

## UČNI NAČRT PREDMETA / COURSE SYLLABUS

<b>Predmet:</b>	<b>Alternativno reševanje sporov</b>
<b>Course title:</b>	<b>Alternative Dispute Resolution</b>

<b>Študijski program in stopnja</b> <b>Study programme and level</b>	<b>Študijska smer</b> <b>Study field</b>	<b>Letnik</b> <b>Academic year</b>	<b>Semester</b> <b>Semester</b>
Pravo in management nepremičnin - 2. stopnja		1/2	1/2
Law and Management of Real Estate – 2 <sup>nd</sup> degree		1/2	1/2

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

**Univerzitetna koda predmeta / University course code:**

<b>Predavanja</b> <b>Lectures</b>	<b>Seminar</b> <b>Seminar</b>	<b>Vaje</b> <b>Tutorial</b>	<b>Klinične vaje</b> <b>work</b>	<b>Druge oblike študija</b> <b>študija</b>	<b>Samost. delo</b> <b>Individ. work</b>	<b>ECTS</b>
30	0	0	0	0	120	6

**Nosilec predmeta / Lecturer:** prof. dr. Peter Jambrek

<b>Jeziki /</b> <b>Languages:</b>	<b>Predavanja/</b> <b>Lectures:</b>	Slovenski jezik/Slovenian
	<b>Vaje / Tutorial:</b>	Slovenski jezik/Slovenian

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

Vpis na podiplomskega študija.	Enrollment in postgraduate study.
Vsaj 80% prisotnost na predavanjih.	At least 80% attendance at lectures.

**Vsebina:**

- pojem konflikta oziroma spora;
- strategije urejanja in upravljanja različnosti ter preprečevanja, upravljanja in razreševanja kriz in konfliktov v pluralnih in notranje raznolikih družbah;
- zgodovina in razvoj alternativnega reševanja spora (ARS);

**Content (Syllabus outline):**

- the concept of conflict and dispute;
- strategies of diversity management and prevention, management and resolution of crises and conflicts in plural societies;
- history of the alternative dispute resolution (ADR) and its development;

- opredelitev in umestitev alternativnega reševanja sporov v sistem pravnega varstva;
- primerjava ARS in sodnih postopkov;
- pomen, prednosti in slabosti ARS;
- postopki ARS (mediacija, arbitraža, zgodnja nevtralna ocena, mini sojenje, poravnalni narok, mini sojenje, hibridni postopki, idr.);
- primernost sporov za ARS;
- ARS v Sloveniji ter primerjalno-pravni pregled ARS v Evropi, ZDA;
- pojem mediacije, temeljna načela mediacije (načelo dispozitivnosti, zakonitosti, prostovoljnosti, zaupnosti, nevtralnosti, načelo pravičnosti, dobra vera) ter postopek mediacije;
- sodišču pridružena mediacija in centri zunaj sodišč, obvezna mediacija, obvezna napotitev na mediacijo, sankcije
- prekinitev pravnega postopka zaradi mediacije
- pojem arbitraže, arbitražni postopek ter arbitražni sporazum;
- pravni viri s področja ARS, mediacije in arbitraže.

- definition of alternative dispute resolution in the system of legal protection;
- comparison between litigation and alternative dispute resolution;
- meaning, advantages and disadvantages of ADR;
- ADR procedures (mediation, arbitration, early neutral assessment, mini-trial, settlement hearing, mini-trial, hybrid proceedings);
- the suitability of the use of the ADR methods
- ADR in Slovenia and comparative legal review of ADR in Europe, USA;
- the concept of mediation, the fundamental principles of mediation (principle of legality, voluntary, confidentiality, neutrality, the principle of fairness, good faith) and the mediation procedure;
- court-annexed mediation and out-of-court mediation, mandatory mediation, mandatory referral to mediation, sanctions
- suspension of the civil proceedings for the duration of court-annexed mediation
- the concept of arbitration, arbitration procedure and arbitration agreement;
- sources of law in the field of ADR, mediation and arbitration.

### Temeljna 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. Pravilnik o izvajanju mediacije po Družinskem zakoniku (Uradni list RS, št. 76/19)
  - f. Zakon o izvensodnem reševanju potrošniških sporov (Uradni list RS, št. 81/15)

- g. Direktiva o nekaterih vidikih mediacije v civilnih in gospodarskih zadevah 2008/52/ES
- h. Pravila UNCITRAL za modelni Zakon o conciliaciji

Priporočljiva literatura:

