UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet:	**Pravo javnih naročil v zdravstvu**
Course title:	**Law of public procurement in health care**

Študijski program in stopnja **Study programme and level**	**Študijska smer** **Study field**	**Letnik** **Academic year**	**Semester** **Semester**
Pravo 3. stopnje	Zdravstveno pravo	2	1
Law 3rd Degree	Healthcare law	2	1

Vrsta predmeta / Course type:	izbirni/elective
Koda predmeta /Course code:	

Predavanja **Lectures**	**Seminar** **Seminar**	**Vaje** **Tutorial**	**Druge oblike študija** **Other type study**	**Samost. delo** **Individual work**	**ECTS**
20	0	0	0	230	10

Nosilec predmeta / Lecturer:	izr. prof. dr. Petra Ferk / Assoc. Prof. Petra Ferk, PhD
Jeziki/Languages: Predavanja / Lectures:	slovenski jezik/Slovenian
Seminar / Seminar:	slovenski jezik/Slovenian

Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:	**Prerequisites:**
Zahteva se vsaj 80 % prisotnost na predavanjih in vajah.	At least 80% attendance at lectures and tutorials is required.

Vsebina	**Content (Syllabus outline)**
UVOD V PRAVO JAVNIH NAROČIL IN KONCESIJ V ZDRAVSTVU - veljavna zakonodaja o javnih naročilih in koncesijah na ravni EU in v Sloveniji s poudarkom na specifiki javnega naročanja v zdravstvu - javno-finančni okvir javnega naročanja - pojmi in razmejitev: javna naročila, koncesije, javno-zasebno partnerstvo - načela postopkov javnega naročanja - predmet javnega naročanja - postopki javnega naročanja POTEK POSTOPKA JAVNEGA NAROČILA - posebnosti posameznih postopkov javnega naročanja - potek javnega naročila po korakih - razpisna dokumentacija - razlikovanje med pogoji in merili v postopkih javnega naročanja - tehnične specifikacije - razlogi za izključitev - finančna zavarovanja	INTRODUCTION TO THE LAW OF PUBLIC PROCUREMENT AND CONCESSIONS IN HEALTH CARE - applicable public procurement and concession law at the EU level and in Slovenia with the emphasis of the specifics of public procurement in health care - public-financial framework of public procurement - definitions and delimitation: public procurement, concessions, public-private partnerships - principles of public procurement procedures - subject of public procurement - public procurement procedures

- različne oblike pogodb

PRAVNO VARSTVO IN NADZOR NAD POSTOPKI JAVNEGA NAROČANJA
- sistemi in postopki pravnega varstva javnih naročil in koncesij s poudarkom na specifiki v zdravstvu
- revizijski postopki
- prekrški v pravu javnih naročil
- okoliščine za sodno varstvo
- odškodninska odgovornost (Sodišče EU)

SPREMEMBE JAVNIH POGODB TEKOM NJIHOVEGA TRAJANJA
- pogoji
- praksa Sodišča EU in zakonodaja

RAZMEJITEV: JAVNA NAROČILA, KONCESIJE, JAVNO-ZASEBNA PARTNERSTVA

DIGITALIZACIJA JAVNEGA NAROČANJA
- pomen uvajanja digitalizacije v javno naročanje
- tehnologija 4.0 in javno naročanje
- varnost in varovanje podatkov v pravu javnega naročanja
- uvajanje digitalizacije in uvajanje sprememb v organizacijo (change management) – dve strani istega kovanca

PUBLIC PROCUREMENT PROCEDURE

- special characteristics of individual public procurement procedures

- progress of public procurements by steps

- tender dossier

- differentiation among the conditions and criteria in public procurement procedures

- technical specifications

- reasons for disqualification

- financial collateral

- various forms of contracts

LEGAL PROTECTION AND CONTROL OF PUBLIC PROCUREMENT PROCEDURES

- systems and procedures of legal protection of public procurements and concessions with the emphasis of the specifics in health care

- audit procedures

- offences in public procurement law

- circumstances for judicial protection

- liability for damages (CJEU case law)

AMENDMENTS TO PUBLIC CONTRACTS DURING THE LIFE OF THE CONTRACT

- conditions

- EU Court case law and legislation

DEMARCATION: PUBLIC PROCUREMENT, CONCESSION, PUBLIC-PRIVATE PARTNERSHIPS

DIGITALISATION OF PUBLIC PROCUREMENT

- the significance of introducing digitalisation in public procurement

- technology 4.0 and public procurement

	- security and data protection in public procurement law - introduction of digitalisation and introduction of changes in the organisation (change management) – two sides of the same coin

