VII. Povzetki Abstracts

UDK 347.5(497.4)
Pravni letopis 2022, str. 9–27

DAMJAN MOŽINA

Obseg varstva pravnih dobrin v deliktnem pravu: kako generalna je generalna klavzula

Prispevek podaja kratek pregled slovenskega nepogodbenega odškodninskega prava z vidika varstva različnih pravnih interesov (pravnih dobrin). Nekateri pravni redi omejujejo varstvo nekaterih interesov (dobrin), kar velja zlasti za t. i. čisto premoženje (varstvo pred posegi v premoženje, ki jih ne spremlja poseg v oškodovančevo telo ali lastnino). Iz generalne klavzule francoskega tipa, na kateri temelji slovensko deliktno pravo, takšne omejitve ne izhajajo. Vendar to ne pomeni, da so vse pravne dobrine varovane pod enakimi pogoji. Tudi za slovensko pravo velja, da je za odškodninsko varstvo pred nekaterimi posegi v golo premoženje treba izkazati dodatne predpostavke, na primer nemoralnega ravnanja (nelojalna konkurenca) ali zavestne zlorabe (zloraba pravice). Sodna praksa je po zgledu iz primerjalnega prava razvila institut odgovornosti za strokovno mnenje pod pogojem »specialnega razmerja«, v katerem se prejemnik mnenja lahko upravičeno zanese na pravilnost, ponudnik pa to lahko predvidi. V primerih, kjer fizična škoda nastane eni osebi, nato pa se škoda odrazi (tudi) pri drugi osebi (posredna premoženjska škoda), sodna praksa cilja omejitve odgovornosti dosega posredno, preko pojmovanja vzročne zveze (z razlikovanjem neposrednih in posrednih škod).

Ključne besede: nepogodbeno odškodninsko pravo, varstvo pravnih dobrin, čista premoženjska škoda, generalna klavzula

UDC 347.5(497.4)
Pravni letopis 2022, pp. 9–27

DAMJAN MOŽINA

Scope of protection of interests in tort law: how general is the general clause?

The paper provides a brief overview of Slovenian tort law from the point of view of the protection of various legal interests. Some legal systems limit the protection of certain interests, particularly with regard to pure economic loss (patrimonial loss not accompanied by interference with the body or property of the injured party). Such restrictions do not arise from the French-type general clause on which Slovenian tort law is based. However, this does not mean that all legal interests are protected under the same conditions. For some claims regarding pure economic loss additional criteria have to be met, such as immoral behaviour (unfair competition) or deliberate abuse (abuse of rights). Following the examples from comparative law, the courts have developed the institute of liability for expert opinion under the condition of a "special relationship", in which the recipient of the opinion, although without a contract with the expert, can reasonably rely on it and the expert can anticipate it. In cases where physical injury occurs to one person, and then the damage is (also) reflected in another person's pecuniary loss (indirect loss), the courts achieve the goal of limitation of liability indirectly, through the concept of causation (by distinguishing between direct and indirect losses).

Keywords: tort law, protection of legal interests, pure economic loss, general clause

UDK 347.426.6
Pravni letopis 2022, str. 29–48

PETRA WEINGERL

Nekompenzatorna povrnitev škode

Prispevek obravnava elemente nekompenzatorne odškodnine v domačem pravnem redu, pri čemer se osredotoča na pravna sredstva, ki jih najdemo zunaj okvira splošnega obligacijskega prava, torej na posebnih pravnih področjih. Ta pravna sredstva pogosto vstopajo v domač pravni red na podlagi prenosa prava EU, zato je nujno poznavanje evropske zakonodaje in sodne prakse SEU glede pravnih sankcij za kršitev prava EU. Glede na to je ključna t. i. triada načel – učinkovitosti, sorazmernosti in odvračilnosti. Iz obravnavanih primerov vidimo, da v slovenski zakonodaji obstajajo določbe, ki odkrito želijo doseči odvračilni namen, vendar je njihova odvračilnost v praksi vprašljiva. Instituti, za katere bi na podlagi terminologije lahko domnevali, da gre za institute, ki želijo doseči namen prevencije in morebiti tudi kaznovanja, so v praksi pogosto oblikovani in razlagani tako, da te namene težko dosežejo.

