Znanstveni članek
UDK: 35:342.51

Koordinacija predpisov – prav(il)ne koordinate prava

Mirko Pečarič

POVZETEK

Prispevek obravnava reforme javne uprave z vidika centra vlade kot mesta, iz katerega naj bi se usklajevale, določale, spremljale in spreminjale naloge različnih organov države. Večina reformnih ukrepov je v javnem sektorju zadevala javno upravo, pri čemer je način dela vlade, njen način usklajevanja dela uprave ostal bolj ali manj nespremenjen. Center vlade je nov pogled na delovanje dosedanjih kabinetov predsednika vlade ali generalnega sekretariata vlade s pomočjo uporabe sistemske teorije, ki omogoča drugačne, nove perspektive delovanja omenjenega organa. Center vlade postavlja okvir, določa pravila in usklajuje samo igro. S pomočjo odgovorov predstavnikov mreže Evropskega centra za parlamentarne raziskave in dokumentacijo prispevek avtor ugotavlja, da center vlade na način, kot ga opisuje prispevek, v nobenih državi še ni zaživel, čeprav ponekod obstajajo njegovi posamezni elementi. Največkrat gre za napako statičnega razmišljanja, ki zanemari dinamične strani problema; preverjanje opravljenih nalog ne upošteva njihovega prepletanja, eksponentnih kombinacij in hkratnega, vzajemnega spreminjanja v procesih medsebojnega součinkovanja po začetku njihovega izvrševanja.

Ključne besede: center vlade, predpisi, koordinacija, prilagajanje, sistem.

Scientific article
UDC: 35:342.51

Coordination of Regulations – The Right and Wrong Coordinates of Law

Mirko Pečarič

ABSTRACT

Public administration reforms are regularly viewed from the perspective of the centre of government as a place from which tasks of various state bodies should be coordinated, defined, monitored and modified. Most public sector reform measures address public administration, while a government's way of coordinating the work of the administration is more or less unchanged. The centre of government presents a systemic view on the functioning of the Prime Minister cabinet and the General Secretariat of the Government and provides a different perspective on the functioning of the said bodies. Through the replies of the representatives of the network of the European Center for Parliamentary Research and Documentation, the author concludes that the government centre does not exist in any country in the way described in the paper, but its individual elements exist. In most cases, it is a mistake of static thinking that neglects the dynamic sides of problems, does not take into account their intertwining, exponential combinations and simultaneous, reciprocal alteration in processes of interaction.

Keywords: the centre of government, regulations, coordination, adaptation, system.

Znanstveni članek
UDK: 35.077.3

Upravno odločanje v primeru nekaterih sprememb materialnega prava

Katja Štemberger

POVZETEK

Prispevek z vidika stališč upravne teorije in sodne prakse sistematično analizira učinke, ki jih ima sprememba materialnega prava na odločanje v upravnem postopku, tako v primeru odločanja upravnih organov na prvi kot tudi na drugi stopnji. V prvem delu so predstavljeni argumenti in stališča glede časovne uporabe materialnega prava pri odločanju na prvi stopnji, v drugem delu pa so predstavljene različne možnosti glede uporabe materialnega prava pri odločanju o upravni zadevi po odpravi prvostopenjske odločbe v pritožbenem postopku in v primeru molka organa ter nekatera druga vprašanja, ki jih časovna uporaba materialnega prava odpira. Prispevek se sklene s sklepom, v katerem so predstavljena stališča avtorice glede obravnavane tematike.

Ključne besede: načelo zakonitosti, uporaba materialnega prava z vidika časovne veljave, sprememba materialnega predpisa, odločanje v upravnem postopku.

Scientific article
UDK: 35.077.3

Administrative Decision-Making in the Event of Some Changes in Substantive Law

Katja Štemberger

SYNOPSIS

From the perspective of administrative theory and case-law, the article systematically analyses the effects of changes in substantive law on the administrative decision-making process, both in case of administrative decision-making at first and second instance. First part presents arguments and points of view regarding the application of substantial law from the temporal perspective in the first instance of decision-making. The second part offers various options for the application of substantive law when administrative authorities are deciding the matter in cases where the first-instance decision had been annulled in the appeal proceedings and in case of the silence of the authority. Some other questions, which the temporal application of substantive law opens, are also presented. The author concludes by adopting her own position regarding the topic under consideration.

