

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet:	Mediacija in arbitraža – alternativno reševanje sporov
Course title:	Alternative Dispute Resolution

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
2. stopnja	Pravo	1/2	1/2
2 st degree	Law	1/2	1/2

Vrsta predmeta / Course type

izbirni/elective

Univerzitetna koda predmeta / University course code:

Predavanja Lectures	Seminar Seminar	Vaje Tutorial	Klinične vaje work	Druge oblike študija	Samost. delo Individ. work	ECTS
30	0		0	0	120	8

Nosilec predmeta / Lecturer:

Prof. dr. Peter Jambrek

Jeziki /
Languages:**Predavanja /**
Lectures:

Slovenščina/Slovenian

Vaje / Tutorial: Slovenščina/Slovenian**Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:**

Vpis na podiplomskega študija.

Prerequisites:

Enrollment in postgraduate study.

Vsebina:

- pojem konflikta oziroma spora;
- zgodovina in razvoj alternativnega reševanja spora;
- pomen, prednosti in slabosti alternativnega reševanja sporov (ARS);
- postopki ARS;
- ARS v Sloveniji ter primerjalno-pravni pregled ARS v Evropi, ZDA, Kitajski in Afriki;
- pojem mediacije, temeljna načela mediacije ter postopek mediacije;
- pojem arbitraže, arbitražni postopek ter arbitražni sporazum;

Content (Syllabus outline):

- the concept of conflict or dispute;
- history of the alternative dispute resolution and its development (ADR);
- meaning, advantages and disadvantages of ADR;
- ADR procedures;
- ADR in Slovenia and comparative legal review of ADR in Europe, USA, China and Africa;
- the concept of mediation, the fundamental principles of mediation and the mediation procedure;
- the concept of arbitration, arbitration procedure and arbitration agreement;

– pravni viri s področja ARS, mediacije in arbitraže.

– sources of law in the field of ADR, mediation and arbitration.

Temeljni literatura in viri / Readings:

Obvezna literatura:

1. Ristin, G., et. al. (2011). *Mediacija v teoriji in praksi*. Ljubljana: Društvo mediatorjev Slovenije.
2. Ude, L. (2004). *Arbitražno pravo*. Ljubljana: GV založba.
3. Temeljna zakonodaja s področja ARS:
 - a. Zakon o arbitraži (Uradni list RS, št. 45/2008)
 - b. Zakon o mediaciji v civilnih in gospodarskih zadevah (Uradni list RS, št. 56/2008)
 - c. Zakon o alternativnem reševanju sodnih sporov (Uradni list RS, št. 97/2009)
 - d. Družinski zakonik (Uradni list RS, št. 15/17 in 21/18)
 - e. Zakon o izvensodnem reševanju potrošniških sporov (Uradni list RS, št. 81/15)
 - f. Direktiva o nekaterih vidikih mediacije v civilnih in gospodarskih zadevah 2008/52/ES
Pravila UNCITRAL za modelni Zakon o conciliaciji

Priporočljiva literatura:

1. Barrett, J. T., Barrett J. (2004). *A History of Alternative Dispute Resolution, The Story of a Political, Social and Cultural Movement*. San Francisco: Jossey-Bass.
2. Fisher R. and Ury W. (2012). *Getting to yes: Negotiating Agreement without giving in*. London: Random House.
3. Iršič, M. (2004). *Umetnost obvladovanja konfliktov*. Ljubljana: Rakmo.
4. Menkel-Meadow, C., Porter-Love, L. and Kupfer-Schneider, Andrea. (2013) *Mediation: Practice, Policy, and Ethics*, Second Edition. New York: Aspen Publishers - Wolters Kluwer Law & Business.
5. Metelko, T.P. (2018). *Mediacijske tehnike in veščine: 1-50: priručnik za učinkovito preprečevanje in reševanje konfliktov ter osebno rast v komuniciranju*. Ljubljana: Pro Creathor.
6. Merrills, J. G. (2011). *International Dispute Settlement – Fifth Edition*. Cambridge: Cambridge University Press.
7. Moore, C. W. (2014). *The Mediation Process: Practical Strategies for Resolving Conflict*. Forth Edition. San Francisco: Jossey-Bass & Pfeiffer Imprints.
8. Nolan- Haley, J.M. (2013). *Alternative Dispute Resolution in a Nutshell*. St. Paul MN: West Publishing Company.
9. Penko Natlačen, M., et. al. (2010). *Alternativno reševanje delavnopravnih sporov s podporo socialnega dialoga, študija*. Ljubljana: GZS.
10. Randolph P. and Strasser F. (2004). *Mediation – A Psychological Insight into Conflict Resolution*. New York: Bloomsbury Academic New York.
11. SANDOLE, J.D., et al. (2011). *Handbook of conflict analysis and resolution*. Routledge, New York.
12. Sourdin, T. (2002). *Alternative Dispute Resolution*. Sydney: Lawbook Company.