Ključne besede: nekompenzatorna povrnitev škode, odškodnina, odvračilnost, prevencija, kaznovanje, triada načel

UDC 347.426.6
Pravni letopis 2022, pp. 29–48

PETRA WEINGERL

Non-compensatory damages

The paper discusses elements of non-compensatory damages in the domestic legal order, focusing on legal remedies that are found outside the framework of general law of obligations, i.e. in specific legal areas. These legal remedies often enter the legal landscape on the basis of the transposition of EU law, therefore familiarity with EU legislation and the case law of the Court of Justice of the EU regarding legal sanctions for breaches of EU law is essential. In this light, the so-called triad of principles - effectiveness, proportionality and deterrence - plays an important role. The analysis shows that there are provisions in the Slovenian legislation that openly pursue a deterrent purpose, but their deterrence in practice is questionable. Institutes that, based on the terminology, could be assumed to pursue the purpose of prevention and possibly also punishment are often designed and interpreted in such a way that they hardly achieve these purposes in practice.

Keywords: non-compensatory damages, compensation, deterrence, prevention, punishment, triad of principles

UDK 349.6:347.426.6
Pravni letopis 2022, str. 49–63

KARMEN LUTMAN

Okoljska škoda in njena povrnitev

Zaradi naraščajoče skrbi za okolje in glede na trajnostni razvoj mehanizmi za preprečevanje in sanacijo okoljske škode postajajo vse pomembnejši. V slovenskem pravu so ukrepi, povezani z okoljsko škodo, v domeni upravnega prava, medtem ko je varstvo okolja v civilnem pravu sorazmerno omejeno. Tako tudi okoljska škoda v klasičnem odškodninskem pravu ni pravno priznana. Primerjalnopravni trendi kažejo, da ima lahko civilno pravo v razmerju do drugih pravnih področij komplementarno funkcijo v boju za okolju prijaznejše prakse in upočasnitev podnebnih sprememb. V članku so predstavljene nekatere tovrstne prakse iz tujine, zlasti francosko pravo, ki je z novelo Code civil uzakonilo institut civilnopravne odgovornosti za okoljsko škodo. Članek obravnava tudi naraščajoči trend horizontalnih podnebnih tožb, ki v Evropi dobivajo prve sodne epiloge.

Ključne besede: varstvo okolja, okoljska odgovornost, okoljska škoda, deliktno pravo, odškodnina, podnebne spremembe, podnebne tožbe

UDC 349.6:347.426.6
Pravni letopis 2022, pp. 49–63

KARMEN LUTMAN

Environmental liability and compensation for environmental damage

Due to the growing concern for the environment and in promoting the goals of sustainable development, mechanisms for the prevention and remediation of environmental damage are gaining increasing importance. In Slovenian law, measures related to environmental damage are in the domain of administrative law, while private law has a rather limited role in environmental protection. Environmental damage is not legally recognized in Slovenian tort law. However, comparative trends show that private law can have a complementary function in achieving more environmentally friendly practices and in slowing down of climate change. The author discusses some of these practices from abroad, especially in French law, which introduced the concept of civil liability for environmental damage in the Civil Code. The article furthermore analyses the growing trend of climate change litigation in horizontal relationships.

Keywords: environmental protection, environmental liability, environmental damage, tort law, compensation, climate change, climate change litigation

UDK 347.447.63:338.5
Pravni letopis 2022, str. 67–99

MITJA KOVAČ

Sprememba tržnih cen kot spremenjene okoliščine

Številni pravniki so bili v zadnjih štirih letih pri vsakodnevnem sklepanju pogodb izpostavljeni izjemnim negotovostim in tveganjem. Negotovi izidi brexita, vojne v Ukrajini in pandemije covid-19 ter iz njih izhajajoče tržna nestabilnost in nepričakovane spremembe tržnih cen ter razprava o ustrezni uporabi doktrine o razvezi ali spremembi pogodbe zaradi spremenjenih okoliščin spadajo med najzahtevnejša vprašanja sodobne pravne znanosti in pogodbenega prava. Ta članek prispeva k obsežni znanstveni razpravi o tem, ali se spremembe tržnih cen, ki so nastale kot posledica pandemije covid-19 in vojne v Ukrajini, lahko štejejo za spremenjene okoliščine. Ta prispevek povzema in sistematizira dosedanjo pravno-ekonomsko in behavioristično literaturo s področja spremenjenih okoliščin in z dodajanjem nekaterih novih pogledov podaja priporočila, komentarje in predloge slovenskemu zakonodajalcu, pravnikom ter še posebej pravno-ekonomski znanosti. Poleg tega prispevek dodaja konceptualni okvir za izboljšano pravno intervencijo v primeru spremenjenih okoliščin, ko mora sodišče odločiti, ali se določen dogodek opredeli kot spremenjena okoliščina in ali se naj zaradi tega pogodba razveže, spremeni ali preprosto uveljavi.

