

## UČNI NAČRT PREDMETA/COURSE SYLLABUS

<b>Predmet:</b>	Primerjalno upravno procesno pravo
<b>Course title:</b>	Comparative administrative procedural law
<b>Članica nosilka/UL Member:</b>	UL FU

Študijski programi in stopnja	Študijska smer	Letnik	Semestri
Skupni doktorski študijski program UPRAVLJANJE IN EKONOMIKA JAVNEGA SEKTORJA , tretja stopnja, za pridobitev doktorata znanosti	Javno upravljanje (modul)	2. letnik	Celoletni
Skupni doktorski študijski program UPRAVLJANJE IN EKONOMIKA JAVNEGA SEKTORJA , tretja stopnja, za pridobitev doktorata znanosti	Ekonomski (modul)	2. letnik	Celoletni

<b>Univerzitetna koda predmeta/University course code:</b>	0060732
<b>Koda učne enote na članici/UL Member course code:</b>	3009

Predavanja	Seminar	Vaje	Klinične vaje	Druge oblike študija	Samostojno delo	ECTS
20	20	0	0	20	90	5

**Nosilec predmeta/Lecturer:** Polonca Kovač

**Izvajalci predavanj:** Polonca Kovač  
**Izvajalci seminarjev:** Polonca Kovač  
**Izvajalci vaj:**  
**Izvajalci kliničnih vaj:**  
**Izvajalci drugih oblik:**  
**Izvajalci praktičnega usposabljanja:**

**Vrsta predmeta/Course type:** izbirni/elective course

**Jeziki/Languages:**

Predavanja/Lectures:	Angleščina, Slovenščina
Vaje/Tutorial:	

**Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:**

Ni pogojev.	<b>Prerequisites:</b> No conditions.
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**Vsebina:**

- Pojem in viri upravnega procesnega prava v okviru nad/nacionalnih pravnih redov in temeljne človekovih pravic ; vpliv ustavnega reda in tradicije ter modernizacija regulacije upravnega postopka v EU in zahodnem Balkanu
- Temeljni pravni akti in vsebina koncepta dobre uprave v Evropskem upravnem prostoru
- Pojem javnega interesa in upravne zadeve v nacionalnih pravnih redih, EU in v praksi ESČP, vrste aktov v sklopu veljave ZUP

**Content (Syllabus outline):**

- Administrative procedure law and its sources in supra/national legal systems and fundamental human rights ; he impact of the constitutional system and tradition and modernisation on administrative procedure law in EU and western Balkans
- Key legal acts and content of good administration concept in European Administrative Space
- The notion of public interest and administrative matters in national legal systems, in the EU law and

<ol style="list-style-type: none"> <li>4. Razmerje med splošno in področno regulacijo (subsidiarnost); avtonomija nacionalnega procesnega prava v EU</li> <li>5. Temeljna načela upravnega postopka v pravnem redu in sodni praksi v EU in članic ter držav na območju bivše Jugoslavije</li> <li>6. Upravni organi in uradne osebe v upravnem postopku – primerjava ureditev med izbranimi državami in v EU</li> <li>7. Lastnost in položaj strank ter zastopstvo stranke</li> <li>8. Pravila teka postopka – primerjava med izbranimi državami in EU</li> <li>9. Pravna sredstva v upravnih postopkih</li> <li>10. Sodni nadzor nad zakonitostjo konkretnih upravnih aktov v pravu EU in izbranih državah</li> <li>11. Odločanje v razumnem roku v upravnih zadevah</li> <li>12. Alternativno reševanje sporov v upravnih zadevah in odprava administrativnih ovir</li> </ol>	<p>ECTHR case law, types of acts under the scope of GAPA</p> <ol style="list-style-type: none"> <li>4. The relation between general and sector-specific regulation (subsidiarity); autonomy of MS in the EU on procedural law</li> <li>5. Fundamental principles of administrative procedure in the legal system and case law of the EU and its member states, and former Yugoslav republics</li> <li>6. Fundamental Authorities and officials in administrative procedure – comparison between selected countries and within the EU</li> <li>7. Locus standi of the parties, representation of the party</li> <li>8. Rules governing the conduct of the procedure – comparison between selected countries and the EU</li> <li>9. Legal remedies in administrative procedures</li> <li>10. Judicial review over the legality of specific administrative acts in EU and selected countries</li> <li>11. Reasonable time of decision-making in administrative matters</li> <li>12. Alternative dispute resolution in administrative matters and cutting red tape</li> </ol>
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#### Temeljna literatura in viri/Readings:

