

Povzetki
Abstracts

VI.

UDK 347.77:004.65:061.1EU(497.4)

Pravni letopis 2014, str. 9–33

MAG. JURE LEVOVNIK

Pravno varstvo podatkovnih baz (izbrani pravni vidiki)

V Evropski uniji pravno varstvo naložb v izdelavo podatkovnih baz temelji na enem od bolj nenavadnih institutov prava intelektualne lastnine, tako imenovani pravici *sui generis*. Ta nastane, če je izdelava podatkovne baze posledica znatne naložbe, in v določenem obsegu in z določenimi omejitvami prepoveduje tretjim osebam dejanja, ki bi lahko nerazumno posegla v zakonite interese izdelovalca baze glede take naložbe. Direktiva 96/9/EC Evropskega parlamenta in Sveta z dne 11. marca 1996 o pravnem varstvu baz podatkov je uzakonila to pravico z namenom spodbujanja naložb v izdelavo podatkovnih baz kot sistemov za hrambo in obdelavo podatkov. Ta prispevek obravnava nekatere izmed temeljnih vidikov pravnega varstva podatkovnih baz na podlagi pravice *sui generis*: pravno opredelitev podatkovne baze, pogoje za nastanek in imetništvo pravice *sui generis* ter vsebino in kršitev pravice *sui generis*. Kot je v prispevku predstavljeno, je ureditev pravice *sui generis* v več pogledih nejasna in pušča precej prostora za različne razlage.

Ključne besede: podatkovne baze, pravno varstvo, pravica *sui generis*, pravice izdelovalcev podatkovnih baz, kršitev pravic

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Pravni letopis 2014, pp. 9–33

MAG. JURE LEVOVNIK

Legal Protection of Databases (Selected Legal Aspects)

In the European Union, legal protection of investments in the creation of databases is based on one of the most curious institutions of intellectual property law, the so-called *sui generis* right which comes into existence if the creation of a database has resulted from a substantial investment and which, to certain extent and with certain limitations, prohibits third parties to take actions which could unreasonably prejudice the legitimate interests of the maker of the database related to such investment. The Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases introduced this exclusive right with the aim to foster investments in the production of databases as advanced information storage and processing systems. This article discusses some of the fundamental aspects of legal protection based on the *sui generis* right, namely: legal definition of a database, conditions for the emergence and ownership of the *sui generis* right and substance and infringement of the *sui generis* right. As will be demonstrated, the regulation of the *sui generis* right is vague in several respects and leaves a lot of room for different interpretations.

Keywords: databases, legal protection, *sui generis* right, database makers' rights, infringement of rights

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Pravni letopis 2014, str. 35–44

DR. MATIJA DAMJAN

Ugotavljanje avtorskih pravic na fotografijah z vidika spletnega repozitorija

Pri vključevanju fotografskega gradiva v javno dostopen spletni repozitorij, kot je zbirka Wikimedia Commons, je treba vedno ugotoviti, ali je gradivo (še) varovano z avtorskimi pravicami. Članek predstavlja pogoje za avtorskopravno varstvo fotografskih del in analizira določbe veljavne in starejše zakonodaje o trajanju pravic s ciljem čim jasneje ugotoviti, katere kategorije fotografiskih del glede na datum nastanka ali objave dela oziroma smrti avtorja niso več varovane z avtorsko pravico. Relevantne so tudi pravice avtorja drugega avtorskega dela, ki je upodobljeno na fotografiji, in s tem povezana izjema proste panorame. Obravnavano je tudi posebno varstvo podobe in imena kulturnega spomenika po predpisih o varstvu kulturne dediščine.

