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ŠIRENJE KRUGA POTRAŽIVANJA KOD JEDNOGODIŠNJEG ROKA ZASTARJELOSTI**

SAŽETAK: U ovom radu se analizira mogućnost analogne primjene čl. 378. Zakona o obligacionim odnosima (ZOO) na druga slična (istovrsna) potraživanja. Cilj istraživanja se ogleda u nastojanju da se da odgovor na centralno pitanje da li je neophodno osavremenjivanje odredaba ZOO o jednogodišnjem roku zastarjelosti potraživanja u skladu sa savremenim tokovima u pogledu kruga potraživanja koja bi trebalo da zastarijevaju u ovom roku? Da bi se došlo do odgovora na ovo pitanje koriste se metode naučno-istraživačkog rada odnosno tehnike, kao što su dogmatičko-normativna, istorijskopravna, uporednopravna, analiza sadržaja i upitnik. Ova aparatura se koristi pri proučavanju zakonodavstva, sudske prakse i pravne literature, kao i pri empirijskom istraživanju. Poznavanje kruga potraživanja koja zastarijevaju u jednogodišnjem roku je ne samo od značaja za teorijsku analizu, nego je i od praktičnog značaja za postupanje sudova, kao i za potrošače.

Ključne reči: zastarjelost, jednogodišnji rok, ZOO, krug potraživanja, potrošači

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UVOD

U četvrtoj glavi o prestanku obaveza, Odjeljak 4, Odsjek 2 ZOO, pod naslovom „Vrijeme potrebno za zastarelost“, sadrži opšte i posebne (specijalne) rokove zastare. Posebni rokovi zastarjelosti su grupisani prema kriterijumu tipa potraživanja koja zastarijevaju. Tako je određen rok zastare za povremena potraživanja, za međusobna potraživanja iz ugovora o prometu roba i usluga, za potraživanja zakupnine, naknade štete, potraživanja utvrđena pred sudom ili drugim nadležnim organom i kod ugovora o osiguranju, dok čl. 378. ZOO nosi naziv „jednogodišnji rok zastarelosti“.[1] To govori o raznolikosti potraživanja koja su supsumirana pod ovaj član, koji glasi:

„1) Zastarevaju za jednu godinu:

1) potraživanje naknade za isporučenu električnu i toplotnu energiju, plin, vodu, za dimničarske usluge i za održavanje čistoće, kad je isporuka odnosno usluga izvršena za potrebe domaćinstva;

2) potraživanje radio-stanice i radio-televizijske stanice za upotrebu radio-prijemnika i televizijskog prijemnika;

3) potraživanje pošte, telegrafa i telefona za upotrebu telefona i poštanskih pregradaka, kao i druga njihova potraživanja koja se naplaćuju u tromesečnim ili kraćim rokovima;

4) potraživanje pretplate na povremene publikacije, računajući od isteka vremena za koje je publikacija naručena.

2) Zastarevanje teče iako su isporuke ili usluge produžene.“

Ova zakonska odredba se odnosi na komunalne i druge srodne usluge koje se kontinuirano pružaju od strane određenih preduzeća domaćinstvima i drugim korisnicima, gdje potraživanja dospijevaju u kratkim vremenskim razmacima.[2] Radi se o slučajevima pružanja usluga bez kojih je nemoguće zamisliti održavanje života u jednoj gradskoj sredini.[3] Zastarjelošću (engl. *prescription, limitation, statute of limitations*, njem. *Verjährung*) prestaje pravo zahtijevati ispunjenje obaveze kad protekne zakonom određeno vrijeme u kojem je povjerilac mogao zahtijevati njeno ispunjenje (čl. 360. ZOO).

[1] Zakon o obligacionim odnosima – ZOO, *Službeni list SFRJ*, br. 29/1978, 39/1985, 45/1989. – odluka USJ i 57/1989. i *Službeni glasnik Republike Srpske*, br. 17/1993, 3/1996, 37/2001. – dr. zakon, 39/2003. i 74/2004.

[2] Đorđević, S. (2019). *Posebni rokovi zastarelosti,* master rad. Niš: Pravni fakultet Univerziteta u Nišu, 41.