Ključni pojmi: spremembe tržnih cen, negotovosti in tveganja, spremenjene okoliščine, pogodbeno pravo

UDC 347.447.63:338.5
Pravni letopis 2022, pp. 67–99

MITJA KOVAČ

Change of market prices as change of circumstances

During the past four years, many lawyers have been exposed to extreme uncertainties and risks in their daily contracting. The uncertain outcomes of Brexit, the war in Ukraine and the covid-19 pandemic, as well as the resulting market instability and unexpected changes in market prices, as well as the debate on the appropriate application of the doctrine of discharge or adjustment of the contract due to unforeseen contingency, are among the most challenging issues of modern jurisprudence and contract law. This article contributes to the extensive scholarly debate on whether changes in market prices resulting from the covid-19 pandemic and the war in Ukraine can be considered as changed, unforeseen circumstances. This paper summarizes and systematizes the current legal-economic and behavioural literature in the field of changed circumstances and, by adding some new views, gives recommendations, comments and suggestions to Slovenian legislators, lawyers and especially legal-economic science. In addition, the paper adds a conceptual framework for an improved legal intervention in the case of changed circumstances, when the courts has to decide whether a certain event is defined as an unforeseen contingency and changed circumstance and whether, as a result, the contract should be terminated, adjusted or simply enforced.

Keywords: change of market prices, uncertainty and risks, unforeseen contingencies, contract law

UDK 347.44:624:338.5
Pravni letopis 2022, str. 101–114

MIHA JUHART

Sprememba cene v gradbeni pogodbi

Avtor obravnava mehanizem spremembe cene pri gradbeni pogodbi. To je posebna oblika spremenjenih okoliščin. Mehanizem spremembe cene ima po pravilih OZ naravo kogentnega pravila in se uporablja tudi pri pogodbah z nespremenljivo ceno. Tudi Posebne gradbene uzance urejajo mehanizem spremembe pogodbene cene. Ureditev je nekoliko drugačna od zakonske in je za izvajalca nekoliko ugodnejša. Avtor razpravlja o ključnih problemih uveljavljanja pravice do spremembe pogodbene cene zaradi zvišanja cen materiala in dela. Če gradbena pogodba vsebuje pogodbeno določilo o nespremenljivi ceni, je izvajalec upravičen do spremembe pogodbene cene, če se cene zvišajo za več kot 10 odstotkov. Posebna pozornost je namenjena tudi pogodbam, sklenjenim v postopku javnega naročanja.

Ključne besede: gradbena pogodba, sprememba cene, Posebne gradbene uzance, javno naročanje

UDC 347.44:624:338.5
Pravni letopis 2022, pp. 101–114

MIHA JUHART

Adjustment of price in construction contracts

The author discusses the system of adjusting the price for construction works in construction contracts. The Obligation Code prescribes the mechanism of adjusting as an obligatory rule even in the case that the parties conclude the contract with fix price. Beside the Obligation Code also the Special Rules for Construction Contracts issued by the Slovenian Chamber of Commerce regulate the price adjustment. This regulation is slightly different and more favorable for the constructor. Author discusses many different problems concerning the application of the special rules. The change in price is caused by price changes in the market for materials and labor. When the contract includes the clause on fix price, the constructor can demand the price difference when the changes are over 10%. Special attention is put on contracts concluded in public procurement procedure.

Keywords: construction contract, price adjustment, public procurement, Special Rules for Construction Contracts (Posebne gradbene uzance)

UDK 347.921.2:347.921.6
Pravni letopis 2022, str. 117–142

MARKO DJINOVIĆ

Stroški postopka in financiranje kolektivne tožbe po Zakonu o kolektivnih tožbah

Pred petimi leti je bil sprejet Zakon o kolektivnih tožbah (ZKolT), ki je v pravnem redu Republike Slovenije zagotovil možnost uveljavljanja kolektivne odškodninske tožbe v primeru določenih množičnih oškodovanj, enotno ureditev kolektivnih opustitvenih tožb in kolektivno poravnavo.

Stroške postopka in financiranje kolektivne tožbe ZKolT ureja v V. poglavju, pri čemer v slovenski pravni red uvaja nekatere nove pravne institute. To so financiranje kolektivne tožbe s strani tretje osebe (TPLF), *sui generis* odvetniško financiranje kolektivne tožbe s prevzemom stroškovnega tveganja in varščina za stroške postopka. Slovenija tako spada med redke države članice EU, ki zakonsko urejajo institut financiranja kolektivne tožbe s strani tretjih oseb.

ZKolT pri urejanju financiranja kolektivne tožbe s strani tretjih oseb večinoma nekritično prenaša Priporočilo Evropske komisije z dne 11. junija 2013 o skupnih načelih za mehanizme kolektivnih opustitvenih in odškodninskih tožb v državah članicah v zvezi s kršitvami pravic iz prava Unije 2013/396/EU, s tem pa tudi njegove številne pomanjkljivosti in protislovja.