Ključne besede: fotografija, avtorska pravica, spletni repozitorij, trajanje pravic, neobjavljena dela, anonimna dela, folklorna dela, prosta panorama, varstvo podobe kulturnega spomenika

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Pravni letopis 2014, pp. 35–44

DR. MATIJA DAMJAN

Determination of the Copyright Status of Photographs from the Perspective of an Online Repository

When incorporating photographic works in a publicly accessible online repository, such as Wikimedia Commons, it is necessary to determine whether they are (still) protected by copyright. The article presents the conditions for copyright protection of photographic works and analyses the provisions of the existing and previous legislation on the duration of rights, with the aim to identify as clearly as possible the categories of photographic works no longer protected by copyright, taking into account the date of their creation or publication or of the author's death. When another copyrighted work is depicted in the photograph, the rights of its author are also relevant. In this regard, the rules of freedom on panorama can come into play. The special protection of the image and the name of a cultural monument under the rules of cultural heritage protection is also discussed.

Keywords: photography, copyright, online repository, duration of rights, unpublished works, anonymous works, works of folklore, freedom of panorama, protection of the image of cultural monuments

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Pravni letopis 2014, str. 47–52

DR. MIHA JUHART

Namenska poraba sredstev rezervnega sklada v večstanovanjskih hišah v etažni lastnini

Če je lastnikov več, je eno bistvenih vprašanj skupnega upravljanja, kako zagotoviti vzdrževanje skupne stvari. To vprašanje je še posebej poudarjeno pri večstanovanjskih hišah, saj je njihovo vzdrževanje bistvenega pomena, da se zagotavljamо pogoji za bivanje. SPZ je uvedel oblikovanje obveznega rezervnega sklada za vse primere etažne lastnine, to obveznost pa je pozneje nekoliko omejil Stanovanjski zakon. Če se v večstanovanjski hiši oblikuje rezervni sklad, je takšen sklad skupna lastnina vseh etažnih lastnikov. Pomembno pa je, da je sklad določen kot ločeno namensko premoženje. Lastnik svojih vplačil v sklad ne more zahtevati nazaj, prav tako na sredstva sklada ne morejo poseči lastnikovi upniki. Z rezervnim skladom upravlja upravnik. Sredstva rezervnega sklada pa se lahko uporabijo samo za namene, ki so določeni z zakonom, kot so: stroški vzdrževanja, ki so predvideni v sprejetem načrtu vzdrževanja, stroški, povezani z učinkovitejšo rabo energije, stroški izboljšav, stroški nujnih vzdrževalnih del, stroški sodnih postopkov izterjave ter odplačevanje posojil, najetih za prej omenjene namene.

Ključne besede: etažna lastnina, etažni lastnik, rezervni sklad, stvarnopravni zakonik, stanovanjski zakon

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DR. MIHA JUHART

The Dedicated Use of Reserve Fund Assets in Condominium Ownership of Apartment Houses

The question how to ensure the maintenance of the house is one of the most important and sensitive issues of condominium. The maintenance of the house is of essential importance for all condominium owners. Therefore, the Slovenian Law of Property Code has introduced the mandatory obligation to form a special fund for maintenance of the house, the so called Reserve Fund. This obligation was later somehow limited by the Housing Act. The Reserve Fund stands in common property of all condominium owners. It is important that the Reserve Fund is defined as a separate property, dedicated for the special purposes. Condominium owners are not allowed to claim back their payments into the fund and their creditors cannot demand the execution on the owner's share of the fund for repayment of their claims in relation to him. The assets of the Reserve Funds can be used only for the purposes specified by law. The condominium owners must appoint a house manager, who also manages the assets of the Reserve Fund. The house manager is responsible to the condominium owners.

Keywords: Condominium, condominium owner, Reserve Fund, Law on Property Code, Housing Act

