

Uvodnik

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Odgovorno upravljanje virov v javnem sektorju

Andrej Brezavšček

POVZETEK

Članek obravnava dva primera upravljanja virov v javnem sektorju in razkriva razlike v njihovi učinkovitosti ter koristnosti za družbo. Prvi primer se nanaša na odločbo Zavoda za zdravstveno zavarovanje Slovenije (ZZZS), ki potrjuje status zavarovane osebe v obveznem zavarovanju za dolgotrajno oskrbo na dan uveljavitve zakona. Avtor, pravnik, izraža dvom v smiselnost takih odločb, saj status zavarovanca izhaja neposredno iz zakona in ni potrebe po dodatni administrativni potrditvi. Drugi primer se nanaša na delo inšpekcije za okolje, ki je izvedla nadzor nad izpolnjevanjem obveznosti proizvajalčeve razširjene odgovornosti. Ta sistem zasleduje javni interes, saj proizvajalci prevzemajo odgovornost za svoje proizvode tudi po koncu njihovega življenjskega cikla, prispevajoč k recikliranju in zmanjšanju negativnega vpliva na okolje. Avtor članka kritizira prvi primer zaradi njegove nepotrebne administrativne obremenitve, ki ne pripomore k javnemu interesu in poudarja potrebo po smotni uporabi omejenih virov v javnem sektorju. Nasprotno, primer proizvajalčeve razširjene odgovornosti nadzorov prikazuje, kako lahko javni sektor učinkovito prispeva k doseganju javnega interesa, hkrati pa spodbuja proizvajalce k odgovornemu ravnanju z odpadki.

Ključne besede: javni sektor, odločba ZZZS, dolgotrajna oskrba, proizvajalčeva razširjena odgovornost, okoljska inšpekcija, recikliranje, javni interes, administrativna učinkovitost, zakonodaja, odpadki.

Editorial

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Responsible Resource Management in the Public Sector

Andrej Brezavšček

SYNOPSIS

The article examines two cases of resource management within the public sector, highlighting differences in their efficiency and societal benefits. The first case pertains to the decision of the Health Insurance Institute of Slovenia, which confirms the status of an insured person in mandatory long-term care insurance as of the date of the law's enactment. The author, a lawyer, questions the rationale behind such decisions, as arguing that insured status directly stems from the law, rendering additional administrative confirmation redundant. The second case focuses on the environmental inspection's oversight concerning the fulfilment of obligations under the extended producer responsibility scheme. This system pursues the public interest, with producers assuming responsibility for their products beyond their life cycle, thus contributing to recycling and mitigating environment harm. Critiquing the first case for its superfluous administrative burden, which fails to advance public interest, the author underscores the imperative of judicious resource utilisation in the public sector. Conversely, the extended producer responsibility scheme exemplifies how public sector initiatives can effectively bolster public interest, while encouraging producers to manage waste responsibly.

Key words: public sector, Health Insurance Institute of Slovenia decision, long-term care, extended producer responsibility, environmental inspection, recycling, public interest, administrative efficiency, legislation, waste.

Znanstveni članek
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340.132.3:336.274.52

Razmislek o retroaktivni uporabi spremenjene sodne prakse glede pojasnilne dolžnosti pri sklepanju kreditnih pogodb v švicarskih frankih