- Auby, Jean-Bernard (ur.) (2014): *Codification of Administrative Procedure*, Bruylant, Brussels.
- Avbelj, Matej (ur.) (2019): *Komentar Ustave Republike Slovenije*, Nova univerza, Nova Gorica.
- Beneška komisija (2011): *Stocktaking on the Notion of Good Governance and Good Administration*. Study 470/2008, CDL-AD(2001)009.
- Dragos, Dacian C., Kovač, Polonca & Tolsma Hanna D. (ur.) (2020): *The Sound of Administrative Silence in European Administrative Law*, Palgrave Macmillan.
- Dragos, Dacian C. & Neamtu, Bogdana (ur.) (2014): *Alternative Dispute Resolution in European Administrative Law*, Springer.
- Hofmann, Herwig C. H., Schneider, Jens-Peter & Ziller, Jacques (ur.) (2014): *The ReNEUAL Model Rules*, [www.reneual.eu](http://www.reneual.eu).
- Galetta, Diana-Urania et al. (2015): *The General Principles of EU Administrative Procedural Law*, European Parliament, Brussels.  
[https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL\\_IDA%282015%29519224\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL_IDA%282015%29519224_EN.pdf)
- Harlow, Carol & Rawlings, Richard (2014): *Process and Procedure in EU Administration*, Hart, Oxford, Portland, Oregon.
- Hofmann, C. H., Miahescu, B. C. (2013): *The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case*, *European Constitutional Law Review*, št. 9/2013, str. 73–101. <https://core.ac.uk/download/pdf/31219659.pdf>
- Jerovšek, Tone & Kovač, Polonca (2020): *Upravni postopek in upravni spor*, Fakulteta za upravo, Ljubljana.
- Koprić, Ivan (2005): *Administrative Procedures on the Territory of Former Yugoslavia*. Bruselj: OECD.
- Koprić, Ivan & Đulabić, Vedran (ur.) (2009): *Modernizacija općeg upravnog postupka i javne uprave u Hrvastkoj [Modernisation of Administrative Procedure and Administration in Croatia]*, Institute for Public Administration, Zagreb.
- Koprić, Ivan & Kovač, Polonca (ur.) (2016): *European Administrative Space*, NISPAcee, Bratislava.  
[https://www.nispa.org/publication\\_details.php?p\\_id=203&pg=8](https://www.nispa.org/publication_details.php?p_id=203&pg=8)
- Koprić, Ivan et al. (2016): *Legal Remedies in Administrative Procedures in Western Balkans*, ReSPA, Danilovgrad. <https://www.nispa.org/files/conferences/2016/Respa/Legal-Remedies-in-Administrative-Procedures.pdf>
- Kovač, Polonca (2016): *The requirements and limits of the codification of administrative procedures in Slovenia according to European trends*. *Review of Central and East European Law*, 41 (3/4), 427–461.
- Kovač, Polonca (2017). *Smernice evropeizacije upravnega procesnega prava*. *Javna uprava*. 2017, letn. 53, št. 1/2, str. 67-83.
- Kovač, Polonca (2017/18) *Innovative administrative procedure law: mission impossible ?*. *The NISPAcee journal*, vol. 10, no. 2, str. 93-117. <https://content.sciendo.com/view/journals/nispa/10/2/article>

- Kovač, Polonca (2019): Principles of administrative procedure in selected CEE countries: between national legacies and European trends. In: Public Administration in a Democratic Society, Conference, Dubrovnik. <https://iju.hr/ipsa/2019/papers/ip19p2.pdf>.
- Kovač, Polonca (2020): Kodifikacija upravnega postopka v Sloveniji in EU: včeraj, danes, jutri, Teorija in praksa, 57(3), 848–866. <https://www.fdv.uni-lj.si/docs/default-source/tip/kodifikacija-upravnega-postopka-v-sloveniji-in-eu-v%C4%8Deraj-danes-jutri.pdf?sfvrsn=0>
- Kovač, Polonca & Kerševan, Erik (2020): ZUP s komentarjem, Uradni list RS in PF UL, Ljubljana.
- Rose-Ackerman, Susan & Lindseth, Peter L. (ur.) (2010): Comparative Administrative Law, Elgar, Northampton, Cheltenham.
- Rusch, Wolfgang (2014): Citizens first: Modernisation of the system of administrative procedures in South-Eastern Europe. Hrvatska i komparativna javna uprava, let. 14, št. 1: 189–228. <https://hrcak.srce.hr/129777>
- Sommermann, Karl-Peter (2011): Das Verwaltungsverfahrensgesetz im europaischen Kontext: eine rechtsvergleichende Bilanz. V: Hill, Herman (ur.), 35 Jahre Verwaltungsverfahrensgesetz – Bilanz und Perspektiven. Berlin, Duncker & Humblot, 193–198.
- EU Resolutions (2013, 2016). [https://www.europarl.europa.eu/doceo/document/TA-7-2013-0004\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-7-2013-0004_EN.html); [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0279\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0279_EN.html)
- Sproti objavljena gradiva v spletni učilnici