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DR. ANITA DOLINŠEK

Nastopanje skupnosti etažnih lastnikov v sodnih postopkih

Z razvojem etažne lastnine kot posebne pravice stvarnega prava je nastala tudi posebna skupnost, ki temelji na tej pravici, to je skupnost etažnih lastnikov. Tej skupnosti kot novemu subjektu civilnega prava, je potrebno zagotoviti ustrezno pravno varstvo. Slovenski pravni red skupnosti etažnih lastnikov ne priznava ne pravne ne pravdne sposobnosti. Zato tudi nastopanje skupnosti etažnih lastnikov pred slovenskimi sodišči ni urejeno. To pravno praznino sodišča različno zapolnjujejo – na splošno velja, da priznavaju pravdne sposobnosti tej skupnosti niso naklonjena. Kadar pa sodišča dovolijo takšni skupnosti nastopati v sodnih postopkih, se največkrat oprejo na določilo tretjega odstavka 76. člena ZPP in tej skupnosti podelijo sposobnost nastopati kot stranka (samo) v konkretnem postopku (podeljena sposobnost biti stranka). Za poenotenje sodne prakse bi bilo potrebno tej posebni skupnosti priznati delno pravno in pravdno sposobnost. S tem bi omogočili, da samostojno nastopa v sodnih postopkih, je aktivno ali pasivno legitimirana.

Ključne besede: etažna lastnina, skupnost etažnih lastnikov, delna pravna in pravdna sposobnost, aktivna in pasivna legitimacija

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DR. ANITA DOLINŠEK

The Appearance of Floor Owners Community in Court Proceedings

The establishment of floor ownership as a special right in rem has also caused the development of a special community named the community of floor owners which is based on this special right. This community, as a new legal entity in civil law, needs appropriate legal protection. The Slovenian legal order does not allocate to the community of floor owners either the legal capacity or the capacity to sue. There are no rules which would define the appearance of the community of floor owners in civil procedures. These legal lacunas are filled by court decisions which are not harmonized. In general in their decisions the courts are not keen on providing legal capacity for the community of floor owners to enter the procedures. Party to the proceeding, if it is allowed, is based on §76/3 of the Civil Procedure Act (grant capacity to be a party). It would be reasonable for the community of floor owner to be recognized their partial legal capacity and capacity to sue and to be sued. This would enable the community to be identified as a party in civil litigations.

Keywords: floor ownership, community of floor owners, partial legal capacity and capacity to sue and to be sued

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DR. VIDA MAYR

Spregled pravne osebnosti v slovenski sodni praksi

Četudi je bil institut spregleda pravne osebnosti v Sloveniji uzakonjen pred več kot dvajsetimi leti, je v sodni praksi zelo malo primerov uspešne uveljavitve odgovornosti družbenikov za obveznosti družbe na tej pravni podlagi. V preteklosti je bil eden od razlogov za to odgovornost družbenikov za obveznosti izbrisanih družb. Upniki imajo v postopkih, v katerih uveljavljajo spregled pravne osebnosti, težek položaj zaradi informacijske asimetrije in procesnih pravil o trditvenem in dokaznem bremenu. To utegne spremeniti novejša sodna praksa, ki v nekaterih primerih izjemoma dovoljuje informativne dokaze. Tudi obrnjeno dokazno breme pri dokazovanju subjektivnega elementa iz četrte alineje 8. člena ZGD-1 bi olajšalo položaj upnikov. Kljub interesom upnikov pa mora ostati spregled pravne osebnosti izjema, saj bi njegova prepogosta uporaba lahko ogrozila pravni institut kapitalskih družb.

Ključne besede: spregled pravne osebnosti, odgovornosti družbenikov

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DR. VIDA MAYR

The Disregard of Legal Personality in Slovenian Case Law

Despite the fact that the institute disregard of legal personality (“lifting the corporate veil”) was introduced in Slovene legislation more than twenty years ago, in the case law the creditors have seldom success by enacting this legal institute. In the past one of the reasons was the responsibility of the shareholders for liabilities of erased companies. The process situation of the creditors is difficult due to the information asymmetry and the burden of proof. This may change the recent case-law that, in some cases, exceptionally allows informative evidence. The position of creditors could also be facilitated by reversed burden of proof in proving the subjective element from the 4. Indent 8. Article Slovene Companies Act. Despite the interest of the creditors the disregard of legal personality has to remain the exception. The use of this institute on excessively frequent basis could threaten the institute of company limited by shares.