Rajko Pirnat

POVZETEK

Avtor ugotavlja, da tri odločitve Vrhovnega sodišča iz leta 2023, in sicer sodbi v zadevah II Ips 8/2022 z dne 19. aprila 2023 in II Ips 49/2023 z dne 18. oktobra 2023 ter sodba in sklep v zadevi II Ips 54/2023 z dne 20. septembra 2023, pomenijo bistveno novo sodno prakso glede pojasnilne dolžnosti bank pri sklepanju kreditnih pogodb v švicarskih frankih. Tako zakoni, njihova razlaga kot tudi druge okoliščine ob času sklepanja pogodb niso zahtevale take izvedbe pojasnilne dolžnosti, kot izhaja iz predmetnih sodnih odločb Vrhovnega sodišča. To pomeni, da je nova sodna praksa Vrhovnega sodišča v obravnavanih primerih uporabljena retroaktivno, torej na primere, ki so se zgodili petnajst let, preden se je ta nova praksa oblikovala. Avtor ugotavlja, da tako pravna doktrina kot tudi sodna praksa uporabljata kriterij razumne predvidljivosti pri ocenjevanju dopustnosti retroaktivne uporabe nove sodne razlage prava. Ta je v primeru, kadar neugodno vpliva na položaj stranke, dopustna le, če je stranka mogla v času njenega pravno relevantnega ravnanja razumno predvideti, kakšna bo prihodnja sodna razlaga prava glede tega ravnanja. Po proučitvi vseh okoliščin avtor meni, da ob objektivni oceni ni mogoče trditi, da so banke lahko že pred petnajstimi leti razumno pričakovale, da bodo zahteve glede pojasnilne dolžnosti tako stroge, kot izhaja iz nove sodne prakse Vrhovnega sodišča. Avtor tudi opozarja, da vprašanja retroaktivne uporabe te sodne prakse Vrhovno sodišče v navedenih sodnih odločbah ni niti obravnavalo in torej ni obrazložilo, zakaj meni, da je retroaktivna uporaba nove sodne prakse v teh primerih dopustna. To pa samo po sebi pomeni pomanjkljivo obrazloženost sodnih odločb in s tem kršitev 22. člena Ustave.

Ključne besede: pojasnilna dolžnost, banke, kreditne pogodbe, švicarski franki, retroaktivnost, predvidljivost, ustava.

Scientific Article
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Reflection on the Retroactive Application of a Change in Case-Law Regarding the Duty of Explanation when Concluding Swiss Francs Credit Agreements

Rajko Pirnat

SYNOPSIS

The author notes that three 2023 decisions of the Supreme Court, namely the judgments in the cases II Ips 8/2022 of 19 April 2023 and II Ips 49/2023 of 18 October 2023 and the judgment and decision in the case II Ips 54/2023 of 20 September 2023, mark a significant shift in jurisprudence regarding the explanatory duty of banks when concluding credit agreements in Swiss francs. Previously, neither the laws nor their interpretation, nor other relevant circumstances at the time of contract conclusion, mandated such an implementation of the duty to explain, as derived from the Supreme Court's case law. This implies that the new Supreme Court case law in these cases is applied retroactively, i.e. to cases that occurred fifteen years before the establishment of this new practice. Both legal doctrine and case law employ the criterion of reasonable foreseeability in determining the permissibility of retroactively applying a new judicial interpretation of the law. Retroactive application is only permissible if it adversely affects a party's position and if, at the time of the party's legally significant actions, they could have reasonably anticipated the future judicial interpretation of the law concerning these actions. It cannot be claimed that even fifteen years ago, banks could have reasonably foreseen the stringent requirements of the duty to explain as it appears in the Supreme Court's recent case law. Moreover, the Supreme Court, in the aforementioned judgments, did not even consider the issue of retroactive application of this case law, thereby failing to justify its view that such retroactive application of new case law is permissible in these cases. This omission constitutes a deficient reasoning of court decisions and thus a violation of Article 22 of the Constitution.

Key words: duty to explain, banks, credit agreements, Swiss francs, retroactivity, foreseeability, constitution.

Znanstveni članek
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Pravice oseb LGBT+ v slovenski upravni praksi

Klavdija Košec, Polonca Kovač

POVZETEK

Demokracija družbe se pretežno kaže skozi spoštovanje človekovih pravic najbolj pri ranljivih skupinah, kot so osebe LGBT+. Ta članek zato obravnava analizo predpisov in teoretična izhodišča za varstvo teh oseb s poudarkom na upravnih postopkih, ki so najpogostejši pri uveljavljanju njihovega pravnega položaja. Namen raziskave je identificirati upravne zadeve, v katerih prihaja do kršitev človekovih pravic oseb LGBT+ v Sloveniji, da bi v prihodnje razmere izboljšali. Pri analizi je bilo uporabljenih več raziskovalnih metod, na čelu s preučitvijo letnih poročil Varuha človekovih pravic, s študijami primerov in strukturiranimi intervjuji, na primer predstavnikov nevladne organizacije Legebitra. V razpravi o rezultatih raziskave ugotavljamo, da je prijavljenih kršitev ob sicer ustrezni zlasti procesnopравни ureditvi razmeroma malo, vendar ne zaradi odprtosti družbe in ozaveščenosti potreb teh oseb, temveč zaradi (še) razmeroma nizke stopnje uveljavljanja pravnega varstva.

Ključne besede: varstvo človekovih pravic, LGBT+, upravni postopki, Varuh človekovih pravic.