### Cilji in kompetence:

Cilji predmeta so:

- predstaviti pomen upravnega procesnega prava za delo v (nacionalni ali nadnacionalni) javni upravi kot del instrumentalnega, pa tudi institucionalnega javnega upravljanja,
- razumeti koncept dobre uprave in evropskih standardov,
- podrobno analizirati posamezne ključne procesne institute v primerjalnem upravnem pravu (pravnem redu EU in posameznih držav), katerih razumevanje in tolmačenje prispeva k razvoju upravne in pravne znanosti. Študentje se bodo seznanili s kompleksnimi procesnimi položaji, ki nastopijo ob odločanju pri izdaji splošnih aktov, ki urejajo odločanje v posamičnih zadevah in neposredno pri vodenju postopkov glede priznavanja oziroma nalaganja pravic, obveznosti in pravnih koristi strank s področij upravnega in drugih javnopravnih področij v skladu s pravnim redom pri nas in v primerjanih drugih državah in EU,
- študentje bodo sposobni razumeti okoljske determinante in poglobitve razlike med sistemom upravnega (procesnega) prava po različnih evropskih modelih,
- študentje se usposobijo za samostojno raziskovanje in razvijanje novega znanja ter za reševanje najzahtevnejših strokovnih in znanstvenih problemov v interdisciplinarni in primerjalno pravni perspektivi upravnopravnih in upravljavskih ved.

Med predmetno-specifičnimi kompetencami, ki jih bodo študenti pridobili, so predvsem:

- usposobitev za razumevanje in nadgradnjo pravno teoretičnih znanj iz statusne in funkcionalne opredelitve izvajalcev javnega upravljanja v izbranih drugih državah, ;
- pridobitev teoretičnih znanj za sistemsko kreiranje izvedbenih predpisov na ravni državnih in občinskih upravnih in drugih organov oziroma izvajalcev javne

### Objectives and competences:

- The course will examine the significance of administrative procedure law for work in (national or supranational) public administration considered as part of instrumental as well as institutional public management, To understand the concept of good administration and European standards,
- the course will outline the key procedural institutions of comparative administrative law (EU law and national legislations), the understanding and interpretation of which contributes to the development of administrative and legal sciences. Students will become familiar with complex procedural statuses that arise in decision-making on the issue of general acts regulating decisions in specific cases as well as in the conduct of procedures that deal with recognition or imposition of the rights, duties and legal interests of the parties in administrative and other public law areas, in accordance with the legislation in force in Slovenia and in comparable countries and the EU,
- students will gain the capacity to recognise environment-specific determinants and the main differences among the systems of administrative law in Europe,
- students will acquire the skills to independently search for and develop new knowledge and solve complex technical and scientific issues in the interdisciplinary and comparative law perspectives of administrative law and administrative science.

Students will acquire the following course-specific competences:

- the capacity to understand and upgrade theoretical knowledge with emphasis on the status and functional definition of administrative bodies in Slovenia, and selected countries, ;
- the theoretical knowledge for a systematic formulation of implementing regulations at the level of state and municipal and other bodies,