Keywords: disregard of legal entity, lifting (piercing) the veil, liability of shareholders

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DR. DAMJAN MOŽINA

Povrnitev premoženjske škode na motornih vozilih

Članek na primeru škode na motornih vozilih predstavlja načela povrnitve premoženjske škode zaradi uničenja ali poškodovanja stvari. Obravnava vprašanja obsega in načina povrnitve škode. Osnovno načelo je popolna odškodnina. Premoženjsko škodo je mogoče povrnilti z vzpostavitvijo prejšnjega stanja, kar pri motornih vozilih pomeni popravilo, oziroma s povrnitvijo stroškov popravila (restitucija) ali pa s povrnitvijo vrednosti vozila pred škodnim dogodkom (kompenzacija). Upoštevati je treba načelo gospodarnosti povrnitve škode in prepoved oškodovančeve obogativitve. Avtor se zavzema za fleksibilen pojem ekonomske totalne škode. Navaja argumente v prid povrnitvi škode v obliki povrnitve stroškov popravila, tudi če se to ne izvede. Obravnava tudi vprašanje dodatka k odškodnini zaradi nižje tržne vrednosti vozila, udeleženega v prometni nesreči. V zvezi z vprašanjem povrnitve škode zaradi začasne nemožnosti uporabe vozila se zavzema za abstraktno povrnitev škode.

Ključne besede: povrnitev premoženjske škode, vrnitev v prejšnje stanje, restitucija, denarna odškodnina, kompenzacija, totalna škoda, škoda zaradi nemožnosti uporabe stvari, abstraktna povrnitev škode

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DR. DAMJAN MOŽINA

Recovery of Patrimonial Loss on Motor Vehicles

The paper aims to present the principles of recovery of patrimonial loss in the form of damaged or destructed things on the example of motor vehicles. It discusses the issues of method and amount of recovery of loss. Patrimonial loss can be recovered by carrying out or paying the cost of cure, i.e. repair (restitution), or by paying the value of the vehicle before the accident (monetary compensation). The principle of economy of damages and the prohibition of enrichment of the wronged party need to be observed. The author strives for a flexible notion of total loss. He presents arguments in favour of recovery on the cost-of-cure basis in cases where repair is not performed. He also discusses the issue of supplement to damages due to lower market price of a repaired vehicle. With regard to the issue of recovery of loss due to temporal impossibility of use of a vehicle the author strives for recovery of abstract damages.

Keywords: recovery of patrimonial loss, restitution, compensation, total loss, loss due to temporal impossibility of use of things, recovery of abstract damages

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TOMAŽ PAVČNIK

(Ne)dopustnost ugovora, da je za nesrečo izključno odgovoren le en voznik (člen 154/4 OZ)

Prispevek se ukvarja z vprašanjem, ali se imetnik motornega vozila proti oškodovancu, ki je pešec, sopotnik ali kolesar, lahko brani z ugovorom, da je za škodni dogodek izključno odgovoren drug imetnik motornega vozila. Geneza tega vprašanja sega več kot sto let nazaj. Leta 1908 je namreč avstrijski zakon uvedel solidarno odgovornost več imetnikov motornih vozil nasproti tretjim. Teorija in praksa v vseh teh desetletjih nista bili enotni, a večinoma sta možnost takšnega ugovora izključevali. Posamezna stališča in posamezne odločbe so ugovor vendarle dopuščale, če je bilo evidentno, da posamezniku ni mogoče pripisati prav nikakršne odgovornosti.

Avtor prispevka se sprašuje o naravi objektivne odgovornosti v prometu in o naravi solidarne odgovornosti. Opirajoč se na naravo te odgovornosti in na spremenjeno besedilo novega zakona zagovarja tezo, da je razbremenilni ugovor mogoč v treh primerih. Prvič, kadar je oškodovanec delno ali v celoti prispeval k škodnemu dohodku. Drugič, kadar je drug voznik izključno krivdno odgovoren. In nazadnje, kadar mu uspe izpodbiti domnevno bazo objektivne odgovornosti.