V prispevku potrdim tezo, da je glede na ureditev iz 59. člena ZKolT pristno (*stricto sensu*) financiranje kolektivne tožbe s strani tretje osebe dejansko onemogočeno, saj je strukturirano kot dolžniški instrument (posojilo). Na njegovo mesto pa stopa sporno *sui generis* odvetniško financiranje kolektivne tožbe s prevzemom stroškovnega tveganja iz 61. člena ZKolT, pri čemer pa ni povsem jasno, ali (tudi) zanj veljajo jamstva in varovalke iz 59. člena ZKolT.

V prispevku z analizo določb V. poglavja ZKolT poudarjam odprta vprašanja uporabe instituta financiranja kolektivne tožbe s strani tretje osebe, iščem odgovore nanje in slovenskim sodiščem ponujam oporne točke za napolnjevanje številnih pravnih standardov, s katerimi je prežeta ureditev v ZKolT. Sklepno predlagam tudi razmislek o mogočih sistemskih spremembah in dopolnitvah V. poglavja ZKolT glede na nedavno sprejeto Resolucijo Evropskega parlamenta z dne 13. septembra 2022 s priporočili Komisiji za odgovorno zasebno financiranje pravdnih postopkov (2020/2130(INL)).

Ključne besede: kolektivne tožbe, Zakon o kolektivnih tožbah, ZKolT, stroški postopka, financiranje pravde s strani tretje osebe, TPLF

UDC 347.921.2:347.921.6
Pravni letopis 2022, pp. 117–142

MARKO DJINOVIĆ

Procedural costs and third-party litigation funding of collective redress under the Slovenian collective actions act

Five years ago, the Slovenian Collective Actions Act (ZKolT) was adopted, which in the legal order of the Republic of Slovenia ensured the possibility of compensatory and injunctive collective redress, as well as collective settlement.

Procedural costs and the financing (funding) of collective actions are regulated by the ZKolT in Chapter V, introducing some new legal institutes into the Slovenian legal order, i.e. third-party litigation funding of collective redress (TPLF); *sui generis* attorney funding of collective redress with assumption of cost risk; and security for costs. Slovenia is thus one of the few EU member states that regulate the institution of TPLF of collective actions.

In regulating TPLF of collective redress, the ZKolT cursory transfers the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU), thereby as well as its many flaws and contradictions.

In the contribution, I confirm the thesis that according to the regulation from Article 59 of the ZKolT, genuine (*stricto sensu*) TPLF of collective actions is virtually impossible, since it is structured as a debt instrument (loan). In its place comes the controversial *sui generis* attorney financing of collective actions with the assumption of cost risk (Article 61 of the ZKolT), but it is not clear whether the guarantees and safeguards from Article 59 of the ZKolT apply to it.

In the contribution, through the analysis of the provisions of Chapter V of the ZKolT, I highlight intricate issues of the application of TPLF of collective redress, seek for answers, and offer Slovenian courts points of reference for interpreting the numerous legal standards of the ZKolT. I conclude by proposing a reflection on possible systemic changes and additions to Chapter V of the ZKolT, in light of the recently adopted Resolution of the European Parliament of September 13, 2022, with recommendations to the Commission for Responsible Private Financing of Litigation Procedures (2020/2130(INL)).

Keywords: collective redress, Collective Actions Act, procedural costs, third party litigation funding, TPLF, ZKolT

UDK 331.109-057.15:331.109:347.922.7
Pravni letopis 2022, str. 143–159

URŠA KLEMENČIČ

Uporaba Zakona o kolektivnih tožbah v praksi

Zakon o kolektivnih tožbah (ZKolT) se je v Sloveniji začel uporabljati 21. 4. 2018, prva kolektivna odškodninska tožba pa je bila vložena 20. 7. 2018, in sicer s področja individualnih delovnih sporov. S kolektivno tožbo je sindikat v imenu zaposlenih pri Republiki Sloveniji, Ministrstvu za obrambo, zahteval plačilo odškodnine zaradi kršitve pravice do odmora med delovnim časom in neplačanega časa primopredaje ob menjavi izmen. Kolektivna tožba ni bila dopuščena, ker je bilo ugotovljeno, da ne gre za spor, ki bi bil primeren za obravnavo po ZKolT zaradi prevladovanja individualnih okoliščin posameznih članov skupine. Ker je šlo za prvi primer kolektivne odškodninske tožbe, še ni bilo izoblikovane sodne prakse na tem področju, zato se je ob obravnavi pojavilo več dilem, ki bodo predstavljene v nadaljevanju.

