IV.

Povzetki
Abstracts

UDK 347.515.2:616.98:578.834
Pravni letopis 2021, str. 9–30

ZALA MAJHENIČ, GAJA TANKO

Novi koronavirus – nove obveznosti delodajalca? Odškodninska odgovornost za okužbo na delovnem mestu

Avtorici predstavljata odškodninsko odgovornost delodajalca za okužbo s COVID-19 na delovnem mestu. Pri tem poudarjata zlasti vprašanja, ali in pod katerimi pogoji se vzpostavi odškodninska odgovornost delodajalca, kakšna je pravna narava te odgovornosti (objektivna, krivdna odgovornost), kdaj delo zaradi večjega tveganja izpostavljenosti okužbi s COVID-19 pomeni nevarno dejavnost, ali in kdaj ima delavec pravico odkloniti delo, kako in pod katerimi pogoji se delodajalec odgovornosti razbremeni ter kaj je pravno priznana škoda, povzročena z okužbo, in kako jo povrniti. Avtorici svoja stališča prikazujeta glede na veljavno ureditev slovenskega pravnega reda, analiza pa vključuje tudi povezavo z dosedanjo sodno prakso slovenskih sodišč in Evropskega sodišča za človekove pravice.

Ključne besede: odškodninska odgovornost delodajalca, vzročna zveza, delo v tveganih razmerah, COVID-19

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ZALA MAJHENIČ, GAJA TANKO

Covid-19 - New responsibilities for the employer?: Civil liability for the infection in the workplace

The authors present employer's liability for COVID-19 infection in the workplace. In particular they raise question of whether and under what conditions is the employer liable, what is the legal nature of this liability (strict, culpable liability), under which circumstances will the work classify as dangerous activity (due to the higher risk of exposure to COVID-19 infection). The authors also discuss, when has the worker right to refuse work, how and under what conditions is the employer discharged of liability and after all, what is the legally recognized damage caused by the COVID-19 infection, and how to reimburse it. The authors present their views through the prism of the current regulation of the Slovenian legal order, and the analysis, which also includes the current case law of Slovenian courts and the European Court of Human Rights.

Keywords: employer's liability, causal link, work in dangerous circumstances, COVID-19

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Pravni letopis 2021, str. 31–49

NADJA STRLE

Nezakonito odrejena karantena na mejnem prehodu: podlaga za odškodninsko odgovornost države?

Avtorica v prispevku obravnava problematiko nezakonitega odrejanja karanten na mejnem prehodu ob vstopu v Slovenijo, kakor izhaja iz odločbe Upravnega sodišča II U 261/2020-18 z dne 2. 9. 2020. V njej je sodišče navedlo, da gre pri ukrepu karantene za poseg v pravico svobode gibanja in tudi v osebno prostost, zaradi česar bi morala biti posamezniku zagotovljena še posebna ustavna procesna jamstva. Ker je bil ukrep v konkretnem primeru nezakonit, so prizadeti posamezniki izrazili namero zahtevati odškodnino od države za utrpljeno škodo. Avtorica glede na to razmišlja, ali obstaja pravna podlaga za odškodninsko odgovornost države glede na veljavno pravno teorijo in sodno prakso. Sklepno izpostavi ustavnopravno vprašanje, ali bi bila med dejansko izrednimi razmerami COVID-19 primerna pravna razglasitev izrednega stanja, kot ga predvideva Ustava RS, ter v zvezi s tem morebitna derogacija posameznih pravic in svoboščin po 15. členu EKČP.

Ključne besede: karantena na mejnem prehodu, odškodninska odgovornost države, protipravnost ravnanja, derogacija EKČP, izredno stanje, COVID-19

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NADJA STRLE

Illegally ordered quarantine at the border crossing: the basis for state liability?

The author discusses the issue of authorities' issuing illegal quarantine decisions to individuals at the border crossing upon entering Slovenia, as follows from the judgement of the Administrative court with the case number II U 261 2020-18 of 2 September 2020. In it, the court said that the quarantine measure interferes with the right to freedom of movement, as well as personal liberty, which means that the individual affected should be provided with special constitutional procedural guarantees. The individuals affected by the illegal measure expressed their intention to seek compensation from the state for the damage suffered. In this light, the author considers whether there is a legal basis for the state's liability for damages according to the existing legal theory and case law. In conclusion, the author raises the constitutional question of whether in the de facto state of emergency resulting from COVID-19 epidemic the state should legally declare a state of emergency as provided by the Constitution of the Republic of Slovenia, and possibly also derogate from certain rights and freedoms according to Article 15 of the ECHR.