Temeljna literatura in viri / Readings:

Obvezna literatura (tudi angleška):

- FERK, Boštjan, FERK, Petra, VALJAVEC, Lara. Postopki javnega naročanja in temeljni koraki javno-zasebnega partnerstva. 3., dopolnjena izd., vključno z novelo ZJN-3. Ljubljana: Lexpera, GV založba, 2020. 1 zgibanka ([8] str.), graf. prikazi. ISBN 978-961-247-435-5.
- Roberto Caranta, Albert Sanchez-Graells (ur.): European Public Procurement - Commentary on Directive 2014/24/EU, Elgar Commentaries series, 2021 – izbrane vsebine. Co-authors FERK, Petra, FERK, Boštjan.
- Direktive Sveta in parlamenta 2014/23/EU, 2014/24/EU, 2014/25/EU, dostopno na spletu: https://eur-lex.europa.eu/
- Nacionalna zakonodaja: vsakokrat veljavni Zakon o javnem naročanju (ZJN-3), Zakon o javno-zasebnem partnerstvu (ZJZP), Zakon o nekaterih koncesijskih pogodbah (ZNKP)FERK, Petra. Elektronsko javno naročanje : podarjena priložnost za korenite spremembe. Pravna praksa : PP. [Tiskana izd.]. 7. jan. 2016, leto 35, št. 1, pril. str. ii-viii.
- FERK, Petra. The new Slovenian public procurement act (ZJN-3). European procurement & public private partnership law review. 2016, vol. 11, no. 2, str. 142-144.
- FERK, Petra, FERK, Boštjan. Implementation of Directive 2014/24/EU in the Republic of Slovenia. V: TREUMER, Steen (ur.), COMBA, Mario (ur.). Modernising public procurement : the approach of EU member states. Cheltenham; Northampton, MA: Edward Elgar, 2018. Str. 201-231. European procurement law.
- FERK, Petra, FERK, Boštjan, HODOŠČEK, Katja. A Challenging Transposition of Directive 2014/23/EU on the Award of Concession Contracts to Slovenia - the New Certain Concession Contracts Act. European procurement & public private partnership law review. 2019, vol. 14, no. 3, str. 203-207.
- FERK, Petra, FERK, Boštjan. Implementation of Directive 2014/24/EU in Slovenia : main challenges transcend the legislative provisions. Public procurement law review. 2019, iss. 5, str. 242-256.
- FERK, Petra. Pomen pridobivanja strojno berljivih podatkov in zagotavljanja njihove integritete na poti k javnemu naročanju 4.0. Pravna praksa : PP. [Tiskana izd.]. 28. nov. 2019, leto 38, št. 46, str. 13-15.
- FERK, Petra. Varnost, obličnost in celovitost podatkov v postopkih elektronskega javnega naročanja. Pravnik : revija za pravno teorijo in prakso. [Tiskana izd.]. 2019, letn. 74, št. 5/6, str. 323-354, 403-404.
- FERK, Boštjan, FERK, Petra. Javno naročanje kot orodje za spodbujanje inovacij. Pravna praksa : PP. 16. jan. 2020, leto 39, št. 1/2, str. 13-15.
- FERK, Petra, FERK, Boštjan. Odgovornost države za zakonito delovanje naročnikov na področju javnega naročanja. Pravna praksa : PP. 19. apr. 2007, letn. 26, št. 15, str. 11-13.
- FERK, Petra, FERK, Boštjan. Javne službe, državne pomoči in javno-zasebna partnerstva. 1. natis. Ljubljana: GV založba, 2008.

Priporočena literatura (tudi angleška):

- FERK, Petra, FERK, Boštjan. Slovenia. V: NEERGAARD, Ulla Boegh (ur.). Public procurement law: limitations, opportunities and paradoxes = Vergaberecht für öffentliche Aufträge :