[3] Stojanović, D. (1980). Član 378. Jednogodišnji rok zastarelosti. *Komentar Zakona o obligacionim odnosima,* ur. Slobodan Perović i Dragoljub Stojanović. (I, 926). Kragujevac – Gornji Milanovac: Pravni fakultet i Kulturni centar. Pored pružanja usluga, ovdje se radi i o prodaji pokretnih stvari – robe – energenata.

Rimsko pravo nije poznavalo zastarjelost potraživanja.[4] Propisivanje opštih, ali i posebnih rokova zastare koji su danas poznati, je prihvatljivo u kontekstu sudske prakse Evropskog suda za ljudska prava u Strazburu (ESLJP).[5]

U ovom radu se analizira jednogodišnji rok zastarjelosti potraživanja iz čl. 378. Zakona o obligacionim odnosima (ZOO), odnosno mogućnost analogne primjene ovog člana na druga slična (istovrsna) potraživanja. Da li su postojeća pravila o jednogodišnjem roku zastarjelosti nefleksibilna i da li treba proširiti njihov okvir s obzirom na stepen tehničko-tehnološkog razvoja pružanja određenih tipskih usluga sličnih onima na koja se odnosi odredba ZOO o jednogodišnjem roku zastare? Da li se u tom slučaju primjenjuje opšti ili neki drugi specijalni rok zastarjelosti potraživanja? Postojeća pravila o specijalnom jednogodišnjem roku zastarjelosti postaju s vremenom, pod uticajem razvoja tehnologije i pružanjem usluga u vezi sa njom, nedorečena i predmet su različitih tumačenja u pravnoj praksi i teoriji. Cilj istraživanja se ogleda u nastojanju da se da odgovor na centralno pitanje da li je neophodno osavremenjivanje odredaba ZOO o jednogodišnjem roku zastarjelosti potraživanja u skladu sa savremenim tokovima u pogledu kruga potraživanja koja bi trebalo da zastarijevaju u ovom roku? Jasno identifikovanje kruga potraživanja koja zastarijevaju u jednogodišnjem roku je ne samo od značaja za teorijsko osvetljavanje i uobličavanje ovog instituta, nego je i od praktičnog značaja za postupanje sudova kada primjenjuju i tumače pravo. Ovo pitanje je od posebnog značaja i za potrošače, iz ugla poznavanja njihovih prava.

U dosadašnjoj pravnoj teoriji nije posvećena veća pažnja niti je data detaljna ili sveobuhvatna analiza problema analogne primjene čl. 378. ZOO na druga slična potraživanja koja nisu eksplicitno normirana u navedenoj odredbi, kao ni analiza mogućeg noveliranja ZOO u tom pogledu. Sveobuhvatna analiza bi obuhvatala, pored analize pravne doktrine, i komparativnu analizu zakonodavstva i sudske prakse na području država nastalih disolucijom Jugoslavije jer baštine sličnu normu o jednogodišnjem roku zastarjelosti, te empirijsko istraživanje.

[4] Meyer, T. (2003). Änderungen im Verjährungsrecht des deutschen Bürgerlichen Gesetzbuches. *Anali Pravnog fakulteta u Beogradu*, 51 (3–4), 495. Za razliku zastarjelosti od drugih sličnih instituta vid. Radulović, S. (2012). Zastarelost i drugi slični pravni instituti. *Glasnik Advokatske komore Vojvodine*, (6), 401–409.

[5] V.: Mihelčić, G. (2020). Zastara u svjetlu konvencijske zaštite (odabrana pitanja). *Hrvatski časopis za osiguranje*, (3), 153–171. i tamo navedenu sudsku praksu ESLJP.

HIPOTETIČKI I METODOLOŠKI OKVIR

U radu će se ispitivati sljedeće hipoteze:

– Postojeći specijalni jednogodišnji rok zastarjelosti potraživanja postaje predmet različitih tumačenja posmatrano iz ugla potraživanja koja bi trebalo da zastarijevaju u tom roku, ne samo u teoretskom smislu, nego i u pravnoj praksi, imajući u vidi savremene tokove.

– Nema prepreka za nomotehničko osavremenjivanje odredaba ZOO o jednogodišnjem roku zastarjelosti potraživanja u skladu sa stepenom tehničko-tehnološkog razvoja u pogledu kruga potraživanja koja bi trebalo da zastarijevaju u ovom roku.