4. 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.
5. Fisher R. and Ury W. (2012). Getting to yes: Negotiating Agreement without giving in. London: Random House.
6. Iršič, M. (2004). Umetnost obvladovanja konfliktov. Ljubljana: Rakmo.
7. Jambreč, E. (2021). Participacija otrok v razvezni mediaciji po Družinskem zakoniku: od koncepta do implementacije. Revija Socialno delo, let. 60, št. 1, str. 37–54.
8. 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.
9. Metelko, T.P. (2018). Mediacijske tehnike in veščine: 1-50: priročnik za učinkovito preprečevanje in reševanje konfliktov ter osebno rast v komuniciranju. Ljubljana: Pro Creathor.
10. Merrills, J. G. (2011). International Dispute Settlement – Fifth Edition. Cambridge: Cambridge University Press.
11. Moore, C. W. (2014). The Mediation Process: Practical Strategies for Resolving Conflict. Forth Edition. San Francisco: Jossey-Bass & Pfeiffer Imprints.
12. Nolan- Haley, J.M. (2013). Alternative Dispute Resolution in a Nutshell. St. Paul MN: West Publishing Company.
13. Penko Natlačen, M., et. al. (2010). Alternativno reševanje delavnopravnih sporov s podporo socialnega dialoga, študija. Ljubljana: GZS.
14. Randolph P. and Strasser F. (2004). Mediation – A Psychological Insight into Conflict Resolution. New York: Bloomsbury Academic New York.
15. SANDOLE, J.D., et al. (2011). Handbook of conflict analysis and resolution. Routledge, New York.
16. Sourdin, T. (2002). Alternative Dispute Resolution. Sydney: Lawbook Company.
17. Šetinc Tekavc M. (2002). Sporazumno reševanje sporov v teoriji in praksi. Tržič: Učila.
18. Waldman, E. (2011). Mediation Ethics: Cases and Commentaries. San Francisco: Jossey-Bass.

**Cilji in kompetence:**

Študentje/študentke bodo pri predmetu zasledovali naslednje cilje:

**Objectives and competences:**

During this course students will pursue the following objectives:

- razumevanje procesa alternativnega načina razreševanja sporov (ARS)
- se seznanili s postopki sporazumnega reševanja sporov, ki predstavljajo alternativo sodnemu sistemu;
- razumevanje prednosti in slabosti ARS;
- razumevanje in poznavanje različnih metod ARS
- razumevanje in poznavanje postopka mediacije in arbitraže;
- poznavanje normativne urejenosti ARS v Sloveniji ter drugod po svetu.

- understanding the process of an alternative dispute resolution (ADR)
- understand the amicable settlement of disputes as an alternative to the judicial system;
- know the advantages and disadvantages of ADR;
- know the various methods 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:**

#### Znanje in razumevanje:

- seznanitev študentov z osnovnim pojmom in razvojem alternativnega reševanja sporov ter njegovimi temeljnimi inštituti;
- znanje in razumevanje o bistvenih značilnosti oz. naravi družbenih konfliktov, njihovih pogojev, vzrokov in dejavnikov;
- razumevanje pojmov nasilja, konflikta, nenasilja, pomiritve, sprave, sodelovanja, solidarnosti, empatije, dialoga idr.;
- razvije kritično razumevanje metod alternativnega reševanja sporov (poznavanje prednosti in slabosti ARS)
- sposoben je kritično obravnavati različne pojavne oblike ARS in možnost njihove uporabe v praktičnih primerih;
- sposoben kritično presojsati, analizirati in razlagati pojme, povezane z vidiki alternativnega reševanje sporov v sodobnem obdobju, s posebnim poudarkom na mediaciji in arbitraži;
- pridobil bo znanje o urejenosti ARS v Sloveniji ter drugod po svetu;
- pridobil bo znanje na kakšen način in na katerih segmentih v pravosodnem sistemu,

### **Intended learning outcomes:**

#### Knowledge and understanding:

- students will understand the fundamental concept of alternative dispute resolution and specific perspectives and its development, and to its basic principles;
- students will understand the essential characteristics or the nature of the social conflicts, their conditions, causes and factors;
- students will understand the concepts of violence, conflict, reconciliation, cooperation, solidarity, empathy, dialogue, etc.;
- students will develop a critical understanding of alternative dispute resolution methods (advantages and disadvantages of ADR);
- students are able to critically address various forms of ADR and the possibility of their use in practical cases;
- students are able to the critical judge and analyse concepts related to ADR – specific perspectives in the modern period, with special emphasis on mediation and arbitration;
- students will gain the knowledge about the regulation of ADR in Slovenia and worldwide;

je mogoče uporabiti postopke mediacije in arbitraže.

– students will acquire the knowledge about the application of the process of mediation and arbitration in the judicial system.

### Metode poučevanja in učenja:

Oblike dela:

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

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

### Learning and teaching methods:

Types of learning/teaching:

- Frontal teaching
- Work in smaller groups or pair work
- Independent students work
- e-learning
- other \_\_\_\_\_

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

Delež (v %) /

Načini ocenjevanja:

Weight (in %) Assessment:

– pisni izpit		– written examination
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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>.