Ključne besede: ZKolT, dopustnost kolektivne tožbe, popolnost kolektivne tožbe, sodelovanje zainteresiranih oseb, pogoji za odobritev kolektivne odškodninske tožbe

UDC 331.109-057.15:331.109:347.922.7
Pravni letopis 2022, pp. 143–159

URŠA KLEMENČIČ

Collective Actions Act in judicial procedure

In Slovenia application of Collective Actions Act (CCA) began on 21. April 2018. The first collective action was filed on 20. July 2018 from the field of labor law. Union demanded damages from the State, Ministry of Defense in the name of employees for lunch breaks which were not guaranteed and non-paid overtime work during handing over the shifts. The collective action was denied because individual facts dominated over common facts of the members of the collective action. Because it was the first collective action in Slovenia, numerous questions arose during the procedure.

Keywords: Slovenian Collective Actions Act, collective action, admissibility of a collective action, completeness of action, participation of persons with interest, conditions for certification of a collective action

UDK 366.5:339.186:004.9
Pravni letopis 2022, str. 163–184

JERNEJ RENKO

Nova ureditev potrošnikovih pravic v primeru dobave digitalnih vsebin in storitev

Direktiva (EU) 2019/770 o dobavi digitalnih vsebin in digitalnih storitev na področje potrošniškega pogodbenega prava prinaša novo posebno ureditev potrošnikovih pravic v primeru, ko je predmet pogodbe med trgovcem in potrošnikom digitalna vsebina ali storitev. Potrošniki, ki v zameno za digitalno vsebino ali storitev trgovcu posredujejo osebne podatke, so v pravicah izenačeni s tistimi, ki kupnino plačajo v denarju. Prispevek se osredotoča na celostno predstavitev področja uporabe Direktive (EU) 2019/770 in posameznih potrošnikovih pravic glede dobave, zahtev za skladnost digitalne vsebine in storitve, jamčevalnih zahtevkov in drugih pravic ter poudarja določene prednosti in pomanjkljivosti na novo sprejete ureditve. Avtor ob opiranju na nemško implementacijo Direktive (EU) 2019/770 v nemški BGB predlaga nekatere prijeme, ki bi jih lahko uporabil tudi slovenski zakonodajalec pri implementaciji direktive v novelo Zakona o varstvu potrošnikov.

Ključne besede: Direktiva (EU) 2019/770 o dobavi digitalnih vsebin in digitalnih storitev, DCSD, potrošniško pogodbeno pravo, zahteve za skladnost, jamčevalni zahtevki, Zakon o varstvu potrošnikov, potrošniška prodaja, plačilo digitalnih vsebin in storitev z osebnimi podatki

UDC 366.5:339.186:004.9
Pravni letopis 2022, pp. 163–184

JERNEJ RENKO

New consumer rights regime in the case of the supply of digital content and services

Directive (EU) 2019/770 on the supply of digital content and services introduces a new specific regime of consumer rights in the area of consumer contract law where the subject-matter of a contract between a trader and a consumer constitutes digital content or services. Consumers who provide personal data to a trader in exchange for digital content or services have equal contract rights as those who pay the purchase price in cash. This article focuses on a comprehensive presentation of the scope of Directive (EU) 2019/770 and of individual consumer rights with regard to supply, conformity requirements for digital content and services, contracutal remedies and other rights, and highlights some advantages and disadvantages of the newly adopted regime. The author, relying on the German implementation of Directive (EU) 2019/770 in the German BGB, suggests some approaches that could also be used by the Slovenian legislator when implementing the Directive in the amendment to the Consumer Protection Act.

Keywords: Directive (EU) 2019/770 on the supply of digital content and digital services, DCSD, consumer contract law, conformity requirements, contractual remedies, slovenian Consumer Protection Act, consumer sales, payment for digital content and services with personal data

UDK 347.45:004.9
Pravni letopis 2022, str. 185–205

JANEZ SEKIRNIK

Sklepanje in izvrševanje pravnih poslov pri uporabi decentraliziranih aplikacij

Prispevek obravnava posebnosti sklepanja in izvrševanja pravnih poslov pri uporabi decentraliziranih aplikacij. To so digitalne platforme z decentralizirano arhitekturo delovanja. Narava in struktura razmerij na njih sta drugačni od za digitalne platforme tipičnega pogodbenega trikotnika med ponudnikom, povpraševalcem in digitalno platformo.