Članak se zasniva na primjeni metoda odnosno tehnika naučno-istraživačkog rada, kao što su dogmatičko-normativna, istorijskopravna, uporednopravna, analiza sadržaja i upitnik. Kao sredstva tumačenja korišćena su: jezičko, logičko, sistematsko, ciljno i istorijsko. Ova aparatura je služila za provjeru postavljenih hipoteza u određenim segmentima. Posebno je izvršena dokumentaciona analiza relevantnih sudskih odluka različitih sudskih instanci u zemljama bivšeg jugoslovenskog kruga, jer one baštine tradiciju „jugoslovenskog" ZOO koji sadrži analiziranu odredbu. Radi utvrđivanja stavova sudova pretražena je, prema ključnim odrednicama, dostupna sudska praksa, što podrazumijeva baze i zbirke/biltene sudske prakse oglašene na internetu, ali i dostupne u biblioteci. Obavljeno je i prikupljanje odluka iz sudova koje su u vezi sa istraživačkim pitanjima.

Pored toga, u okviru empirijskog istraživanja, analizirani su odgovori dobijeni anketiranjem sudija Osnovnog suda u Banjoj Luci i Okružnog suda u Banjoj Luci i to sudija građanskog odnosno parničnog odjeljenja, kao i advokata Advokatske komore Republike Srpske – Zbor advokata Banja Luka, s akcentom na advokate koji se bave građanskopravnom materijom. Upitnik su popunile 4 sudije parničnog odjeljenja Osnovnog suda u Banjoj Luci, 3 sudije građanskog odjeljenja Okružnog suda u Banjoj Luci i 19 advokata Advokatske komore Republike Srpske – Zbor advokata Banja Luka. Upitnik za svaku grupu ispitivanih lica je sadržavao ista pitanja zbog lakše komparacije. Anketa odnosno upitnik je bio zatvorenog tipa, anoniman i služio je za utvrđivanje stavova stručne javnosti (primjenjivača normi) o primjeni čl. 378. ZOO o jednogodišnjem roku zastarjelosti. Neka istraživačka pitanja iz upitnika neće biti predmet obrade u ovom radu zbog ograničenja obima rada. Kriterijumi pri ovom uzorkovanju i usmjeravanju istraživanja na područje grada Banja Luka su bili: brojnost sudija, pretpostavljena vjerovatnoća i brojnost predmetnih sporova, veličina i razvijenost grada i u vezi sa tim rasprostranjenost prodaje energenata, obavljanja komunalnih i telekomunikacionih i sl. djelatnosti u vezi sa kojima nastaju i razmatrana potraživanja. Osnovni sud je izabran jer rješava

građanske sporove u prvom stepenu u kojima se javlja pitanje zastarjelosti potraživanja, okružni sud jer odlučuje u drugom stepenu u ovim postupcima i predstavnici advokatske profesije, jer su angažovani kao punomoćnici stranaka u ovim predmetima. Kako su potrošači najbrojnija skupina korisnika predmetnih usluga odnosno kupaca robe, privredni sudovi nisu anketirani. Uglavnom se radi o tzv. maličnim sporovima koji se u pretežnoj mjeri iscrpljuju pred sudovima prvog i drugog stepena. Ideja za neko novo istraživanje jeste da ono može da obuhvati anketiranje sudija ostalih sudova i advokata u Republici Srpskoj, ali i na prostoru država bivše Jugoslavije, kako bi se vidjelo u kojoj mjeri koincidiraju rezultati obavljenog istraživanja sa rezultatima anketiranja sudija ostalih sudova i advokata, a interesantno bi bilo utvrditi i stav samih potrošača.

REZULTATI ISTRAŽIVANJA I DISKUSIJA

Stav(ovi) pravne teorije

U pravnoj teoriji se u sklopu pitanja zastarjelosti potraživanja može pronaći i stav o primjeni čl. 378. ZOO na druga slična potraživanja. Ranije je F. Stanković smatrao da se odredbe čl. 22. Zakona o zastarelosti potraživanja,[6] koje su većim dijelom nastavile da žive u ZOO, analogno primjenjuju i na druga potraživanja iz činjenično ili pravno sličnih obaveza, a ne samo na potraživanja koja su u njemu izričito navedena.[7] Međutim, J. Studin u Komentaru ZOO (ur. B. Blagojević i V. Krulj) smatra da se teško mogu prihvatiti neki stavovi prakse i teorije, a koji su izuzetak, da se ovaj rok zastarjelosti može analogijom primijeniti na druge slične isporuke, polazeći od toga da su ove odredbe precizne i da izuzetke treba usko tumačiti.[8] Za razliku od toga, navođenje telefona i poštanskih pregradaka u t. 3. čl. 378. ZOO ima značaj karakterističnih primjera, pa se ne radi o taksativnom nabrajanju.[9] Ima i stavova o tome da u slučaju sumnje da li neko potraživanje zastarijeva u nekom posebnom zastarnom roku, treba primijeniti opšti rok zastarjelosti, jer su specijalni zastarni rokovi izuzetak od opšteg pravila.[10]