Begrenzungen, Möglichkeiten und Widersprüche = Le droit des marchés publics : restrictions, possibilités et paradoxes : congress publications. Vol. 3. 1st ed. Copenhagen: DJØF Publishing, 2014.
- FERK, Petra. Can the implementation of full e-procurement into real life address to real challenges of EU public procurement?. European procurement & public private partnership law review. 2016, vol. 11, no. 4, str. 327-339.
- FERK, Petra. E-procurement between EU objectives and the implementation procedures in the Member States - Article 22(1) of the 2014 Directive. V: ØLYKKE, Grith Skovgaard (ur.), SÁNCHEZ GRAELLS, Albert (ur.). Reformation or deformation of the EU public procurement rules. Cheltenham; Northampton: E. Elgar, cop. 2016. Str. 101-124.
- FERK, Boštjan, FERK, Petra. Local preferences as non-discriminatory instrument in public procurement of fresh foods : why, when and how. V: PIGA, Gustavo (ur.), TÁTRAI, Tünde (ur.). Law and economics of public procurement reforms. London; New York: Routledge, 2018. Str. 61-89. The economics of legal relationships.
- PEKOLJ, Nina, HODOŠČEK, Katja, VALJAVEC, Lara, FERK, Petra. Digital transformation of public procurement as an opportunity for the economy. Lexonomica. June 2019, vol. 11, no. 1, str. 15-41.
- MUŽINA, Aleksij, (2004): Koncesije: pravna ureditev koncesij v Republiki Sloveniji in EU. Primath, Ljubljana.
- REJC, Žiga, ŽVIPELJ, Marko, POHAR, Klemen, TEKAVC, Janez, CEGLAR, Janja, MUŽINA, Aleksij (urednik, avtor). Upravne pogodbe. 1. izd. Ljubljana: MLC Fakulteta za management in pravo, 2019. 167 str., ilustr. ISBN 978-961-94676-0-2.
- MUŽINA, Aleksij (vodilni avtor), Zakon o nekaterih koncesijskih pogodbah, s komentarjem, Uradni list, 2020.

Cilji in kompetence:

Študenti/ke bodo pridobili naslednje **splošne kompetence:**

- poznavanje in razumevanje pravnih pojmov, pravnih načel in pravil s področja prava javnega naročanja ter sposobnost za njihovo analizo, sintezo in predvidevanje rešitev in njihovih posledic;
- razumevanje pomembnosti uporabe temeljnih načel v postopkih javnega naročanja in razvoj sposobnosti dostopati do domače in tuje sodne prakse;
- sposobnost samostojnega in avtonomnega strokovnega in raziskovalnega dela s področja javnega naročanja;
- razvoj sposobnosti kritično analizirati pravne vire in pravna besedila;
- sposobnost kritične strokovne razprave in analize o temeljnih pojmih, načelih, pravilih in postopkih javnega naročanja;
- sposobnost razumevanja posebne vloge zdravstva v sistemu javnih služb in specifike javnega naročanja in koncesij v zdravstvu;
- uporaba ustreznih metod pravnega raziskovanja, njihovih postopkov, analize in sinteze;

Objectives and competences:

Students will gain the following general competences:

- to know and understand legal definitions, legal principles and rules in the field of public procurement law and to be able to analyse, synthesize them and anticipate the solutions and their consequences;
- to understand the significance of applying the basic principles in public procurement procedures and to develop the ability to access national and foreign case law;
- capability for independent and autonomous scientific and research work in the field of public procurement;
- to develop the ability to critically analyse legal sources and legal texts;
- the ability to participate in critical professional discussions and analysis of fundamental definitions, principles, rules and procedures of public procurement;
- to be able to understand a special role of health care in the system of public services and the specifics of public procurement and concessions in health care;
- application of appropriate methods of legal research, procedures, analysis and synthesis thereof;

Študentje bodo razvili **predmetno-specifične kompetence**: - razvoj ustvarjalnosti in sposobnosti premagovanja problemov pri uporabi načel in pravil javnega naročanja; - razvoj sposobnosti reševanja konkretnih izzivov s področja javnega naročanja; - razvoj sposobnosti uporabe interdisciplinarnih znanj pri reševanju zadev s področja javnega naročanja v zdravstvu; - sposobnost skrbne uporabe kadrovskih in finančnih virov v postopkih javnega naročanja; - prepoznavanje pomembnosti izzivov in uvajanja digitalizacije v postopke javnega naročanja.	Students will develop the following **course-specific competences:** - to develop creativity and ability to overcome problems in the application of the principles and rules of public procurement; - to develop the ability to face specific challenges in the field of public procurement; - to develop the ability to apply interdisciplinary knowledge to the resolution of issues in the field of public procurement in health care; - to be able to carefully use human and financial resources in public procurement procedures; - to recognise the significance of challenges and introduction of digitalisation in public procurement procedures.