<p>službe oz. nosilcev javnih pooblastil v skladu s trendi evropskega upravnega prava;</p> <ul style="list-style-type: none"> <li>• obvladovanje evalvacijskih pristopov nad poslovnimi, strokovnimi in raziskovalnimi projekti in politikami v zvezi z ali s poudarkom na vidikih upravnega procesnega prava ter razmerja med upravo in sodnim sistemom;</li> <li>• razvijanje kritične refleksije v raziskovanju in zmožnosti za vodenje strokovnega in raziskovalnega dela v interdisciplinarnem in primerjalno pravnem polju upravnopravnih in upravljaljskih ved ter posledično usposobitev za kritično spremljanje znanih dejavnikov ter oblikovanje novih rešitev za znanstveno-disciplinarno polje ter prakso primerjalno pravnega konteksta upravnega prava;</li> <li>• usposobitev za samostojno vodenje raziskovalnih znanstvenih in/ali strokovnih projektov oziroma najzahtevnejših delovnih sistemov iz vsebin upravnega procesnega prava, skupaj s sposobnostjo odkrivanja praktičnih problemov s predmetnega področja, s stalno navezavo na komparativne in evalvacijske prijeme,</li> <li>• predmet bo študentom razkril teoretično ozadje in praktične aplikacije njihovega raziskovalnega dela in ga soočil s temeljnimi epistemološko/metodološkimi problemi v luči sodobnih spoznanj teorije znanosti; študent bo posvojil ustrezen instrumentarij, potreben za samorefleksijo in kritiko znanstvenoraziskovalnega dela s poudarkom pravnih vidikov upravne znanosti.</li> </ul>	<p>public service providers or holders of public functions, following the trends of European law,</p> <ul style="list-style-type: none"> <li>• the ability to master the evaluation approaches to business, professional and research projects and policies in relation to or with emphasis on aspects of administrative procedure law and the relation between administration and the judicial system,</li> <li>• the capacity of reflective research and the capacity to carry out technical and research work in interdisciplinary and comparative areas of administrative and management sciences, and consequently the competence to critically monitor known factors and to develop new solutions to scientific problems and practice of comparative administrative law,</li> <li>• the competence to work independently on scientific and/or technical projects and the most complex work systems concerning administrative procedure law, together with the capacity to identify the related problems in practice, with relation to the comparative and evaluation approaches,</li> <li>• the course will outline the theoretical background and practical application of students' research work, confronting it with the basic epistemological and methodological problems in the light of contemporary findings of scientific theory; students will eventually master the instruments necessary for self-reflection and criticism of scientific research, with emphasis on the legal aspects of administrative science.</li> </ul>
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<p><b>Predvideni študijski rezultati:</b></p> <p>Študentje razumejo pomen upravnega procesa kot dela instrumentalnega javnega upravljanja. Razumejo evropske in širše konvergenčne trende in razlike. Obvladujejo vrednotenje najzahtevnejših procesnih situacij, ki nastajajo pri odločanju v upravnih zadevah, torej pridobijo sposobnosti vodenja zahtevnih upravnih sistemov in podsistemov izvršilne oblasti. Prav tako pridobijo metodološko znanje raziskovanja v stroki in znanosti. Študenti nadalje razumejo vzroke in posledice različnih upravnih sistemov in so zato usposobljeni razvijati regulacijo v nacionalnem pravu v skladu s trendi razvoja upravnega procesnega prava v EU in širše. Znajo razvijati sodobna orodja upravnega postopka kot dialoga med oblastjo in drugimi deli družbe ter oblike modernega sodnega varstva.</p>	<p><b>Intended learning outcomes:</b></p> <p>Students will understand administrative process as part of instrumental public governance. They understand European and broader convergency trends and dissimilarities. Students can distinguish good, allowed and illegal exercise of rights and the imposing of obligations before administrative and other bodies which make decisions with regard to administrative matters. They will manage methodological knowledge on research in profession and science. The student will be able to critically assess the administrative process in Slovenia and elsewhere and also understand causes and effects of different systems, according to modern governance principles in EU and broader. They will be able to regulate national law in this respect. They are able to develop contemporary tools of administrative procedure as a dialogue between an authority and other parts of the society and modern forms of administrative justice.</p>
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<p><b>Metode poučevanja in učenja:</b></p> <p>1. Predmet bo sestavljen iz predavanj in seminarjev oziroma konzultacij v predavalnici ali online ter individualnega študijskega dela in raziskovanja. Predavanja so namenjena podajanju teoretičnih podstat obravnavanih tem in predstavitvi regulacije</p>	<p><b>Learning and teaching methods:</b></p> <p>1. The course will consist of lectures and seminars or consultations held in the lecture room or online as well as of individual study and research activities. The lectures are intended to provide the theoretical basis of the topics concerned and present the</p>