Narava in vsebina razmerij med uporabniki in decentralizirano aplikacijo sta odvisni od stopnje decentraliziranosti aplikacije in tipa decentralizirane aplikacije. Stopnja (de)centraliziranosti aplikacije določa (ne)obstoj subjekta – nosilca pravic in obveznosti na strani decentralizirane aplikacije in s tem (ne)obstoj razmerij med njim in uporabniki. Od tipa decentralizirane aplikacije pa sta odvisna vloga pametnih pogodb, ki jo sestavljajo, in posledično pomen transakcije pri sklepanju in izvrševanju pravnega posla prek decentralizirane aplikacije. Transakcija uporabnika prek pametne pogodbe določene decentralizirane aplikacije lahko pomeni le izvršitev razpolagalnega pravnega posla ali pa tudi izjavo volje za sklenitev zavezovalnega pravnega posla z vsebino, kot jo določa pametna pogodba.

Raznolikost pojavnih oblik decentraliziranih aplikacij onemogoča splošne ugotovitve, zato prispevek ponudi orodje in okvir za razumevanje razmerij na konkretnih decentraliziranih aplikacijah.

Ključne besede: decentralizirane aplikacije, pametne pogodbe, pravni posli, sklepanje in izvrševanje pravnih poslov

UDC 347.45:004.9
Pravni letopis 2022, pp. 185–205

JANEZ SEKIRNIK

Concluding and executing legal transactions by using decentralised applications

This paper discusses the specificities of concluding and executing transactions by usuing decentralised applications. Decentralised applications are digital platforms with a decentralised operating architecture. The nature and structure of the relationships on them is different from the contractual triangle between the provider, the user and the digital platform typical for digital platforms.

The nature and content of the relationship between the provider, the user and the decentralised application depends on the degree of decentralisation of the application and the type of decentralised application. The degree of (de)centralisation of the application determines the (non-)existence of an entity - the holder of rights and obligations on the side of the decentralised application and thus the (non-)existence of a relationship between it and the users. The type of decentralised application in turn determines the role of the smart contracts that make it up and, consequently, the importance of the transaction in the conclusion and execution of a legal transaction through the decentralised application. A user's transaction through a smart contract of a particular decentralised application may be merely the execution of a dispositive legal transaction or may also be a declaration of intent to enter into a binding legal transaction with the content as defined by the smart contract.

The variety of forms that decentralised applications take makes it impossible to draw general conclusions, thus this paper offers a tool and a framework for understanding the relationships in concrete decentralised applications.

Keywords: Decentralised applications, smart contracts, legal transactions, concluding and executing transactions.

UDK 347.51:659.23:004
Pravni letopis 2022, str. 207–219

MATIJA DAMJAN

Odgovornost za neupravičeno odstranitev spletnih vsebin

Ponudnik spletnega gostiteljstva uporabnikom svojih storitev zagotavlja, da bodo vsebine, ki so jih naložili na njegov strežnik, ostale dostopne drugim uporabnikom interneta. Izpad spletne dostopnosti uporabniških vsebin lahko strankam povzroči škodo. Vendar so ponudniki gostiteljstva po zakonu dolžni odstraniti vsebine svojih uporabnikov, če prejmejo od tretje osebe prijavo, da gre za nezakonite vsebine. Prispevek obravnava vprašanje odgovornosti za škodo, ki nastane zaradi začasne nedostopnosti odstranjenih spletnih vsebin, če se naknadno izkaže, da je bila zahteva za odstranitev neutemeljena. Obravnavani so pogoji, pod katerimi lahko odškodninsko odgovarja oseba, ki je vložila neutemeljeno zahtevo za odstranitev, in pogoji za odgovornost ponudnika spletnega gostiteljstva, ki je vsebino neupravičeno odstranil oziroma onemogočil dostop do nje. Predstavljeno je tudi, kako bo na obravnavana razmerja vplivala prenovljena zakonska ureditev postopkov prijave in odstranitve nezakonitih spletnih vsebin, ki jo prinaša Akt o digitalnih storitvah.

Ključne besede: gostiteljstvo, sistem prijave in odstranitve, neutemeljena zahteva za odstranitev, odškodninska odgovornost, Akt o digitalnih storitvah

UDC 347.51:659.23:004
Pravni letopis 2022, pp. 207–219

MATIJA DAMJAN

Liability for unjustified takedown of online content

A web hosting provider guarantees the users of its services that the content they upload to the provider's server will remain accessible to other internet users. An outage in online availability of the users' content can cause damage to the provider's customers. However, hosting providers are obliged by law to remove their users' content if they receive a notification from a third party that the content is unlawful. The article examines the liability for damage caused by the temporary inaccessibility of the removed online content if it subsequently turns out that the takedown request was unfounded. Discussed are the conditions under which the person who submitted an unfounded takedown request can be held liable for damages as well as the conditions for the liability of the web hosting provider who unjustifiably removed the content or disabled access to it. The article also outlines how the issues in question will be affected by the revised regulation of the notice-and-takedown system brought about by the Digital Services Act.