Ključne besede: prometna nesreča, ugovor izključne odgovornosti, nevarna dejavnost, objektivna odgovornost, solidarna odgovornost, vzročna zveza

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TOMAŽ PAVČNIK

About the Defense that Another Holder of Motor Vehicle is Exclusively Liable for the Accident (Code of Obligations, article 154/4)

Paper deals with the question whether a person, who owns a car, may exclude his liability towards a pedestrian, passenger or cyclist with the defense that another holder of motor vehicle is exclusively responsible for the accident. The genesis of this issue dates back over a hundred years ago. The Austrian act of 1908 introduced joint liability of motor vehicle holders towards third parties (persons). Theory and case law in all those decades were not uniform, but mainly such a defense was excluded. The defense was exceptionally recognized when it was obvious that an individual is innocent of any kind of liability.

The author analyzes the nature of strict liability in traffic and the nature of joint liability. Basing on the nature of strict and joint liability on one the hand and according to changed text in relevant article of the Code of obligations on the other hand, argues, that such an objection is grounded in three cases. First, if a victim itself contributed partially or exclusively to the accident. Secondly, if another motor vehicle holder is exclusively guilty by criteria of fault liability. And finally, if motor vehicle holder proves that there is not even a slightest actual reason to implicate the rule of presumption of causal link to his case.

Keywords: motor vehicle accidents, defense of exclusive liability, dangerous activity, strict liability, joint liability, causal link

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DR. LUIGI VARANELLI

Zakon o obveznih zavarovanjih v prometu, evropska zavarovalniška direktiva in slovenski predhodni vprašanji za Sodišče EU

V prispevku avtor analizira nekatere sporne vidike direktiv o zavarovanju avtomobilske odgovornosti. Pri analiziranju pojma vozila zagovarja restriktivno razlago, ki temelji na teleološki interpretaciji normative o zavarovanju avtomobilske odgovornosti. Bolj kompleksna je problematika pravnega položaja t. i. odškodninskega organa, zoper katerega se zahtevek lahko vloži v primeru, če odgovornostna zavarovalnica oziroma njen pooblaščenec za obravnavanje odškodninskih zahtevkov v predpisanim roku ne podata ustreznega odgovora na zahtevek oškodovanca. Polni učinek člena 6 Četrte direktive o zavarovanju avtomobilske odgovornosti, ki je uvedla odškodninski organ, zahteva, da se ta organ ne obravnava le kot posrednik med odgovornostno zavarovalnico in oškodovancem, temveč kot subjekt, zavezani k plačilu odškodnine, če so izpolnjeni pogoji, ki jih direktiva predpisuje.

Ključne besede: zavarovanje avtomobilske odgovornosti, motorno vozilo, odškodninski organ, pooblaščenec za obravnavanje odškodninskih zahtevkov, postopek predhodnega odločanja

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DR. LUIGI VARANELLI

Law on Compulsory Insurance in Transport, Directive on Insurance Against Civil Liability in Respect of the use of Motor Vehicles, Slovenian Requests for a Preliminary Ruling to the Court of Justice of the European Union

In the contribution author analyses some controversial aspects of directive on insurance against civil liability in respect of the use of motor vehicles. In the analysis of the concept of vehicle he defends a restrictive interpretation, basing on the teleological interpretation of the regulation concerning the automobile third party insurance. More problematic is the position of so called compensation body, to which the claim could be addressed, when the liable insurance undertaking or its representative in the fixed period does not answer to the claim of the injured party. The full efficiency of the 6th Article of directive on insurance against civil liability in respect of the use of motor vehicles, that has introduced the compensation body, requires that the above mentioned body is not seen as a mediator between the liable insurance undertaking and the insured, but as a subject being liable to compensate the damages, if the conditions provided by the directive have been realized.