Scientific Article

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Rights of LGBT+ People in Slovenian Administrative Practice

Klavdija Košec, Polonca Kovač

SYNOPSIS

Democratic societies are largely characterized by their respect for human rights, particularly for vulnerable groups such as the LGBT+ community. This article, therefore, explores the regulations and theoretical grounds for the protection of these individuals, with a focus on administrative procedures, which are most commonly employed in asserting their legal position. The aim of this analysis is to identify instances of administrative violations in Slovenia to improve the situation in the future. The research utilized several methods, including a review of Slovenian Ombudsperson annual reports and case studies, as well as structured interviews with, for example, representatives of LGBT+ individuals from the NGO Legebitra. In the discussion section, the authors argue that although procedural legal regulation is adequate, reported violations are infrequent. This is not necessarily indicative of societal openness and awareness of needs but may be attributed to the (still) low level of enforcement of legal protections.

Key words: human rights protection, LGBT+, administrative procedures, ombudsman.

Znanstveni članek
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O možnih spremembah pravne ureditve gospodarjenja z gozdovi v zasebni lasti

Tanja Pucelj Vidović

POVZETEK

Manjšem poseku lesa od zelenega (nerealizaciji načrtovanega poseka) v slovenskih zasebnih gozdovih botrujejo številni razlogi. Pravna ureditev bi sicer tudi lahko bila (delni) vzrok za tako stanje, vendar iz povprečja rezultatov anketne zasebnih lastnikov gozdov ne izhaja, da bi imela pravna ureditev odločilen vpliv, hkrati pa je kritičen odnos do normativne ureditve in/ali do njenega izvajanja prisoten zlasti pri nekaterih večjih lastnikih zasebnih gozdov. Vsekakor je pri premisleku o uvajanju sprememb zakonodaje s ciljem večjega poseka lesa prvi in bistveni korak analiza ter oblikovanje politike različnih pristopov za različne skupine (kategorije) zasebnih lastnikov gozdov. Najprej je treba preučiti obstoj (ne)motivacije za posek lesa glede na različna dejanska stanja oziroma razmere zasebnih lastnikov gozdov in šele na tej podlagi je mogoče oblikovati različne (normativne in praktične) pristope pri obravnavi različnih kategorij lastnikov gozdov. Ob tem pa je treba upoštevati dejstvo, da imajo številni zasebni lastniki gozdov v lasti razmeroma majhne površine gozda, kar pomembno usmerja njihovo (ne)gospodarjenje z gozdom.

Ključne besede: gozd, posek lesa, pravna ureditev, zasebni lastniki, gospodarjenje z gozdom.

Scientific Article
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Possible Changes to the Legal Regulation of Privately Owned Forests

Tanja Pucelj Vidovič

SYNOPSIS

There are several factors contributing to the lower-than-desired timber harvest (non-realisation of the planned cutting) in Slovenian private forests. The legal regulation might partially contribute to such a situation. However, average findings from a survey of private forest owners do not indicate that legal regulations are a decisive factor. Nevertheless, there is a critical attitude towards both the normative regulation and its implementation, particularly among some larger private forest owners. When considering legislative changes aimed at increasing timber harvesting, the first and fundamental step is to analyse and develop a policy that considers different approaches for various groups (categories) of private forest owners. This necessitates an examination of the presence of (dis)incentives for timber harvesting in relation to the diverse actual conditions or circumstances of private forest owners. Only on this basis can one formulate different (normative and practical) approaches for addressing the needs of various forest owners categories. Concurrently, it is necessary to acknowledge that many private forest owners own relatively small forest areas, which significantly influences their (mis)management of these forests.

Key words: forest, timber harvest, legal regulation, private owners, forest management.

Strokovni članek
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Prihodnost splošnega upravnega postopka v Sloveniji: iskanje temeljev za prenavo in nadgradnjo