Keywords: the principle of legality, the application of substantive law regarding its temporary validity, change of the substantial provision, decision-making in the administrative procedure.

Znanstveni članek
UDK: 330.322.16:502.131.1

Trajnostni urbani razvoj, prostorsko načrtovanje in javno-zasebno partnerstvo

Senko Pličanič

POVZETEK

Avtor analizira pomen prostorskega načrtovanja in javno-zasebnega partnerstva kot enega od pravnih instrumentov, ki lahko s tem, ko zaradi uresničevanja lastnih (profitnih) interesov spodbuja podjetja (zasebni sektor) k sodelovanju z državo in občinami (javni sektor), precej pripomore k preoblikovanju naše družbe v trajnostno (okolje ohranjujočo) delujočo družbo. Javno-zasebno partnerstvo je pri tem lahko uspešno le, če je usklajeno s celovitim in trajnostnim prostorskim načrtovanjem oziroma določanjem namenske rabe zemljišč. Zato avtor v prispevku analizira tudi povezavo med trajnostnim prostorskim načrtovanjem in javno-zasebni partnerstvom.

Ključne besede: trajnostni urbani razvoj, urbani projekti, prostorsko načrtovanje, javno-zasebno partnerstvo.

Scientific article
UDC: 330.322.16:502.131.1

Sustainable Urban Development, Land-Use Planning and Private-Public Partnership

Senko Pličanič

Abstract

The importance of land-use planning and public-private partnership is analysed as some of the main legal tools for the implementation of sustainable urban development. Given the importance of law in modern societies, already at the time, sustainable development model was created in Rio. From the outset, it was clear that for its implementation the law should be reformed. During the last three decades since its creation, most countries have incorporated sustainable development model into their respective constitutions and on that basis, a significant and comprehensive body of sustainable development law has been developed. Since Rio, substantial progress has been made in terms of sustainable development legal regulation and in designing different economic and social models in the majority of countries—in relatively short time. However, we must admit that in reality, nothing has changed. If we are to achieve the main objective of a sustainable model, i.e. protect the environment and simultaneously produce material goods, it is clear that it does not suffice merely to limit human (i.e. economic) interference with the environment. Besides, our "obsession" and insatiability with the material goods should be transformed into a more moderate attitude towards the material dimension of our life. To achieve this goal, the economy itself should find its own interest in such a transformation. The private-public partnership is a legal instrument, which allows the private sector to cooperate with the public sector (pursuing at the same time its own interest) in transforming our societies into more sustainable ones. The author demonstrates the potential of private-public partnerships in stimulating the industry to collaborate with the public sector in the implementation of sustainable development. The author also demonstrates the importance of the association between sustainable land-use planning and public--private partnership based urban projects.

Keywords: sustainable urban development, urban projects, land-use planning, private-public partnership.

Znanstveni članek
UDK: 346.543:615.12

Novosti Zakona o nekaterih koncesijskih pogodbah ter pravne negotovosti pri podeljevanju koncesij za izvajanje lekarniške in zdravstvene dejavnosti

Boštjan Zuljan

POVZETEK

Članek obravnava izbrane novosti Zakona o nekaterih koncesijskih pogodbah (ZNKP), ki povzročajo pravno negotovost v postopkih podelitve lekarniških in zdravstvenih koncesij. Avtor ugotavlja, da se ZNKP, ki je v domači pravni red prenesel Direktivo 2014/23/EU o sklepanju koncesijskih pogodb, omejeno uporablja tudi za lekarniške in zdravstvene koncesije. Predlog zakona vsebuje trditve, ki lahko koncedente zavedejo v prepričanje, da so te koncesije kot izjema izključene iz uporabe zakona. Kot bistveno novost zakona, ki velja za postopke podeljevanja lekarniških in zdravstvenih koncesij, je treba poudariti nova pravila o pravnem varstvu. Poleg upravnega sodstva je za reševanje sporov v postopku izbire koncesionarja v omejenem obsegu postala pristojna tudi Državna revizijska komisija, ki bo v teh postopkih zagotavljala pravno varstvo po pravilih revizijskega postopka. Čeprav se je s tem povečal obseg pravnih sredstev, ki jih imajo na voljo stranke v teh postopkih, obstaja nevarnost, da v različnih pravovarstvenih postopkih pride do nasprotujočih odločitev v posamezni zadevi.