Keywords: quarantine at the border crossing point, state liability, unlawful conduct, derogation from ECHR, state of emergency, COVID-19.

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MIHA FINK

Problem neveljavnih vladnih odlokov, glob, izrečenih brez pravne podlage, in vprašanja neupravičene obogatitve Republike Slovenije

Širjenje koronavirusa po državi je od te zahtevalo hiter odziv pri sprejemanju posameznih ukrepov z vladnimi odloki. Vendar nekateri od teh niso bili ustrezno objavljeni v Uradnem listu Republike Slovenije. Tako Odlok o začasni delni omejitvi gibanja ljudi in omejitvi oziroma prepovedi zbiranja ljudi zaradi preprečevanja okužb s SARS-CoV-2 v obdobju med 3. 11. 2020 in 5. 12. 2020 ni bil veljaven, saj kot rečeno ni bil ustrezno objavljen v Uradnem listu. Zato so bile izrečene globe med neveljavnostjo odloka brez pravne podlage in Republika Slovenija je bila neupravičeno obogatena. Zato je glavno vprašanje v prispevku, ali je bila objava ustrezna. Avtor zastopa stališče, da ni bila ustrezna, saj se pri objavi predpisov zahtevata natančnost in predvsem spoštovanje Ustave. Zato lahko posamezniki, ki so že plačali (neupravičeno) globe, vložijo restitucijski zahtevek zoper Republiko Slovenijo. Prispevek obravnava tudi mogoče poti in zaplete, ki se lahko pojavijo pri postopku vračila plačane globe.

Ključne besede: neveljaven odlok, neupravičena obogatitev, globe, prekrškovno pravo, objava, veljavnost, restitucijski zahtevek, Uradni list

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MIHA FINK

The problem of invalid government ordinances, fines imposed without a legal basis and issues pertaining to the unjust enrichment of the Republic of Slovenia

The spread of the coronavirus across the country has demanded quick actions by adopting individual measures through government ordinances. However, some of these measures were not properly published in the Official Gazette of the Republic of Slovenia. Therefore, the Ordinance on the temporary partial restriction of the movement of persons and the prohibition of the collection of persons for the prevention of SARS-CoV-2 infections was invalid during the period between 3 November 2020 and 5 December 2020 because it had not been properly published in the Official Gazette, as already stated. Therefore, these fines, which were imposed during the period of ordinance invalidity, have no legal basis, and have led to the unjust enrichment of the Republic of Slovenia. The main question dealt with in this paper is whether the publication was suitable or not. The author takes the view that it was not, as the publication of regulations requires precision and, above all, the respect of the Constitution. Therefore, the individuals who have already (unjustly) paid their fines may bring a restitutionary claim against the Republic of Slovenia. This paper also discusses the possible ways and complications which may arise during the procedure of reimbursing the fines that have already been paid.

Keywords: invalid ordinance, unjust enrichment, fines, administrative law, publication, validity, restitutionary claim, Official Gazette

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Pravni letopis 2021, str. 67–81

SAMO MIKLIČ

Nepogodbena odškodninska odgovornost in umetna inteligenca

Sedanji režimi nepogodbene odškodninske odgovornosti so globoko ukoreninjeni v evropske in svetovne pravne redove. Odgovornost proizvajalca, objektivna in krivdna odgovornost, odgovornost za drugega in drugi režimi odgovornosti so instituti, katerih stalnost kaže na njihovo zmožnost, da pokrijejo vse mogoče primere nepogodbene škode, ki si jih človeku uspe zamisliti. Pa so ti uveljavljeni temelji civilnega prava ustrezni tudi, ko vznikne nov povzročitelj škode – umetna inteligenca? Pravna stroka ponuja pritrdilne in odklonilne odgovore. Nekateri bi le priredili sedanje režime, drugi menijo, da bo potrebna uvedba novih institutov. Strinjajo pa se, da je za optimalen izkoristek prednosti, ki jih umetna inteligenca ponuja, nujno, da pravo njen razvoj budno spremlja.