Matevž Bedič

POVZETEK

Ureditev splošnega upravnega postopka v Sloveniji še vedno sloni na avstrijski upravni tradiciji, ki jo je pozneje – z nekaterimi prilagoditvami – prevzela tudi Jugoslavija. Konceptualna zasnova slovenskega Zakona o splošnem upravnem postopku (ZUP) se kljub svojim desetkratnim spremembam ni posodabljala in v tem smislu ni ustrezno sledila družbenim potrebam. ZUP pri nas tako še vedno razumemo predvsem kot formalno-procesni okvir za uveljavljanje pravic in nalaganje obveznosti v upravnopravnih oziroma javnopravnih razmerjih in manj kot instrumentarij za vzpostavitev sodelovalnega upravljanja, dobrega javnega upravljanja ter pravic dobre uprave. Ob tem v ZUP umanjajo tudi nekateri instituti, ki so v teoriji upravnega procesnega že nekaj časa uveljavljeni, na primer konkurenčni postopki, alternativno reševanje upravnih zadev, garantni akti. Raziskovalni projekt, katerega cilje popisujem v pričujočem prispevku, bo s pomočjo primerjalnopravne in praktične analize institutov skušal pripraviti strokovno podlago za modernizacijo ter prenavo splošnega upravnega postopka v Sloveniji.

Ključne besede: splošni upravni postopek, modernizacija, primerjalnopravna analiza, digitalizacija, dobra javna uprava, alternativno reševanje sporov, garantni akti, konkurenčni postopki.

Professional Article
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Future of General Administrative Procedure in Slovenia: In Search of the Foundations for Renewal and Upgrade

Matevž Bedič

SYNOPSIS

The general administrative procedure in Slovenia remains rooted in the Austrian administrative tradition, which, after some adaptation, was adopted by Yugoslavia. Despite ten amendments, the concept of the Slovenian General Administrative Procedure Act (*Zakon splošnem upravnem postopku – ZUP*) has not been updated. As such, it fails to adequately address the needs of modern society. Thus, ZUP is predominantly perceived as a formal procedural framework for the exercise of rights and the imposition of obligations in administrative law, rather than as a tool for fostering collaborative governance, good public administration and the rights of good administration. ZUP also lacks some institutions long established in the theory of administrative procedure, such as competitive procedures, alternative dispute resolution of administrative relations, and assurance. Through a comparative legal and practical analysis, the research project, the objectives of which are described in the article, aims to provide an expert basis for the modernisation and reform of the general administrative procedure in Slovenia.

Key words: general administrative procedure, modernisation, comparative legal analysis, digitalisation, good administration, alternative dispute resolution, assurance, competitive procedures.

Strokovni članek
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Digitalizacija javne uprave in Mestne občine Ljubljana

Matej Cerar

POVZETEK

Digitalizacija je postala ena glavnih tem zanimanja tako v akademskem kot tudi v poslovnem svetu. Vendar se digitalni razvoj mest komajda raziskuje, saj je le del vseh raziskav o digitalizaciji usmerjen v javno upravo. V prispevku je pojasnjena razlika med digitalizacijo in digitalno preobrazbo. Hkrati so orisane digitalne strategije Evropske unije in nacionalni pristopi Slovenije s poudarkom na ciljih, povezanih z digitalizacijo, transformacijo in pametnimi mesti. V nadaljevanju so predstavljeni glavni vidiki Strategije digitalnega razvoja MOL 2023–2027. Nazadnje članek ponuja pogled na dobro e-upravo in vlogo sodobnih tehnologij pri njej.

Ključne besede: digitalizacija, javna uprava, digitalni razvoj, digitalne strategije, e-upravljanje.

Professional Article
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Digitalisation of the Public Administration and of the City of Ljubljana

Matej Cerar

SYNOPSIS

Digitalisation has emerged as a principal subject of interest in both academic and business world. Yet the digital development of cities has received scant research attention, with only a fraction of all the research on digitalisation is directed towards public administration. The article begins by clarifying the distinction between digitalisation and digital transformation. It then outlines the European Union's digital strategies and Slovenia's national approaches, emphasizing goals related to digitalisation, transformation, and smart cities. Subsequently, the main aspects of the City of Ljubljana Digital Development Strategy for 2023–2027 are presented. Finally, the article provides insights into good e-governance and the role of modern technologies in it.

Key words: digitalization, public administration, digital development, digital strategies, e-governance.