Keywords: insurance against civil liability in respect of the use of motor vehicles; motor vehicle; compensation body; claims representative; preliminary rulings

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DR. ALBIN IGLIČAR

Resolucija o normativni dejavnosti – neizpolnjeni cilji slovenske zakonodajne politike

Državni zbor Republike Slovenije je leta 2009 sprejel Resolucijo o normativni dejavnosti. Ta dokument je ključnega pomena za razvoj Slovenije v smeri oblikovanja sodobne pravne države. Navedena resolucija na začetku opredeljuje glavne cilje, ki naj jih dosegamo pri pripravi in sprejemanju predpisov: krepitev pravne države, spoštovanje delitve oblasti in hierarhije pravnih aktov, zagotavljanje kakovosti predpisov, uveljavljanje državljanske participacije ter izvajanje presoje posledic predpisov. Cilji so bili torej postavljeni, zato ni več vsaka pot dobra za njihovo uresničevanje. Toda večina poti, ki jih ubira dejanska slovenska pravna politika, ne vodi k resolucijskim ciljem. Premalo prizadevanja za uresničevanje resolucijskih ciljev beležimo tako pri predlagateljih in pripravljavcih predpisov, pri organih, ki predpise sprejemajo, in tudi pri organih, ki so odgovorni za izvrševanje predpisov.

Ključne besede: pravna politika, delitev oblasti, pravna država, participacija, presoja učinkov predpisov

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DR. ALBIN IGLIČAR

Resolution on Regulatory Activities – the Unfulfilled Goals of Slovenian Legislative Policy

National Assembly of the Republic of Slovenia adopted in 2009 a Resolution on regulatory activities. This document is crucial for the development of Slovenia towards a modern state based on the rule of law. The Resolution first sets out the main objectives to be achieved in the preparation and adoption of rules: strengthening the rule of law, respect for separation of powers and the hierarchy of norms, assurance of the quality of regulations, encouragement of civic participation and implementation of regulatory impact assessment. The objectives were thus set and not any path leads to their achievement. However, most of the paths taken by the actual Slovenian legislative policy are not conducive to the objectives of the Resolution. Insufficient efforts to achieve the objectives are indicated in bodies preparing and proposing new regulations, in legislative and regulatory bodies, as well as in bodies responsible for the enforcement of said regulations.

Keywords: legal policy, separation of powers, rule of law, participation, regulatory impact assessment

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KATJA BOŽIČ

O čem govorimo, kadar govorimo o »našem« pravu

Vsakodnevni diskurz na zelo različnih ravneh je precej enoten: da je naš pravni red kaotičen, zapleten, birokratski, neživljjenjski, nepravičen.

Zaupanje v pravo, v pravno varnost in pravno državo naj bi bili immanentni odnosu do tistega prava, ki ga ljudje doživljamo kot legitimno, torej kot tisto, kar je, zelo poenostavljeno rečeno, sprejemljivo in upravičeno. Nezaupanje v pravo implicira krepko omajano zaupanje v državne institucije, torej v ljudi, ki pravo sooblikujejo, sprejemajo in izvršujejo.

Razlika med odzivi na »pravo« in »naše pravo« je pričakovana in sploh ne presenetljiva. Če prava Evropske unije ne dojemamo kot »naše« pravo, s tem posredno ne računamo na vse tiste pravice in dolžnosti, ki iz tega izvirajo. In so vse prej kot nepomembne. Z nezavedanjem tega pomembnega dejstva izgubljamo priložnost za aktivacijo in mobilizacijo na tem polju, širše gledano pa to zanika ali vsaj rahlja že tako ubogo identifikacije s pripadnostjo Evropski uniji.

Zgodba o zaupanju v pravo Evropske unije je najbrž podobna zgodbi o zaupanju v nacionalne predpise, pri čemer so nekateri elementi vendarle drugače poudarjeni in izpostavljeni. Pravilo je nekaj relacijskega, obstaja v odnosih ljudi med seboj in do stvari. Z množično volilno abstinenco se odrekamo demokraciji, z množično družbeno apatijo se odrekamo vpetosti v družbeno stvarnost. Če želimo drugače kot danes, predvsem ne smemo molčati. Najbrž lahko vsak od nas prispeva kaj k temu, da se povrne spoštovanje in zaupanje v pravo.