Ključne besede: civilno pravo, nepogodbena odškodninska odgovornost, umetna inteligenca, odgovornost uporabnika, odgovornost proizvajalca, objektivna odgovornost, krivdna odgovornost, odgovornost za drugega, škoda, nove tehnologije

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SAMO MIKLIČ

Non-contractual liability and artificial intelligence

The established non-contractual liability regimes are deeply embedded both in European legal systems and worldwide. The continuity of product liability, strict and fault liability, and vicarious liability, as well as other established types of liability, shows their ability to cover every possible case of damage one can think of. Are these pillars of civil law effective, however, when a new injuring party – artificial inteligence – emerges? Legal scholars provide both affirmative and dissenting answers to this question. Some would only adapt the current framework of civil liability, others claim that new legal constructs need to be established. Despite their differences, however, most scholars agree, that in order to maximize the advantages of artificial inteligence, law needs to closely follow its evolution.

Keywords: civil law, non-contractual liability, artificial inteligence, product liability, user liability, strict liability, fault liability, vicarious liability, damage, emerging technologies

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EVA STOJAN

Umetna inteligenca: *cogito, ergo sum?*

Prispevek obravnava temeljna vprašanja in dileme o statusu umetnointeligentnih sistemov v civilnopravnih razmerjih, ki so povezana z njihovimi specifičnimi lastnostmi: avtonomijo ravnanja, (ne)transparentnostjo in sposobnostjo učenja. Posebna pozornost je namenjena problematiziranju odškodninske odgovornosti v primerih z udeležbo umetne inteligence in s tem povezanim predlogom podelitve pravne subjektivitete le-tej. Zaradi pomanjkanja regulacije namreč nastajajo pravne praznine, kar najpogosteje prizadene oškodovance. Skozi prizmo evropske mehke zakonodaje in teorije avtorica kritično razpravlja o primernosti prilagoditve že obstoječih civilnopravnih okvirov in uvedbe novih. Umetnointeligentne sisteme lahko z umestitvijo med pravne subjekte izenačimo z naravnimi ali pravnimi osebami in jim s tem priznamo pravice in naložimo dolžnosti. Alternativno lahko uvedemo nove koncepte, kot je »e-osebnost«, katerih vsebino je mogoče prilagoditi potrebam. Pot do kompenzacije kot enega od ciljev odškodninskega prava pa lahko dosežemo tudi z instituti obveznega zavarovanja in povrnitvenega sklada.

Ključne besede: krepka umetna inteligenca, Nacionalni program, učinek črne škatle, Pravila civilnega prava o robotiki, tehnološka revolucija, agent, objektivna odgovornost, odgovornost države, deliktna sposobnost, delna pravna sposobnost

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EVA STOJAN

Artificial intelligence: *Cogito, ergo sum?*

The article addresses the fundamental dilemmas concerning the status of artificially intelligent systems in civil law, considering their specific characteristics: autonomy, (in)transparency and learning ability. Special attention is given to the question of liability for damages in tort cases involving artificial intelligence and the proposal of granting it legal personhood. The victims are those most frequently affected by the legal gaps that the lack of regulation creates. Through the prism of European soft law and legal theory, the author critically discusses the appropriateness of adapting the current civil law framework and introducing new ones. By granting them legal personhood, artificially intelligent systems could be equalized with natural and juridical persons, thus possessing rights and bearing responsibilities. Alternatively, there is a possibility of introducing new concepts, such as »e-personhood« and adapting them to our needs. The goal of compensation, as one of the main purposes of tort law, can also be achieved by using the institutes of compulsory insurance and compensation funds.