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[6] *Službeni list FNRJ*, br. 40/53. i 57/54.

[7] Stanković, F. (1969). *Zastara potraživanja*. Zagreb, 98.

[8] Studin, J. (1980). Čl. 378. Jednogodišnji rok zastarelosti. *Komentar Zakona o obligacionim odnosima,* ur. Borislav Blagojević i Vrleta Krulj. (I, 854). Beograd: Savremena administracija. V.: Brković-Mujagić, S. (2012). *Posebni rokovi zastarjelosti po Zakonu o obligacionim odnosima,* magistarski rad. Sarajevo: Pravni fakultet Univerziteta u Sarajevu, 57.

[9] *Ibid.,* 854.

[10] Vizner, B. (1978). *Komentar Zakona o obveznim (obligacionim) odnosima*. Zagreb, 1317.

Od novijih istraživanja, ali u okviru razmatranja svih posebnih rokova zastarjelosti potraživanja, uočava se stav da treba predvidjeti proširenu primjenu jednogodišnjeg roka zastarjelosti iz ZOO na druge komunalne usluge određene Zakonom o komunalnim djelatnostima u Republici Srbiji, kao i da se razmisli o regulisanju roka zastarjelosti i u samom Zakonu o komunalnim djelatnostima.[11] Nasuprot tome, čini nam se da je bolje rješenje da se u ZOO regulišu sva pitanja zastarjelosti potraživanja, jer ZOO već sistematično sadrži set pravila o zastari. Time bi se izbjegla rascjepkanost rokova i pravila o zastari.

U udžbeničkoj literaturi se ne otvara i ne raspravlja pitanje o potrebi proširenja kruga potraživanja na osnovu isporuke roba ili vršenja usluga kod jednogodišnjeg roka zastarjelosti.[12] B. Morait potraživanja iz t. 1. čl. 378. ZOO razvrstava na potraživanja naknade za izvršene isporuke komunalnih energenata (energija, plin, voda i sl.) i za izvršene komunalne usluge (održavanja čistoće, dimnjačarske usluge i sl.), navodeći zakonske slučajeve i odrednicu „i slično" iz čega se može zaključiti, iako se o tome izričito ne izjašnjava, da smatra da se ova odredba odnosi i na druge slične slučajeve pod navedenim tipološkim kategorijama.[13]

Dakle, u pravnoj teoriji najveći procenat otpada na neizjašnjavanje autora o mogućoj analognoj primjeni čl. 378. ZOO na slična potraživanja i, u okviru širih razmatranja o zastarjelosti potraživanja ili posebnim rokovima zastarjelosti, na sporedne stavove o nemogućnosti primjene čl. 378. ZOO na druga slična potraživanja. Naspram toga, u manjoj mjeri su zastupljeni stavovi o mogućoj analognoj primjeni analizirane odredbe ZOO.

Neophodno je teorijske stavove sagledati u svijetlu komparativnog pogleda kako na zakonodavstvo, tako i na sudsku praksu, posebno u zemljama nastalim disolucijom bivše Jugoslavije, jer baštine istu pravnu tradiciju o jednogodišnjem roku zastare. Takođe, analiza stavova primjenjivača sporne odredbe (sudija i advokata) može da dâ korisne povratne informacije o predmetu ovog istraživanja.

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[11] Đorđević, S. (2019). *Posebni rokovi zastarelosti,* master rad. Niš: Pravni fakultet Univerziteta u Nišu, 62.