Ključne besede: Direktiva 2014/23/EU, lekarniška koncesija, zdravstvena koncesija, negospodarska javna služba, negospodarske storitve splošnega pomena, izbira koncesionarja, pravno varstvo.

Scientific article
UDC: 346.543:615.12

Novelties of Certain Concession Contracts Act and Legal Uncertainties in Respect of Procedures for Awarding Public Concessions for Pharmacy and Medical Services

Boštjan Zuljan

SYNOPSIS

Article focuses on selected novelties of Certain Concession Contracts Act (ZNKP) which could cause legal uncertainties in respect of procedures for awarding public concessions for pharmacy and medical services. The author first notes that ZNKP, which implements Directive 2014/23/EU on the award of concession contracts shall apply also to public concessions for pharmacy and medical service. On this point, legislative proposal of ZNKP contains misleading and false reasoning, which could lead the contracting authority to a wrong practice of excluding concessions mentioned above from the scope of new regulation. Legislative main novelty to the award of pharmacy and medical concessions contracts is the adoption of new rules on the legal protection in public concessions award procedures. In addition to administrative justice, legal protection for concessions award procedures is now provided also before National Review Commission, which is responsible for review procedures to the award of public supply and public works contracts. Although the introduction of new supervisory body increases legal remedies in this procedures, it also creates legal uncertainties in cases where supervisory competences are not strictly divided between the judiciary and body responsible for review procedures.

Keywords: Directive 2014/23/EU, public concession for pharmacy services, public concession for medical services, non-economic services of general interest, selection of concessionaire, legal protection.

Znanstveni članek
UDK: 34:620.9(497.4)

Izbrani vidiki slovenske ureditve lokalnega energetskega koncepta

Luka Martin Tomažič
Borut Bratina

POVZETEK

Avtorja obravnavata izbrane vidike slovenske ureditve lokalnega energetskega koncepta. Pojasnjujeta njegovo naravo v luči dognanj pravne teorije. Tako ugotavljata, da lokalni energetski koncepti niso zgolj strateški in politični, temveč tudi pravni dokumenti. Proučujeta obvezne sestavine in potrebo po skladnosti z Energetskim konceptom Slovenije ter drugimi relevantnimi dokumenti in poudarjata pomen sodelovanja javnosti pri pripravi, zlasti v luči zavez Republike Slovenije po Aarhuški konvenciji. S primerjalnopravno analizo kljub specifikam ugotavljata določeno stopnjo sorodnosti s francosko ureditvijo, Velika Britanija k načrtovanju v energetiki na lokalni ravni pa ima drugačen pristop.

Ključne besede: lokalni energetski koncept, pravo energetike, Aarhuška konvencija, sodelovanje javnosti, načrtovanje v energetiki.

Scientific article
UDC: 34:620.9(497.4)

Selected Aspects of the Slovenian Regulation of Local Energy Concept

Luka Martin Tomažič
Borut Bratina

ABSTRACT

Authors consider selected aspects of the Slovenian regulation of local energy concept. They explain its nature in light of legal theory and they find that local energy concepts are not merely strategic and political, but also legal documents. They research the mandatory elements and the need for compliance with the Slovenian energy concept and other relevant documents and they also emphasise the importance of public participation in preparing local energy concepts, especially in light of the commitments of the Republic of Slovenia under the Aarhus Convention. They perform a comparative legal analysis and find that specifics notwithstanding, a certain degree of similarity exists between the Slovenian and French regulation, while Great Britain has a different approach with regard to local level energy planning.

Keywords: local energy concept, energy law, Aarhus convention, public participation, energy planning.