Keywords: strong artificial intelligence, National program, black box effect, Civil Law Rules on Robotics, technological revolution, software agent, strict liability, state liability, tort capacity, partial legal capacity

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Pravni letopis 2021, str. 103–122

BARBARA PAVLEKOVIĆ, JERCA PETROVIČ

Civilnopravni vidiki umetne inteligence v zdravstvu

Umetna inteligenca je ena od tehnologij, ki naj bi bistveno zaznamovale prihodnost. V svojem bistvu je umetna inteligenca zmožnost stroja, da izkazuje človeške lastnosti, kot so mišljenje, učenje in načrtovanje. Umetna inteligenca omogoča tehničnim sistemom, da zaznavajo okolje, obdelajo, kar zaznajo, in rešijo problem, pri čemer ravnajo v skladu z določenim ciljem. Še posebej pomemben je vpliv umetne inteligence na zdravstvo, saj bi z njenim napredkom lahko preprečili marsikatero napačno diagnozo. Umetna inteligenca že spreminja način, kako se zdravniki lotevajo reševanja kliničnih problemov. Nekateri algoritmi se lahko celo kosajo z zdravniki, še vedno pa jih ni mogoče popolnoma samostojno vključiti v vsakodnevno zdravstveno prakso, so pa ti že postavljeni v vlogo pomočnika. Čeprav ti algoritmi pomembno vplivajo na učinkovitost zdravljenja in zdravstvenih posegov, obstajajo še nekatera regulativna in etična vprašanja, na katera je treba predhodno poiskati odgovore. Med temi je tudi pravno vprašanje odškodninske odgovornosti zdravstvenih delavcev in proizvajalcev tehnologije umetne inteligence. Prispevek tako obravnava izbrana vprašanja s tega področja in predlaga nekatere rešitve za take težave. Umetna inteligenca nedvoumno prinaša veliko več prednosti kot slabosti, vendar jo je treba ustrezno pravno regulirati, da bi se zagotovila ustrezna pravna varnost vseh udeležencev.

Ključne besede: umetna inteligenca, zdravstvo, odškodninska odgovornost, reguliranje prava

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BARBARA PAVLEKOVIĆ, JERCA PETROVIČ

Civil law aspects of artificial intelligence in medicine

Artificial intelligence is one of the technologies expected to significantly shape our future. In its essence, artificial intelligence is the ability of a machine to exhibit human characteristics such as thinking, learning and planning. Artificial intelligence enables technical systems to detect the environment, process what they detect and solve the problem by acting in accordance with specific objectives. Of particular importance is the impact of artificial intelligence on healthcare as the further development of AI could prevent many misdiagnoses. Artificial intelligence is already influencing the way doctors approach different clinical problems. Some algorithms are even able to compete with physicians, but it is still not possible to include them in everyday medical practice on their own. They can, however, be placed in the role of assistant. Although these algorithms significantly affect the effectiveness of treatment and medical interventions, there are still some regulatory and ethical issues that need to be addressed in order to find answers. Among these is the legal issue of liability for damages that affects healthcare professionals and artificial intelligence technology manufacturers. This article addresses selected issues in this area and contains some suggested solutions for such problems. Artificial intelligence unequivocally brings many more advantages than disadvantages, but appropriate legal regulations are needed to ensure adequate legal certainty for all participants.

Keywords: artificial intelligence, health care, liability for damages, law regulation

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MASHA KOROŠEC

Jamčevalni zahtevki pri pogodbah o dobavi digitalnih vsebin ali digitalnih storitev: novosti Direktive (EU) 2019/770

Prispevek obravnava jamstva, vsebovana v Direktivi 2019/770, ki jih ima potrošnik na voljo v primeru sklepanja pogodb o digitalni vsebini ali digitalni storitvi. Direktiva je bila sprejeta 20. 5. 2019 in je del Strategije za enotni digitalni trg za Evropo, ki si prizadeva za zagotavljanje čim večjega varstva potrošnikov in harmonizacijo temeljnih pravic ter obveznosti strank pogodbenega razmerja. Glavno vprašanje pri sprejetju Direktive se je nanašalo na ustreznost jamstev, ki so na voljo potrošniku v primeru kršitve tovrstnih pogodb. Sedanja ureditev ni povsem prilagojena potrebam digitalnega trga, ko predmet pogodbe ni stvar, ampak gre za različne podatke, kot so na primer videodatoteke, e-knjige, glasbene datoteke itd. Direktiva obravnava pravice potrošnika v primeru nedobave in v primeru neskladnosti digitalne vsebine, njen temelj pa je dosedanja ureditev potrošniškega prava. V evropski pravni prostor prinaša kar nekaj novosti, s katerimi si prizadeva za vzpostavljanje enotnega digitalnega trga in odpravljanje negotovosti potrošnikov pri uresničevanju njihovih pravic. Med drugim Direktiva uvaja posebne zahteve za skladnost, ki jih razvršča na subjektivne in objektivne, ter uvaja odgovornost za nepravilno namestitev digitalne vsebine. Poleg tega je v določbah upoštevan tudi tehnološki napredek, saj je posebej obravnavano vprašanje glede zagotavljanja posodobitev digitalnih vsebin.