[12] V. npr.: Pajtić, B., Radovanović, S., Dudaš, A. (2018). *Obligaciono pravo*. Novi Sad: Pravni fakultet u Novom Sadu, 202. Bikić, A. (2013). *Obligaciono pravo, opći dio*. Sarajevo: Pravni fakultet u Sarajevu, 327–328. Stanković, O., Vodinelić, V. (1996). *Uvod u građansko pravo*. Beograd, 209–212. Vodinelić, V. (2012). *Građansko pravo: Uvod u građansko pravo i opšti deo građanskog prava*. Beograd, 520–525. Radišić, J. (2004). *Obligaciono pravo, opšti deo*. Beograd: Nomos, 363.

[13] Morait, B. (2010). *Obligaciono pravo*. Banja Luka: Komesgrafika, 148.

Stav(ovi) zakonodavstva

Na osnovu tabelarnog prikaza (vid. *Tabelu 1*) kao i na temelju jezičke i dogmatsko-normativne analize relevantnih odredaba ZOO i planiranih obligacionih kodeksa posmatranih država, mogu se pregledno izvesti određeni zaključci o uporednopravnom stanju povodom razmatranih pitanja.

***Tabela 1**: Uporedni pregled postojećih i planiranih odredaba obligacionih propisa povodom razmatranog pitanja*

ZOO*	*De lege lata*		Da li se razmatra u planiranom propisu?
	Odredba ZOO	„Novi" krug potraživanja (u odnosu na „jugoslovenski" ZOO)	Proširenje kruga potraživanja
Srbija	Čl. 378. st. 1. i 2.	Ne	Da
RS/FBiH	Čl. 378. st. 1. i 2.	Ne	Ne (2003) Da (2010)
Crna Gora	Čl. 388 st. 1. i 2.	Da	–
Hrvatska	Čl. 232. st. 1. i 2.	Ne	–
Slovenija	Čl. 355. st. 1–3.	Da	–
S. Makedonija	Čl. 367. st. 1. i 2.	Ne	Da

* Izvor: ZOO posmatranih država i planirani obligacioni kodeksi (zakoni i građanski zakonici); crta (–) označava da nije poznato da je u planu donošenje budućeg kodeksa ili izmjena postojećeg propisa.

Skica za zakonik o obligacijama i ugovorima profesora Konstantinovića nije sadržavala ove odredbe o zastari, već je bio donesen pomenuti Zakon o zastarelosti potraživanja iz 1953. godine. Njegova rješenja su uglavnom preuzeta u ZOO. U Republici Srpskoj Zakon o komunalnim djelatnostima[14] ne sadrži pravila vezana za zastaru tzv. komunalnih potraživanja. Evropske države poznaju opšti rok i posebne rokove za pojedine tipove potraživanja. Primjera radi, naknada za prodaju robe potrošačima zastarijeva u specijalnom roku od godinu dana u Italiji.[15] Na evropskom prostoru se govori o reformi rokova zastarjelosti.

[14] *Službeni glasnik Republike Srpske*, br. 124/11. i 100/17.

[15] V.: Commercial Law Group (2014). *Periods of Limitation and Other Time Limits in Europe: A country by country summary of limitation and time limits in Europe*, 1–26.

Izmjenama i dopunama Srpskog građanskog zakonika od 5. maja 1864. godine uvedeni su kratki rokovi zastarjelosti, kao i odredba 928v)[16] po ugledu na *Code Civil*.[17] Kao što Srpski građanski zakonik predviđa zastarjelost za potraživanje na ime nekih usluga svojstvenih tom periodu,[18] tako ZOO predviđa jednogodišnji rok zastarjelosti za neka potraživanja na ime pruženih usluga ili isporučenih roba osobena tom periodu i stepenu tehničko-tehnološkog razvoja. ZOO treba da prati savremene tokove i ubuduće.

U Zakonu o zastarjelosti potraživanja iz 1953. godine nije bilo navedeno u odredbi o jednogodišnjem roku, u t. 1. potraživanje naknade za isporučenu toplotnu energiju, a u t. 2. potraživanje za upotrebu televizijskog prijemnika. To govori o tome da usluge ili isporuke koje se podvode pod ovu odredbu zavise od tehničko-tehnološkog razvoja. Stoga je opravdano razmišljati da se na današnjem stepenu tehničko-tehnološkog razvoja prodaje roba i pružanja usluga može govoriti o još nekim robama ili uslugama, istovrsnim onima iz čl. 378. ZOO, a koja potraživanja bi trebalo da zastarijevaju u jednogodišnjem roku. Krajem sedamdesetih godina u bivšoj Jugoslaviji je došlo do intenzivnije opskrbe toplotnom energijom, a prva TV stanica je osnovana 1956. godine,[19] dok je prvi televizor proizveden u Srbiji 1959. godine.[20] Kablovska televizija se kasnije pojavila. Dakle, neophodno je određeno vrijeme da zaživi određeni sistem usluga.