Predvideni študijski rezultati: **Znanje in razumevanje:**	**Intended learning outcomes:** **Knowledge and understanding:**
Študent bo usposobljen za prepoznavanje in razumevanje materije javnega naročanja in koncesij s poudarkom na poznavanju specifik javnega naročanja in koncesij v zdravstvu. Poznal bo temelje javnega naročanja in pomen prava EU ter zlasti sodb Sodišča EU za razvoj javnega naročanja. Poznal bo razmerje med javnimi naročili in koncesijami ter njihov pomen kot enega od temeljnih predpogojev za zdrave javne finance. Študent bo pridobil poglobljeno znanje na področju prava javnih naročil. Usposobljen bo za reševanje raznovrstnih vprašanj na tem področju. Pridobljeno znanje študentu omogoča opravljati svetovalno in/ali operativno delo pri subjektih, ki delujejo na področju zdravstva. Prav tako pridobi metodološko znanje raziskovanja v stroki in znanosti.	The student will be qualified to recognise and understand the subject of public procurement and concessions with the emphasis on knowing the specifics of public procurement and concessions in health care. The student will know the basics of public procurement and the significance of EU law and particularly the EU Court judgements for the development of public procurement. The student will know the relation between public procurement and concessions and their significance as one of the fundamental prerequisites for healthy public finance. The student will acquire in-depth knowledge in the field of public procurement law and will be qualified to resolve various issues in the field. The acquired knowledge will allow the student to do counselling and/or operational work with the entities in the field of health care. In

	addition, methodological knowledge for research in the profession and science will be acquired.

Metode poučevanja in učenja:	**Learning and teaching methods:**
Oblike dela: ☒ Frontalna oblika poučevanja ☒ Delo v manjših skupinah oz. individualno ☒ Samostojno delo študentov ☒ študij s pomočjo IKT tehnologije ☐ drugo (vpišite) _____ **Metode (načini) dela:** ☒ Razlaga ☒ Razgovor/ diskusija/debata ☒ Delo z besedilom ☒ Proučevanje primerov raziskav ☒ Igra vlog ☒ Druge vrste nastopov študentov ☒ Reševanje nalog/vaje ☐ Študijski obiski podjetij ipd.) ☒ Vključevanje gostov iz prakse ☒ Udeležba na okrogli mizi, na konferenci	**Types of learning/teaching:** ☒ Frontal teaching ☒ Work in smaller groups or individual work ☒ Independent students work ☒ studies using ICT technology ☐ other _____ **Teaching methods:** ☒ Explanation ☒ Conversation/discussion/debate ☒ Work with texts ☒ Research case studies ☒ Role-play ☒ Different presentation ☒ Solving exercises/study exercises ☐ Field work (e.g. company visits) ☒ Inviting guests from companies ☒ Attending round table and conference

Načini ocenjevanja: **Način (pisni izpit, ustno izpraševanje, naloge, projekt)**	**Teža (v %) /** **Weight (in %)**	**Assessment:** **Type (examination, oral, coursework, project)**
Sprotno ustno (aktivno sodelovanje pri kontaktnih urah in pri raziskavah)		Oral verification and assessment of knowledge
Sprotno pisno preverjanje znanja (krajši pisni izdelki)		Written verification and assessment of knowledge (short written casework)
Daljši pisni izdelki (seminarska naloga, projektna naloga, raziskovalna poročila)		Longer written casework
Javni nastop in predstavitev lastnega raziskovalnega dela		Public presentation of one's research
Končni ustni izpit	**100**	Final examination (oral)
Končni pisni izpit		Final examination (written)
Drugo (vpišite)		Other:

Reference nosilca / Lecture's references:

Petra Ferk je diplomirala pri 22 letih na Pravni fakulteti Univerze v Ljubljani z oceno cum laude. Po končanem študiju se je zaposlila na Slovenski odškodninski družbi, nato pa je kot svetovalka začela delati v javnem podjetju Kontrola zračnega prometa Slovenije, d.o.o. Leta 2008 je na Pravni fakulteti Univerze v Ljubljani uspešno zagovarjala magistrsko nalogo pod mentorstvom prof. dr. Rajka Pirnata. Istega leta je v soavtorstvu z Boštjanom Ferkom napisala monografijo z naslovom Javne službe, državne pomoči in javno-zasebna partnerstva. Leta 2008 je prejela priznanje Zveze društev pravnikov za mlado pravnico. Leta 2023 je prejela priznanje Zveze društev pravnikov za delo v organih zveze in njenih članicah.

