa vprašanj v zvezi s tem postopkom, in sicer na determinante in funkcije postopka oblikovanja podzakonskih predpisov. Ugotavlja, da je kot glavne determinante procesnega prava podzakonskih predpisov mogoče šteti temeljna ustavna načela in temeljne človekove pravice ter posebnosti področja reguliranja, kot dopolnilne pa vplive drugih pravnih redov in pričakovanja javnosti glede načina upravljanja javnih zadev. Ugotavlja tudi, da so funkcije postopka oblikovanja podzakonskih predpisov mnogovrstne, kompleksne, med seboj odvisne in nasprotujoče si, kar pomeni, da morajo konkretna procesna pravila pogosto izravnati več med seboj nasprotujočih funkcij. Vse funkcije niso enako pomembne v vseh postopkih oblikovanja podzakonskih predpisov, saj so ti heterogena skupina pravnih aktov, kar otežuje enotno pravno ureditev. Za vsako od v tem prispevku obravnavanih funkcij je mogoče najti ustavnopravno podlago, kar pa še ne pomeni, da so vse te funkcije ustavnopravna zahteva in da je mogoče iz vseh izpeljati konkretne procesne zahteve.

Ključne besede: upravno pravo, podzakonski predpisi, postopek, izvršilna oblast, primerjalno pravo.

Scientific Article
UDC: 340.134:351:342

Determinants and Functions of the Rulemaking Procedure

Iztok Rakar

SYNOPSIS

The significance of the delegated legislation grows both in quantitative and qualitative terms. Consequently, the rulemaking procedure attracts more attention, both from academia and practice. The paper focuses on two dimensions of rulemaking procedure: its determinants and its functions. The author concludes that the principal determinants of the rulemaking procedural law are the fundamental constitutional principles, basic human rights, and the specificities of the regulated area. The complementary determinants, on the other side, are the impacts of other legal orders and the public's expectations regarding the manner of managing public affairs. As far as functions are concerned, the author concludes that they are multiple, complex, mutually dependent, and contradictory. However, not all the functions are equally important in all rulemaking procedures, since delegated legislation is a very heterogeneous group of legal acts. Additionally, this heterogeneity makes it difficult to develop a unified legal system of rulemaking. For each of the given features of the functions discussed, a constitutional legal basis can be found, which, however, does not mean that all these functions are constitutional requirements and that it is possible to derive concrete procedural requirements from all of them.

Key words: administrative law, delegated legislation, procedure, executive government, comparative law.

UDK: 35:005.336
Znanstveni članek

Potenciali za povečanje učinkovitosti državne uprave

Mitja Horvat

POVZETEK

Čedalje večja kompleksnost in zelo hitro spreminjajoče se globalno okolje zahtevata od državne uprave vse večjo učinkovitost, ki naj zagotovi trajnostni razvoj ter ugodne pogoje za razvoj konkurenčnega gospodarstva, kar vse naj na koncu pripomore k povečanju blaginje prebivalstva. Skladno s temeljnimi vrednotami in načeli delovanje državne uprave vodi do učinkovitosti njenega delovanja, s čimer se gradita zadovoljstvo ter zaupanje vanjo. V prispevku avtor predstavlja možnosti, ki jih za povečanje učinkovitosti državne uprave ponujajo sodelovalni procesi, spremljanje upravnih procesov ter razkrivanje in izločanje nesprejemljivih ravnanj. Pozitivno usmerjeni procesi in graditev javne integritete v odprti ter prožni državni upravi so pogoji, v katerih lahko pride do izraza potencial človeških virov. Ta je ena od najpomembnejših možnosti za večjo učinkovitost državne uprave in s tem večje zadovoljstvo uporabnikov njenih storitev ter zaupanje vanjo.

Ključne besede: državna uprava, učinkovitost, sodelovanje, spremljanje, nesprejemljiva ravnanja, javni uslužbenci, integriteta, dobro upravljanje.

UDC: 35:005.336
Scientific Article

Potentials for Increasing the Effectiveness of the State Administration

Mitja Horvat

SYNOPSIS

Increasing complexity and the extremely rapidly changing global environment require the state administration to increase effectiveness, which should ensure sustainable development and favourable conditions for the development of a competitive economy, which should ultimately contribute to increasing the welfare of the population. In accordance with the fundamental values and principles of the functioning of the state administration, it leads to the effectiveness of its operation, thus building satisfaction and trust in it. In the article, the author presents the possibilities that collaborative processes, monitoring of administrative processes, as well as the disclosure and elimination of unacceptable practices, are offered for the enhancement of the effectiveness of the state administration. Positively oriented processes and the building of public integrity in an open and flexible state administration are conditions in which the potential of human resources can be expressed. This is one of the most important options for enhancing the effectiveness of the state administration and, consequently, the greater satisfaction of users of its services and trust in it.

Key words: public administration, effectiveness, cooperation, monitoring, unacceptable behaviour, civil servants, integrity, good governance.

Znanstveni članek
UDK: 338.483.13-056.26
352(497.4Kranj)

Dostopnost objektov v javni rabi za gibalno ovirane osebe – primer mestne občine Kranj

Ema Grbić, Iztok Rakar

POVZETEK

Slovenija je država z bogato kulturno dediščino in razmeroma visokim deležem gibalno oviranih oseb. Namen prispevka je oceniti dostopnost javno dostopnih objektov za gibalno ovirane osebe na vzorcu devetih objektov v Mestni občini Kranj. Rezultati empirične analize kažejo številne ovire pri dostopnosti in neizvajanje priporočil, ki so bila dana v mednarodnem projektu. Avtorja predlagata rešitve, ki bi izboljšale razmere na tem področju tako pri obnovi obstoječih objektov kot tudi pri gradnji novih objektov.