Citirani čl. 378. ZOO u Republici Srpskoj je identičan i u ZOO FBiH, Srbije, Hrvatske i Sjeverne Makedonije.[21] Prijedlog Zakona o obligacionim

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[16] „U slučajevima 928a) i 928b) zastarelost teče, i ako je produžavano izdavanje, rad ili služba, i prestaje, samo ako je zaključen račun ili izdata priznanica ili obligacija, ili predata tužba sudu."

[17] Čubinski, A. (1927). *O zastarelosti u građanskom pravu,* sa predgovorom Ž. Perića. Beograd, 151.

[18] „Tužba lekara i hirurga za posete, operacije i lekove; tužbe trgovaca za davanje espapa netrgovcima (vidi čl. 14. i 15. Trgovačkog zakonika); tužba onih, koji drže decu u obitalištu i daju im hranu; tužba drugih majstora i učitelja zbog plate za učenje; i tužba slugu koji se na godinu pogađaju, za naplatu njihove plate, zastareva za godinu dana." – odredba 928b) Srpskog građanskog zakonika, dopuna od 5. maja 1864. godine.

„…usluge, koje se godišnje imaju činiti, i u opšte sve, što se plaća ili čini godišnje ili u kraćim rokovima, koji se godišnje povraćaju, zastareva za tri godine" – odredba 928d) Srpskog građanskog zakonika.

[19] SFRJ. Dostupno na: https://bs.wikipedia.org/wiki/Socijalisti%C4%8Dka_Federativna_ Republika_Jugoslavija

[20] Informacija dostupna na: https://rs.n1info.com/region/a 452878-zasto-smo-voleli-sfrj-a-od-kuma-televizor-ambasador/

[21] V.: čl. 378. ZOO Federacije BIH – FBiH, *Službeni list SFRJ*, br. 29/1978, 39/1985, 45/1989. – odluka USJ i 57/1989, *Službeni list RBiH*, br. 2/1992, 13/1993. i 13/1994. i *Službene novine FBiH*, br. 29/2003. i 42/2011), čl. 378. ZOO Srbije, *Službeni list SFRJ*, br. 29/78, 39/85, 45/89. – odluka USJ i 57/89, *Službeni list SRJ*, br. 31/93. i *Službeni list SCG*,

odnosima BiH, koji nije usvojen u Parlamentarnoj skupštini BiH 2010. godine, predviđao je osavremenjivanje ove odredbe proširenjem primjene jednogodišnjeg roka zastarjelosti i na potraživanja naknade na osnovu upravljanja i održavanja zajedničkih dijelova zgrade, potraživanja iz osnova pružanja usluga kablovske televizije i kablovskog interneta, odnosno interneta, potraživanja naknade iz osnova *drugih* usluga za potrebe domaćinstava.[22] Posljednjom formulacijom nije ograničen krug potraživanja u vezi sa uslugama izvršenim za potrebe domaćinstva, već bi se ova odredba odnosila i na druga istovrsna potraživanja na ime tih usluga. Na taj način bi ovaj dio odredbe bio dovoljno prilagodljiv pravnoj stvarnosti. Međutim, kako bi se odstupilo od taksativnog pristupa zakonodavca kod ovog seta pravila i s tim narušila pravna sigurnost, nismo skloni tome da podržimo ovo rješenje. Nacrt ZOO RS/FBIH iz 2003. godine nije sadržavao prijedlog izmjena ili dopuna odredbe o jednogodišnjem roku zastare.