Je avtorica več strokovnih in znanstvenih člankov doma in v tujini. Med daljšimi študijskimi aktivnostmi v tujini je treba omeniti raziskovalno delo, ki ga je opravila za magistrsko nalogo in za doktorsko disertacijo kot štipendistka na Inštitutu Maxa Plancka za mednarodno in primerjalno pravo v Hamburgu. Stažirala je na Sodišču Evropske Unije v Luksemburgu, in se v Dublinu na Irskem izpopolnjevala v angleškem jeziku ter opravljala tudi raziskovalno delo za doktorsko disertacijo.
V okviru Inštituta pokriva predvsem raziskovalno dejavnost na vseh področjih delovanja Inštituta, mednarodno sodelovanje in prenos znanja. Kot izredna profesorica za javno upravo je habilitirana in predava na Novi univerzi, kjer predava pri predmetih Pravo javnih služb, Upravni sistemi, Pravo javnih naročil in koncesij in Javno-zasebna partnerstva. V zadnjem času se ukvarja zlasti z aktualnimi vprašanji elektronskega javnega naročanja, projekti pogodbenega zagotavljanja prihranka energije, trajnostno usmerjenega izvajanja javnih projektov, zagotavljanjem in financiranjem izvajanja javnih služb in izgradnje javne infrastrukture ter s tem povezanim vprašanjem državnih pomoči.
Petra Ferk je članica upravnega odbora Slovenskega društva za evropsko pravo in sodeluje pri njegovih aktivnosti že od ustanovitve naprej. Hkrati je tudi članica upravnega odbora Mednarodnega združenja za evropsko pravo (Federation Internationale du droit Europeen – FIDE) in članica upravnega odbora Mednarodne akademije za primerjalno pravo (International Academy of Comparative Law – IACL).
Petra Ferk je nacionalna korespondentka za European Procurement & Public Private Partnership Law Review. V okviru Upravne akademije pri Ministrstvu za javno upravo pa nastopa kot izvajalka seminarjev in izobraževanj na temo javno-zasebnega partnerstva.
Petra je tudi zelo aktivna pri globalnem prenosu najboljših praks s področja uveljavljanja ciljev trajnostnega razvoja z javno-zasebnimi partnerstvi, ki poteka pod okriljem Gospodarske komisije Združenih narodov za Evropo (UNECE) - UNECE PPP and Infrastructure Evaluation and Rating System (PIERS) in je uvrščena na seznam ocenjevalcev projektov po metodologiji PIERS pri Sekretariatu UNECE.

Petra Ferk is one of the Founders at the Institute for Public-Private Partnership, Slovenia. She is also an Assistant Professor for Public Administration at the Graduate School of Government and European Studies, Slovenia.
Petra Ferk graduated cum laude from the Faculty of Law. After her studies, she started working at Slovenska odškodninska družba, Ltd. and later switched to a position of a Advisor at Slovenia Control, Ltd.. In 2008, she successfully defended her Master Thesis, her mentor being prof. Rajko Pirnat. That same year, she co-authored a monograph Javne službe, državne pomoči in javno-zasebna partnerstva [Public Services, State Aids, and Public-Private Partnerships]. In 2008, she was also awarded the "Young Lawyer Award" by the Slovenian Law Association. In 2023, she received recognition from the Association of Lawyers for her work in the organs of the association and its members.
As said, Petra is the co-author of a legal monograph and also the author of numerous articles dealing mainly with public-private partnerships, public procurement, services of general (economic) interest, and state aid. Among her activities abroad, her most prominent work is a research, conducted in Dublin as well as research for her master's and doctoral theses at the Max Planck Institute for Comparative and International Private Law in Hamburg, Germany, for which she received scholarship. She additionally improved her professional skills as a stagier at the European Court of Justice in the cabinet of Judge of the Court of First Instance of European Communities, Mrs. Ingrida Labucka.
Within the Institute for Public-Private Partnership, Petra advises on complex legal issues within the areas of operation of the Institute, as well as covering the fields of research, international cooperation, and knowledge transfer. As an Associate assistant professor for public administration at the New University, she lectures about public services law, public-private partnerships, public procurement, administrative systems, administrative law and procedure. Recently, she has been actively engaging in discussions on e-procurement, energy performance contracting projects, sustainable procurement, provision and financing of public services, public infrastructure, and the related issue of state aid.
Petra is a member of the board of the Slovenian Association for European Law and participates in its activities since its establishment. She also holds the positions of a member of the management board at Federation Internationale du droit Europeen – FIDE and International Academy of Comparative Law – IACL.
Petra is the national correspondent for European Procurement & Public Private Partnership Law Review, and is active in promoting best practices on PPPs within the trainings organised by the UNECE

International PPP Centre of Excellence. She is on the list of lecturers for public-private partnerships at the Academy for Administration of the Slovenian Ministry of Public Administration.
Petra is also very active in the global transfer of best practices in the field of implementing sustainable development goals through public-private partnerships, which takes place under the auspices of the United Nations Economic Commission for Europe (UNECE) - UNECE PPP and Infrastructure Evaluation and Rating System (PIERS) and is listed as a Project Evaluator rostered by the UNECE Secretariat.
Bibliografija/Bibliography: https://bib.cobiss.net/biblioweb/biblio/si/slv/conor/74627939