Ključne besede: potrošniško pogodbeno pravo, digitalne vsebine, jamstva potrošnikov, Direktiva (EU) 2019/770 o dobavi digitalnih vsebin in digitalnih storitev, pravice potrošnikov, digitalni trg, nedobava digitalne vsebine, neskladnost digitalne vsebine

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MASHA KOROŠEC

Warranty claims in contracts for the supply of digital content and services: Novelties of Directive (EU) 2019/770

The article analyses the remedies set out in Directive 2019/770 to which the consumer may resort if the contract for the supply of digital content and digital services is not performed correctly. The Directive was adopted in May 2019 and is a part of the Commission's Digital Single Market Strategy that aims to ensure a high level of consumer protection and harmonisation of main rights and obligations of the parties to a sales contract. The main issue faced by the European legislature concerned the adequacy of remedies available to the consumer in the event of a breach of such contracts. Remedies honed to respond to the sale of tangible items do not necessarily translate well into the digital market, since the main subject matter of the contract is not a physical item but intangible data such as video files, e-books, music files, etc. The Directive addresses the consumer's rights both in case of a failure to supply and in case of a lack of conformity and is based on the current EU consumer acquis. However, it brings quite a few novelties to the European legal area, among others it distinguishes between objective and subjective requirements for conformity and introduces the responsibility for the integration of digital content, furthermore, given that the digital content and services are constantly developing, it also addresses the issue of providing the updates to consumers.

Keywords: Consumer contract law, digital content, consumer remedies, Directive (EU) 2019/770 on the supply of digital content and digital service, consumer rights, digital market, failure to supply, lack of conformity

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LEONARDO ROK LAMPRET

Ali je pravo pripravljeno na pametno pogodbo

Pametne pogodbe so v današnjem pravnem redu ena izmed pomembnejših novosti, ki so del tehnologije verižnih blokov. Zaradi samodejne izvršitve transakcij in zagotovljene visoke stopnje anonimnosti, se zanimanje za uporabo pametnih pogodb veča. Upoštevaje, da se zmeraj več pravnih razmerij poslužuje njihove uporabe, je potrebno pametne pogodbe ustrezno pravno urediti. V izogib pravnemu pluralizmu, je potrebno pregledati obstoječi slovenski pravni red ter se vprašati, ali trenutna pravna ureditev zadostuje, da lahko učinkovito in z visoko stopnjo pravne predvidljivosti uporabljamo pametne pogodbe v pravnem prometu. Pri tem je predvsem pomembno, da se lahko pogodbene stranke obrnejo na sodno instanco, ki jim zagotovi učinkovito zaščito pravnega položaja. Zaradi pomankanja sodne prakse, pa se pogodbene stranke v primeru spora obračajo na posebno obliko arbitraže, ki deluje na tehnologiji verižnih blokov.

Ključne besede: pametne pogodbe, tehnologija verižnih blokov, anonimnost, inovativnost, tehnologija, pogodbeno razmerje

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LEONARDO ROK LAMPRET

Is legal system prepared for smart contracts

Smart contracts are one of the most important innovations that are part of blockchain technology. Due to the automatic execution of transactions and the guaranteed high level of anonymity, interest in the use of smart contracts is increasing. Considering that we find smart contracts in many legal relationships nowadays, they need to be properly regulated. In order to avoid legal pluralism, it is necessary to review the existing Slovenian legal order and ask whether the current legal regulation is sufficient to be able to use smart contracts in legal transactions efficiently and with a high degree of legal predictability. In doing so, it is particularly important that the contracting parties have a possibility to turn to the Court of law in order to efficiently protect their legal position. Due to the lack of case law, however, the contracting parties in the event of a dispute turn to a special form of arbitration, which operates on the blockchain technology.

Keywords: smart contracts, blockchain technology, anonymity, innovation, technology, contracting relationship