Strokovni članek
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Razširjanje načinov uporabe konoplje

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POVZETEK

Analitično podjetje New Frontier Data je ocenilo, da se je leta 2020 skupna svetovna prodaje konoplje (legalna in nelegalna) povzpela na kar 415 milijard ameriških dolarjev. Ta znesek naj bi se do leta 2025 povečal na skoraj 500 milijard dolarjev. Ker neurejeni (ali nelegalni) trg še vedno zaseda velik tržni delež, je jasno, da je nastajajoča legalna industrija konoplje še vedno v svojih začetnih razvojnih fazah. Kazalniki na trgu nam tudi kažejo, da nekatera podjetja hitijo k ustvarjanju konopljinih izdelkov prihodnosti, tako za medicinsko uporabo kot tudi za odrasle, da se zadovolji rastoče povpraševanje. Slovenija je že uveljavljena kot mednarodno središče raziskav in razvoja za različne industrijske panoge, med drugim tudi za farmacevtsko industrijo. Enako kot je raziskovanje in razvoj za druge industrijske panoge izjemno koristno za slovensko gospodarstvo, bi lahko take koristi pridobivali tudi iz nastajajoče industrije konoplje. Slovenija že ima infrastrukturo, znanje in institucije, kot so univerze, da bi lahko zasedla pomemben delež sektorja raziskav in razvoja konoplje. Žal pa trenutno pri nas še nimamo sodobnih politik in predpisov glede konoplje, ki so potrebni za ustvarjanje trdne podlage in pogojev za uspešno industrijo. Kot pa sta avtorja zgolj orisala v tem prispevku, so možnosti raznolike uporabe konoplje in gospodarskega razvoja na tej podlagi izjemne.

Ključne besede: konoplja, medicinska uporaba, industrija, raziskave in razvoj, gospodarski razvoj.

Professional Article
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Expanding the Uses of Cannabis

Jakob Jež
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SYNOPSIS

The analytical company New Frontier Data has estimated that in 2020, the total global sales of cannabis, both legal and illegal, rose approximately to USD 415 billion. This figure is projected to increase to nearly USD 500 billion by 2025. With the unregulated (or illegal) market still occupying a substantial share of the market, it is clear that the burgeoning legal cannabis industry is in the early stages of development. Market indicators suggest that some companies are rushing to develop the cannabis products of the future, both for medical use and for adults, to meet the growing demand. Slovenia has already established itself as an international hub for research and development across various sectors, including pharmaceuticals. Just as research and development have been immensely beneficial to the Slovenian economy in other sectors, similar advantages could be reaped from the emerging hemp industry. Slovenia possesses the necessary infrastructure, expertise, and institutions, such as universities, to secure a significant position in the cannabis research and development sector. Unfortunately, at present, Slovenia lacks modern cannabis policies and regulations essential for laying a robust foundation and creating conducive conditions for a thriving industry. However, as the two authors have outlined in this article, the potential for diverse applications of hemp and the resultant economic development are extraordinary.

Key words: cannabis, medical use, industry, research and development, economic development.

Drugi članki in sestavki
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Vizija za še boljšo pravno fakulteto: refleksija študenta

Peter Šujica

POVZETEK

Avtor, sveži diplomant Pravne fakultete Univerze v Ljubljani, podaja svojo refleksijo študijske izkušnje in predloge morebitnih izboljšav. Najprej poudari vrednost kritičnega razmišljanja, ki ga spodbuja *open-book* način pisanja izpitov. V tem smislu je to lahko pomembna in izvedljiva nadgradnja izpitov, ki temeljijo na pomnjenju obsežne veljavne zakonodaje. Nato predlaga uvedbo institutov, ki študente že v času študija usmerjajo v znanstveno raziskovanje in delo. Na koncu je predstavljena še možnost mednarodnega programa LL.M., ki bi povečal svetovni ugled fakultete in spodbudil kulturno ter akademsko raznolikost.

Ključne besede: Pravna fakulteta Univerze v Ljubljani, predlogi sprememb, *open-book* izpiti, študentski raziskovalec, program LL.M.

Other Articles and Contributions
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A Vision for an Even Better Faculty of Law: Student Reflection

Peter Šujica

SYNOPSIS

The author, a recent graduate from the Faculty of Law at the University of Ljubljana, reflects on his educational journey and offers suggestions for potential improvements. Initially, he emphasises the importance of critical thinking, fostered through an “open-book” approach of examinations. This method, he argues, could be a significant and feasible improvement over exams that solely focus on the rote memorisation of the legislation in force. Subsequently, he advocates for the establishment of institutes dedicated to steering students towards scientific research and academic pursuits during their course of study. Finally, he introduces the concept of an international LL.M programme. This programme aims to elevate the global standing of the Faculty and foster both cultural and academic diversity.

Key words: Faculty of Law at the University of Ljubljana, suggestions for changes, “open-book” exams, student researcher, LL.M. programme.