Predloženi Građanski zakonik Republike Srbije (radni tekst pripremljen za javnu raspravu sa alternativnim prijedlozima iz maja 2015. godine) predviđa dopunu odredbe o jednogodišnjem roku zastarjelosti i to u pogledu potraživanja izdavaoca parking prostora (čl. 583. st. 1. t. 2, pored potraživanja radio i TV stanice). U alternativi za ovaj član Građanski zakonik predviđa dodavanje i potraživanja za usluge obezbeđenja pristupa internetu i elektronskim komunikacijama (t. 5) i potraživanja upravnika ili lica koje obavlja funkciju upravljanja u višestambenim zgradama (u etažnoj svojini) za usluge upravljanja i druga potraživanja koja se plaćaju tromesečno ili u kraćim rokovima (t. 6). U posljednjem slučaju može da bude sporno da li se druga potraživanja odnose na potraživanja upravnika iz t 6. *ili* je riječ o posebnoj kategoriji u vidu generalne klauzule kod koje nastupa zastarjelost u roku godinu dana. Smatramo da treba prihvatiti prvo shvatanje. Ovaj stav se temelji na tome da se ta druga potraživanja koja se plaćaju tromjesečno ili u kraćim rokovima ne nalaze u posebnoj tački, već su u funkcionalnoj vezi sa ostatkom formulacije t. 6. Kod potraživanja iz tačke 1. koja su bila poznata i u čl. 378. st. 1. t. 1 „jugoslovenskog" ZOO, pisci Građanskog zakonika Srbije odrednicu „kad je isporuka odnosno usluga izvršena za potrebe domaćinstva" stavljaju u zagradu čime se stiče utisak da se razmišlja da li istu ostaviti ili brisati. U slučaju brisanja, promijenio bi se dosadašnji smisao ove tačke i odstupilo bi se od zakonskih rješenja zemalja u okruženju.

br. 1/2003. – Ustavna povelja i *Službeni glasnik Republike Srbije*, br. 18/2020, čl. 232. Zakona o obveznim odnosima – pročišćeni tekst (ZOO Hrvatske), *Narodne novine*, br. 35/05, 41/08, 125/11, 78/15. i 29/18) i čl. 367. Zakona za obligacionite odnosi (ZOO Makedonije), *Služben vesnik na Republika Makedonija*, br. 18/01, 78/01, 04/02, 59/02, 05/03, 84/08, 81/09, 161/09, 23/13. i 123/13.

[22] Čl. 428. st. 1. t. e), f) i g) Prijedloga Zakona o obligacionim odnosima BiH.

Budući Građanski zakonik Republike Makedonije predviđa širenje kruga potraživanja koja zastarijevaju u jednogodišnjem roku.[23] Tako se u alternativi čl. 367. st. 1, u t. 1. dodaje i potraživanje naknade za izvršene komunalne usluge (i održavanje čistoće), pored već postojećih kategorija (neke komunalne usluge su već nabrojane), a u t. 2. dodaje se, pored postojećeg, i potraživanje na ime korišćenja usluga pristupa internetu, te u t. 5. potraživanja iz različitih vrsta regresnih odnosa. Normira se da i drugi propisi mogu predvidjeti koja potraživanja će zastarijevati za jednu godinu, kao i to da potraživanja mogu zastarijevati i u kraćim periodima od jedne godine u skladu sa ovim zakonikom ili posebnim propisima. Iako ovakva opšta klauzula može da izgleda privlačno i fleksibilno, s druge strane to može narušiti pravnu sigurnost i dovesti do konfuzuje kod potrošača zbog većeg broja rokova rasutih u različitim propisima i na različitim mjestima.

S druge strane, pozitivno crnogorsko i slovenačko obligaciono pravo poznaju i „novi" krug potraživanja, pored onih koje je propisao jugoslovenski zakonodavac. Crnogorski zakonodavac je kod razmatrane odredbe učinio nekoliko izmjena i dopuna u odnosu na „jugoslovenski" ZOO: a) odredba je sadržana u čl. 388. ZOO (nova numeracija), b) uveo je dvogodišnji rok zastare umjesto jednogodišnjeg roka prema „jugoslovenskom" ZOO i c) proširio je krug potraživanja koja zastarijevaju u tom dvogodišnjem roku i na potraživanja vlasnika posebnih dijelova stambenih zgrada za usluge upravljanja i druga njihova potraživanja koja se plaćaju u tromjesečnim ili kraćim rokovima (nova tačka 5).[24]