13. Šetinc Tekavc M. (2002). Sporazumno reševanje sporov v teoriji in praksi. Tržič: Učila.
14. Waldman, E. (2011). Mediation Ethics: Cases and Commentaries. San Francisco: Jossey-Bass.

Cilji in kompetence:

Cilji izbirnega predmeta so:

- z nekaterimi splošno veljavnimi spoznanji o konfliktih;
- s postopki sporazumnega reševanja sporov, ki predstavljajo alternativo sodnemu sistemu;
- s prednostmi in slabostmi ARS;
- z različnimi pojavnimi oblikami ARS;
- s postopkom mediacije in arbitraže;
- z urejenostjo ARS v Sloveniji ter drugod po svetu.

Objectives and competences:

Student will:

- be acquainted with some generally valid facts about the conflict;
- understand the amicable settlement of disputes as an alternative to the judicial system;
- know the advantages and disadvantages of ADR;
- know the various forms of ADR;
- be familiar with the process of mediation and arbitration;
- gain knowledge about the regulation of ADR in Slovenia and worldwide.

Predvideni študijski rezultati:

Po zaključku izbirnega predmeta bo študent:

- poznal prednosti in slabosti ARS;
- poznane mu bodo različne pojavne oblike ARS in možnost njihove uporabe v praktičnih primerih;
- seznanil se bo s postopkom mediacije in arbitraže;
- pridobil bo znanje o urejenosti ARS v Sloveniji ter drugod po svetu;
- pridobil bo znanje na kakšen način in na katerih segmentih v sistemu javne uprave, je mogoče uporabiti postopke mediacije in arbitraže.

Intended learning outcomes:

After an elective course the student:

- will know the advantages and disadvantages of ADR;
- will know the various forms of ADR and the possibility of their use in practical cases;
- will be familiar with the process of mediation and arbitration;
- will gain knowledge about the regulation of ADR in Slovenia and worldwide;
- acquired the knowledge about the application of the process of mediation and arbitration in the system of public administration.

Metode poučevanja in učenja:**Oblike dela:**

- ☒ Frontalna oblika poučevanja
- ☐ Delo v manjših skupinah oz. v dvojicah
- ☒ Samostojno delo študentov
- ☒ e-učenje
- ☐ drugo (vpišite) _____

Learning and teaching methods:**Types of learning/teaching:**

- ☒ Frontal teaching
- ☒ Work in smaller groups or pair work
- ☒ Independent students work
- ☒ e-learning
- ☐ other _____

Metode (načini) dela: ☒ Razlaga ☒ Razgovor/ diskusija/debata ☒ Delo z besedilom ☒ Proučevanje primera ☐ Igra vlog ☒ Druge vrste nastopov študentov ☒ Reševanje nalog ☐ Študijski obiski podjetij ipd.) ☒ Vključevanje gostov iz prakse ☐ Udeležba na okrogli mizi, na konferenci	Teaching methods: ☒ Explanation ☒ Conversation/discussion/debate ☒ Work with texts ☒ Case studies ☐ Role-play ☒ Different presentation ☒ Solving exercises ☐ Field work (e.g. company visits) ☒ Inviting guests from companies ☐ Attending round table and conference
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Načini ocenjevanja: – pisni izpit – seminarska naloga	Delež (v %) / Weight (in %)	Assessment: – written examination – assignments
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Reference nosilca / Lecturer's references:

Peter Jambrek, rojen 1940, je diplomiral na Pravni fakulteti Univerze v Ljubljani in doktoriral na sociološkem oddelku Univerze v Chicagu (ZDA). Trenutno je profesor ustavnega prava in prava človekovih pravic na Fakulteti za državne in evropske študije in na Evropski pravni fakulteti v Sloveniji. Svojo akademsko kariero je začel na Pravni fakulteti Univerze v Ljubljani, kjer je predaval v letih 1965 - 2000. Kot gostujoči profesor je predaval na Univerzi v Pittsburghu (Pittsburgh, ZDA, 1989), Univerzi v Virginiji (Charlottesville, ZDA, 1982), Univerzi v Zambiji (Lusaka, Zambija, 1973-1975), v poletnem semestru leta 1976 pa je bil raziskovalec na Centru za mednarodne zadeve, Harvard University (Boston, ZDA). Bil je član znanstvenega odbora Agencije Evropske unije za temeljne pravice in član Evropske komisije za demokracijo skozi pravo ("Beneška komisija") od 1991 do 2008. Bil je sodnik (1990-1998) in predsednik (1991-1993) Ustavnega sodišča Republike Slovenije in sodnik Evropskega sodišča za človekove pravice (1993-1998). Je avtor in urednik številnih knjig, monografij in člankov s področja človekovih pravic in evropskega prava, kot tudi s področja sociologije. Opravljal je številne funkcije v mednarodnih in v slovenskih znanstvenih in univerzitetnih združenjih. Med letoma 1987-1991 je prispeval k osamosvojitvi Slovenije in k razvoju njene ustavne demokracije kot eden od avtorjev slovenskega nacionalnega programa (Nova revija, št. 57) leta 1987, kot urednik in soavtor prvi osnutkov slovenske ustave (1988-1991), in kot eden od ključnih pobudnikov za plebiscit o osamosvojitvi Slovenije (1990). Bibliografija: <http://splet02.izum.si/cobiss/bibliography?code=01327>.

Peter Jambrek, born 1940, graduated from the University of Chicago, where he was awarded a Ph.D. from the Department of Sociology in 1971. He is currently Professor of Constitutional and Human Rights Law at the Graduate School of Government and European Studies and at the European Faculty of Law, Slovenia. He began his academic career at the Law Faculty of the University of Ljubljana in 1965, where he also obtained the Bachelor of Law degree in 1962, and lectured there until 2000. His visiting professorships and scholarships encompass the following institutions: the University of Pittsburgh (Pittsburgh, USA), 1989; the University of Virginia (Charlottesville, USA), 1982; the University of Zambia (Lusaka, Zambia), 1973-1975; and the Center for International Affairs, Harvard University (Boston), 1976. He was a member of the Scientific

Committee of the European Union Agency for Fundamental Rights, and a member of the European Commission for Democracy through Law ("the Venice Commission"), 1991-2008. He was Judge (1990-1998) and President (1991-1993) of the Constitutional Court of the Republic of Slovenia, and Judge of the European Court of Human Rights (1993-1998). He authored and edited numerous books, monographs, and articles in the fields of human rights and European law, as well as in sociology, and has held a number of international and Slovenian academic positions. He contributed to Slovenian independence and to the inauguration of its constitutional democracy during 1987-1991 when he coauthored the Slovenian National Programme (Nova revija, No. 57) in 1987. He edited and coauthored the first drafts of the Slovenian Constitution (1988-1991), and was one of the key initiators of the plebiscite on Slovenian independence in 1990.

Bibliography: <http://splet02.izum.si/cobiss/bibliography?code=01327>.