Keywords: hosting, notice-and-takedown system, unfounded takedown notice, liability for damages, Digital Services Act

UDK 340.134:321.011.5
Pravni letopis 2022, str. 223–236

ALBIN IGLIČAR

Ljudska zakonodajna iniciativa in civilna družba

Temeljna značilnost civilne družbe kot področja, ki ga določajo človekove potrebe, je v njeni avtonomnosti in pluralnosti. Ta se kaže predvsem v samostojnosti subjekta civilne družbe v primerjavi z državo. Čeprav deluje civilna družba tam, kjer ni države, se v sodobnosti razlike med civilno družbo in državo zmanjšujejo. To omogoča razmah pravnega pluralizma v globalni družbi. Ob državi se kot tvorci prava pojavljajo tudi subjekti civilne družbe. V zakonodajno dejavnost države se združenja civilne družbe neposredno vključujejo tudi z institutom ljudske zakonodajne iniciative. Iz potreb posameznikov in skupin civilne družbe nastajajo posebni in posamični interesi, vendar ljudska zakonodajna iniciativa ne bi smela prezreti splošnega oziroma javnega interesa.

Ključne besede: civilna družba, pravni pluralizem, zakonodajna dejavnost, interes, ljudska zakonodajna iniciativa

UDC 340.134:321.011.5
Pravni letopis 2022, pp. 223–236

ALBIN IGLIČAR

Popular legislative initiative and civil society

The fundamental characteristic of civil society as an area determined by human needs is its autonomy and plurality. This is reflected in the independence of the subject of civil society vis a vis the state. Although civil society operates where there is no state, in modern times the differences between civil society and the state diminish. This enables the expansion of legal pluralism in global society. Along with the state, civil society entities also appear as law makers. Civil society is also directly involved in the legislative activity of the state trough the institute of popular legislative initiative. Individual and special interests arise from the needs of individuals and groups of civil society, but the popular legislative initiative should not neglect the general public interest.

Keywords: civil society, legal pluralism, legislative activity, interest, popular legislative initiative

UDK 340.134:321.011.5
Pravni letopis 2022, str. 237–248

URBAN LEČNIK SPAIĆ, NIKA PODAKAR

Civilna družba kot iniciator zakonodaje

Aktivna vključenost civilne družbe v zakonodajni postopek je v zadnjih dveh letih v javnosti postala zelo odmevna. Organizacije, kot so Inštitut 8. marec, Pravna mreža za varstvo demokracije in CNVOS, pri sprejemanju zakonodaje ne sodelujejo le s svojimi komentarji in strokovnimi stališči, temveč zakonodajne predloge celo samo pripravljajo in v primeru Inštituta tudi vlagajo v zakonodajni postopek. Inštitut 8. marec je z uporabo instituta ljudske zakonodajne iniciative v zakonodajni postopek vložil dva predloga zakonov, en zakonodajni predlog pa so le spisali, medtem ko so ga vložili poslanci. Pravna mreža je prav tako spisala dva predloga zakona. Prvega so vložili poslanci, drugega pa Vlada. Ker pa civilnodružbene organizacije niso organizirane in strokovno podkovane v enaki meri kot na primer Vlada in uradniški aparat, se pri svojem delu srečujejo s številnimi izzivi, predvsem s področja nomotehnike.

Ključne besede: civilna družba, ljudska iniciativa, zakonodajna iniciativa, nomotehnika, demokracija, transparentnost, zakonodajni postopek, zakonodajni predlogi, Inštitut 8. marec, Pravna mreža za varstvo demokracije, CNVOS

UDC 340.134:321.011.5
Pravni letopis 2022, pp. 237–248

URBAN LEČNIK SPAIĆ, NIKA PODAKAR

The civil society as an initiator of legislation

The active involvement of civil society in the legislative process has gained a great deal of public attention in the last two years. Organizations such as the 8th of March Institute, the Legal Network for the Protection of Democracy and CNVOS not only participate in the adoption of legislation with their comments and expert opinions, but also draft legislative proposals themselves and, in the case of the Institute, submit them into the legislative process. The 8th of March Institute has already submitted 3 bills to the Parliament using the people's legislative Initiative, while the Legal Network for the Protection of Democracy has written two bills. The first has been submitted into the legislative process by MPs and the second by the Government. However, since the NGOs are not as organized or as professional in this field as is the Government and the bureaucratic apparatus, they face a number of difficulties in their work, especially in the area of nomotechnics.