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<p>upravnega postopka in upravno-sodnega nadzora v izbranih državah s stalnostjo umeščanja posamičnih pravil v sistem upravnega procesnega prava in dobrega upravljanja.</p> <p>2. V okviru seminarja si študentje s pomočjo mentorja posamič ali v manjših skupinah izberejo primerjalno analizo posameznega procesnega instituta v izbranih državah ali konkreten primer iz sodne prakse; ga opredelijo, definirajo in analizirajo ter predstavijo drugim študentom.</p> <p>3. Študentje izdelajo poleg udeležbe na predavanjih in razpravah na seminarjih raziskovalno nalogo, v kateri primerjalno pravno analizirajo posamezne institute ali celovito regulacijo splošnega oziroma posebnih upravnih postopkov po izbranih nad/nacionalnih pravnih ureditvah (s poudarkom na primerjavi z ureditvijo v Republiki Sloveniji). Pri tem pripravijo analizo stanja (problema), oblikujejo hipoteze, predstavijo možne rešitve, izberejo in utemeljijo najprimernejšo rešitev ter pripravijo načrt za rešitev problema s poudarkom celoviti analizi učinkov in posledic izbranega projekta oziroma initiative. Metodološko striktno upoštevajo raziskovalne pristope in metode upravnega prava. Svoje izsledke predstavijo v pisni obliki v formi znanstvenega prispevka in jih ponudijo v recenzijo izvajalcu predmeta in kolegom na predavanjih ali tudi za objavo.</p>	<p>regulation of administrative procedure and administrative justice in selected countries by incorporating individual rules in the system of administrative procedure law and good governance/administration.</p> <p>2. During seminars, students will be assisted by a mentor and will select, define and analyse, either individually or in smaller groups, a specific procedural institution in a given country, or a specific case from case law, and present it to other students.</p> <p>3. In addition to attending lectures and seminars, students will prepare a research paper intended to compare and analyse either individual institutions or the entire regulation of general or specific administrative procedures in selected supra/national legal systems (with particular emphasis on comparison with Slovenia). They will be required to prepare an analysis of the state of affairs (problem), develop hypotheses, present the possible solutions, select and explain the most favourable solution, and draw up a plan to solve the problem with emphasis on an overall analysis of the effects and consequences of the selected project or initiative. They will strictly consider the research approaches and methods of administrative law. They will present their findings in the form of a written scientific paper and offer them for review to the course coordinator and colleagues at lectures or for a publication.</p>
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<b>Načini ocenjevanja:</b>	<b>Delež/Weight</b>	<b>Assessment:</b>
<p>Ocena sodelovanja na predavanjih in seminarjih ter aktivnega prispevka dela pri dodeljenem seminarju, ki se ovrednoti z do 50 odstotnih točk, pri čemer mora pozitivno ocenjena raziskovalna naloga oz. znanstveni prispevek obsegati samostojno analizo, praviloma primerjave slovenske in ene tuje ureditve ali izbranega instituta v EU, RS in vsaj dveh državah, v obsegu vsaj 5.000 besed in metodološko ustrezati merilom za izvorni ali pregledni ali kratki znanstveni članek; seminar se mora tudi predstaviti.</p>	50,00 %	<p>Participation at lectures and seminars and active contribution to the seminar will be evaluated with up to 50 percentage points, whereby the positively evaluated research paper or scientific contribution should comprise an independent analysis of the legal regulation in Slovenia and one foreign country or selected institute in the EU, RoS and at least two countries, of at least 5,000 words and methodologically comply with criteria for an original, review or short scientific paper; the seminar has to be presented as well.</p>
<p>Ocena pisnega esejskega izpita, ki se ovrednoti s preostalimi odstotnimi točkami. Kolikor je seminarsko delo kot članek ali referat sprejet v recenzirano znanstveno revijo ali na znanstveno konferenco, se izpit prizna kot opravljen s predložitvijo potrdila o sprejemu v objavo ali objavo z maksimum možnih točk.</p>	50,00 %	<p>The written essay exam will be evaluated with the remaining percentage points. In a case of submitting the seminar to peer reviewed scientific journal or scientific conference, the exam is acknowledged with maximum points after receiving confirmation of admission to publication or publication itself.</p>

**Reference nosilca/Lecturer's references:**

<ul style="list-style-type: none"> <li>• Dragos, D.C., Kovač, P., Tolsma, H.D. (ur.) (2020). The Sound of Silence in European Administrative Law. Legal and Empirical Insights in Selected Jurisdictions. Palgrave Macmillan.</li> <li>• Kovač, P. (2016). The requirements and limits of the codification of administrative procedures in Slovenia according to European trends. Review of central and east European law, 41(3/4) 427-461.</li> <li>• Kovač, P., Kerševan, E. (ur.) (2020). ZUP s komentarjem. Ljubljana: Uradni list RS in PF UL.</li> </ul>
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- Kovač, P. (2020). Kodifikacija upravnega postopka v Sloveniji in EU, Teorija in praksa, let. 57, št. 3, str. 848-866.
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