Ključne besede: pravo, naše pravo, pravo EU, zaupanje v pravo, demokracija, aktivna participacija, evropska identiteta

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KATJA BOŽIĆ

What Do We Talk about when We Speak of "Our" Law?

Everyday discourse at very different levels is fairly uniform: that our legal system is chaotic, too complex, bureaucratic, impractical and unfair.

Trust in the law, in legal certainty and in the rule of law should be immanent to the attitude towards that law that people experience as legitimate, i.e. the law which is, very simply put, acceptable and justified. Distrust in the law implies a severely undermined confidence in state institutions, that is, in the people who shape, adopt and enforce the law.

The difference between the responses to the "law" and "our law" is expected and not at all surprising. If the law of the European Union is not perceived as "our" law, we thus indirectly do not count on all the rights and obligations resulting therefrom. And they are all but irrelevant. Through unawareness of this important fact, we are losing the opportunity to activate and mobilise in this field. More broadly, however, this denies or at least loosens the already poor identification with affiliation to the European Union.

The story of trust in European Union law is probably similar to the story of trust in the national regulations; however, some other elements may be highlighted and exposed. The law is something relational, it exists in relationships between people and in relation to things. With the massive electoral abstinence, we are renouncing democracy; with the massive social apathy we are denying involvement in the social reality. If we want the situation to change, we should not remain silent. Each of us can probably contribute something towards restoring the respect of the law and trust into it.

Keywords: law, our law, EU, trust in the law, democracy, active participation, European identity

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Pot in stranpoti nomotehnike – Analiza nekaterih aktualnih primerov

Eden od temeljev pravne varnosti, s tem pa tudi pravne države so jasni, nedvoumni, razumljivi in v skladu z veljavno nomotehniko zasnovani predpisi, ki vnaprej definirajo položaj ter pravice in obveznosti vsakogar. Pomen kakovostne priprave predpisov je pogosto podcenjen. Kljub temu, da so v posameznih primerih možne (in dopustne) različne nomotehnične rešitve, to samo po sebi ne sme vplivati na primernost, ustreznost in pravilnost predpisov. Namen prispevka je prikazati, ali in kako se lahko slabe nomotehnične rešitve odrazijo v neprimernih ali manj primernih rešitvah, ki še dodatno utrjujejo vtis, da je zakonodaja slaba, zapletena in nerazumljiva. Nekateri v prispevku opisani primeri dokazujejo, da lahko neprimerne nomotehnične rešitve vplivajo na preglednost in razumljivost predpisa ali celo predragačijo prvotno predvideni vsebinski pomen njegovih določb.

Ključne besede: pravna varnost, zakonodaja, nomotehnika, nomotehnične smernice, hierarhični ustroj pravnega reda

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“Ways and Byways” of Legal Drafting – Analysis of some Current Cases

Legal certainty bases on clear, unambiguous, understandable regulations that are perfectly legally drafted, and which – in advance – define the everyone's position, rights and obligations. The regulations that are correct with regard to the rules of legal drafting and base on the use of unified legal drafting rules are an important constituent element of legal certainty in a state governed by the rule of law. The importance of the quality of drafting of legislation is often underestimated. Even if sometimes different drafting solutions are possible, the adequacy, appropriateness and correctness of the legislation may not be affected by using different legal drafting techniques. The purpose of this article is to examine, whether and how bad legal drafting causes inappropriate or less appropriate legislation, and how the non-using the right legal drafting technique contributes to the final impression that the legislation is bad, complicated and incomprehensible. Some of the examples, described in this article, prove that the poorly prepared regulations cause trouble in the interpretation and/or their meaning is different than preliminary estimated.

Keywords: legal certainty, legislation, legal drafting technique, legal drafting guidelines, hierarchical structure of the legal system