Ključne besede: lokalna samouprava, kulturna dediščina, gibalno ovirana oseba, kulturni turizem, Kranj.

Scientific Article
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352(497.4Kranj)

Accessibility of Objects in Public Use for Disabled Persons – A Case of the Municipality of Kranj

Ema Grbić, Iztok Rakar

SYNOPSIS

Slovenia is a country with a rich cultural heritage and a relatively high proportion of disabled people. The purpose of the article is to assess the accessibility of publicly accessible facilities for disabled persons on a sample of nine buildings in the Municipality of Kranj. The results of the empirical analysis demonstrate a number of barriers to accessibility and non-implementation of the recommendations given in the international project. The authors suggest solutions that would improve the situation in this area both in the reconstruction of the existing facilities and in the construction of new facilities.

Key words: local government, cultural heritage, disabled person, cultural tourism, Kranj.

Diskusijski prispevek
UDK: 334.752:334.012.32/.33:340.1

Pogled na koncept Predloga zakona o javno-zasebnem partnerstvu (ZJZP-1)

Aleksij Mužina

POVZETEK

Glede na ureditev javno-zasebnega partnerstva v direktivah, ki sta jih Evropski parlament in Svet EU sprejela z namenom ureditve področja javnega naročanja, podeljevanja koncesij in varovanja temeljnih načel delovanja Evropske unije, je najlažje zagovarjati stališče taksativnosti, po katerem je po *ratione temporis* veljavnih Direktivah 2014/23/EU, 2014/24/EU in 2014/25/EU dobava blaga, izvedba storitev ali gradenj javna pogodba, ki je bodisi javno naročilo bodisi javna koncesija. Pravo EU tako tretje poti ne pozna, kar ne pomeni nujno, da nekaterih upravnih pogodb, ki s pravom EU niso regulirane, nacionalni zakonodajalec ne bi smel urediti, vendar se mora zavedati, da nacionalni zakonodajni poseg ne sme posegati v dvojnost javnega naročila in koncesije. Predlog zakona o javno-zasebnem partnerstvu je primerljiv s pristopom k pripravi istoimenskega zakona iz januarja 2005, katerega začasnost in konceptualnost se je pozneje sprevrgla v obsežen organizacijsko-procesni predpis.

Ključne besede: javno-zasebno partnerstvo, ZJZP-1, koncesije, Direktiva 2014/23/EU.

Discusion Article
UDC: 334.752:334.012.32/.33:340.1

A Perspective on the Concept of Legislative Proposal of the Public-Private Partnership Act

Aleksij Mužina

SYNOPSIS

According to the regulation of public-private partnership in the Directives adopted by the European Parliament and the Council with an intent to regulate the scope of public procurement, awarding of concessions, and to ensure protection of the EU's fundamental principles, it is most straightforward to defend an exhaustive list ("*numerus clausus*") approach upon which by *ratione temporis* applicable Directives 2014/23/EU, 2014/24/EU in 2014/25/EU supply of goods, performance of services or constructions shall be considered a public contract, either a public procurement or a concession. Thus, EU law does not recognize the third way, meaning it does not absolutely exclude the Member States from regulating certain administrative law contracts, but it must recognise that the national legislation should not affect the duality of public procurement and concession. Draft public-private partnership act from the beginning of 2018 is comparable with the approach of preparing the law with the same title of January 2005 (as conceived by the author of this article), which temporary and conceptual nature turned around into vast organisational-procedural regulation.

Key words: public-private partnership, concession, Directive 2014/23/EU.

Prikaz knjige
UDK: 34:001.4:811.163.6(049.3)

Pravni terminološki slovar – izziv za danes in jutri

Mateja Jemec Tomazin

POVZETEK

Slovenska pravna terminologija ima med vsemi terminologijami slovenskega jezika najdaljšo tradicijo sistematičnega urejanja in prizadevanja za ustrezen prikaz v slovarskem priročniku. Pravni terminološki slovar ponuja sistematični prikaz sodobnega slovenskega pravnega sistema, dopolnjujejo pa ga najpomembnejši pojmi mednarodnega prava in prava EU ter izbor relevantnih primerjalnopravnih terminov. Slovar je namenjen pravnim strokovnjakom, s pridom pa ga lahko uporabijo tudi drugi, ki pri svojem delu naletijo na pravne termine.

Ključne besede: terminološki slovar, pravna terminologija, pravni strokovnjak, termin, pojem.

Book Review
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Legal Terminological Dictionary – A Challenge for the Present and the Future

Mateja Jemec Tomazin

SYNOPSIS

Among the terminologies of the Slovenian language, Slovenian legal terminology is the one with the longest tradition of systematic harmonisation and efforts to present it adequately in a dictionary. The Legal Terminological Dictionary offers a systematic description of the contemporary Slovenian legal system, which is complemented by the most relevant concepts of international law, EU law and a selection of the relevant comparative law terms. The dictionary is intended for legal experts, but those who come across legal terms at work can also make good use of it.

Key words: terminological dictionary, legal terminology, legal expert, term, concept.