Keywords: civil society, people's initiative, legislative initiative, nomotechnics, democracy, transparency of the legislative process, legislative proposals, 8th of March Institute, The Legal Network for the Protection of Democracy, CNVOS

UDK 342.52:340.134(497.4)
Pravni letopis 2022, str. 249–254

NIKA PODAKAR

Položaj in vloga vladne in parlamentarne zakonodajne službe

Zakonodajno-pravna služba in Služba Vlade za zakonodajo vsaka na svoj način skrbita za kakovostno zakonodajo. Svoje delo opravljata strokovno in politično nevtralno. Zakonodajno-pravna služba skrbi za usklajenost s pravnim redom kot celoto in ustavo, Služba Vlade za zakonodajo pa sodeluje pri pripravi zakonodajnih predlogov. Obema strokovnima službama je skupno, da vsaka pri svojem državnem organu skrbita za upoštevanje pravil nomotehnike. Njuno delo se rahlo prekriva, predvsem pa dopolnjuje. Srečujeta se tudi s podobno problematiko, med drugim predvsem s pomanjkanjem časa za kakovostno opravljanje svojih nalog.

Ključne besede: Zakonodajno-pravna služba, Služba Vlade za zakonodajo, nomotehnika, skladnost s pravnim sistemom, skladnost z ustavo, zakonodajni postopek, mnenje ZPS, zakonodajni predlogi

UDC 342.52:340.134(497.4)
Pravni letopis 2022, pp. 249–254

NIKA PODAKAR

The position and role of the government and parliamentary legislative service

The Legislative and Legal Service and the Government Office for Legislation are each in their own way responsible for the quality of legislation. They carry out their work in a professional and politically neutral manner. The Legislative and Legal Service ensures compliance with the legal order as a whole and the Constitution, while the Government Office for Legislation is involved in the drafting of legislative proposals. What both professional services have in common is that they both ensure that the rules of nomotechnics are respected in their respective public bodies. Their work overlaps slightly, but above all complements each other. They also face similar problems, the most prevalent of them is the lack of time to carry out their tasks to a high standard.

Keywords: Legislative and Legal Service, Government Office for Legislation, nomotechnics, compliance with the legal system, compliance with the Constitution, legislative procedure, opinion of the Legislative and Legal Service, legislative proposals

UDK 342.8:378:34-057.875
Pravni letopis 2022, str. 257–265

NIKA PODAKAR, PETER PODRŽAJ

Uresničevanje volilne pravice na volitvah v študentski svet Pravne fakultete

Na volitvah izbiramo svoje predstavnike, ki s svojimi odločitvami pomembno vplivajo na naše življenje in oblikujejo našo prihodnost. Na naše življenje pa ne vplivajo samo volitve na državni in lokalni ravni, temveč tudi tiste na ravni univerze in fakultet, med katere spadajo tudi volitve v Študentski svet Pravne fakultete Univerze v Ljubljani. Tudi na takšnih volitvah mora biti zagotovljeno uresničevanje tako aktivne kot pasivne volilne pravice ter zagotovljeni ustrezni mehanizmi pravnega varstva. Seveda pa si želimo, da so tudi volitve v Študentski svet dostopne in kompetitivne ter da je volilna udeležba čim večja. Ta prispevek analizira nekatere problematike uresničevanja aktivne in pasivne volilne pravice, podaja predloge za izboljšanje ter analizira razloge, ki vplivajo na volilno udeležbo.

Ključne besede: študentsko volilno pravo, Študentski svet, volitve, aktivna volilna pravica, pasivna volilna pravica, volilna udeležba

UDC 342.8:378:34-057.875
Pravni letopis 2022, pp. 257–265

NIKA PODAKAR, PETER PODRŽAJ

Exercising the right to vote in elections to the student council of the Faculty of law

Elections enable us to choose our representatives, whose decisions have a significant impact on our lives and shape our future. Our lives are affected not only by elections at the state and local level, but also by elections at the university and faculty level. The latter also include elections to the student council of the Faculty of Law of the University of Ljubljana. Even in such elections, the exercise of both the right to vote as well as right to stand for elections must be safeguarded. Furthermore, appropriate mechanisms of legal protection must be ensured. Apart from that, the elections to the student council ought to be accessible, competitive, and with a high voter turnout. This paper analyses certain issues in connection with exercising the right to vote and the right to stand for elections, provides suggestions for improvement, and analyses the reasons which influence voting participation.

Keywords: student election law, student elections, student council, elections, right to vote, right to stand for elections, vote turnout