Slovenačko pozitivno pravo predviđa „nova" potraživanja koja zastarijevaju za godinu dana: za usluge pristupa internetu, za pružanje usluga upotrebe elektronske pošte i elektronskih poštanskih sandučića, za usluge održavanja veb-stranica i usluge u vezi sa pristupom kablovskim i satelitskim radio i televizijskim programima, koji se plaćaju tromjesečno ili u kraćim rokovima, za potraživanja upravnika višestambenih zgrada za usluge upravljanja i druga njihova potraživanja koja se plaćaju u roku od tri mjeseca ili u kraćim rokovima.[25] Slovenačko pravo sadrži interesantno rješenje u pogledu početka toka jednogodišnjeg roka zastarjelosti, jer zastarijevanje počinje da teče po isteku godine u kojoj je potraživanje dospjelo.[26]

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[23] V.: Odluku o formiranju Komisije za izradu Građanskog zakonika R. Makedonije, *Službene novine R. Makedonije*, br. 04/11. i Odluka o izmjenama i dopunama Odluke o formiranju Komisije za izradu Građanskog zakonika R. Makedonije, *Službene novine R. Makedonije*, br. 19/12.

[24] V.: čl. 388. st. 1. Zakona o obligacionim odnosima – ZOO Crne Gore, *Službeni list Crne Gore*, br. 47/2008, 4/11. i 22/17.

[25] Čl. 355. st. 1. u t. 5. i 6. Obligacijskog zakonika – OZ, *Uradni list Republike Slovenije*, št. 97/07. – uradno prečiščeno besedilo in 64/16. – odl. US.

[26] Čl. 355. st. 2. OZ Slovenije.

Dakle, u pretežnoj mjeri, postojeći ili budući obligacioni propisi država okruženja predviđaju širenje kruga potraživanja kod jednogodišnjeg roka zastarjelosti, a istorijski razvoj pokazuje da je taj krug bio determinisan razvojem sistema srodnih usluga i isporuka roba u sklopu opšteg tehničko-tehnološkog razvoja.

Stav(ovi) sudske prakse

Dokumentacionom analizom je uočeno da se najveći broj pronađenih sudskih odluka na području država nastalih disolucijom bivše Jugoslavije o primjeni jednogodišnjeg roka zastarjelosti odnosi na slučajeve isporuke energenata, kao što su *električna*[27] i *toplotna energija,*[28] *voda*[29] i sl. Prilikom tumačenja i primjene prava, sudovi različito postupaju u kontekstu supsumiranja raznih slučajeva pod t. 1. čl. 378. ZOO. Tako neki sudovi potraživanje koje se odnosi na plaćanje *naknade za doprinos za angažovanu vodu*, koji je iskazan na računu za vodu, tretiraju kao potraživanje koje zastarijeva u jednogodišnjem roku,[30] a drugi sudovi naknadu za zaštitu vode, fiksne troškove održavanja – odvodnje, uslugu potrošnje odvodnje i naknadu za razvoj, ne podvode pod ovaj rok zastare, jer se ne odnose na naknadu za uslugu potrošnje vode.[31] Nekada su oprečna mišljenja pravne teorije i sudske prakse u pogledu toga da li isporuka električne energije i sl. spada u povremena davanja[32] ili

[27] Presuda Općinskog suda u Mostaru, 07 58 P 001197 05 P od 17. 1. 2011. godine, odluke Apelacionog suda Brčko distrikta, 96 0 Mal 003293 10 Gž od 8. 10. 2010. godine i Višeg suda u Podgorici, Gž. br. 51/16-10. od 5. 4. 2016. godine. S druge strane, potraživanje naknade za neovlašćeno korišćenje električne energije zastarijeva u opštem zastarnom roku (sticanje bez osnova). Zaključci i stavovi verifikovani na sjednici Građanskog odjeljenja Vrhovnog kasacionog suda Srbije od 3. 3. 2015. godine. Isto u Presudi Višeg suda u Pančevu, Gž. 2395/10. od 25. 1. 2011. godine. Međutim, neki sudovi u BiH smatraju da se ovdje radi o naknadi štete zbog neovlaštene potrošnje električne energije u kojem slučaju se primjenjuje rok zastarjelosti za potraživanje naknade štete. Presuda Kantonalnog suda u Livnu, 10 0 Mal 001564 11 Gž od 5. 4. 2011. godine.

[28] Presuda Osnovnog suda u Prijedoru, 77 0 Mal 019598 14 Mal od 27. 10. 2014. godine i Općinskog suda u Zenici, 43 0 Mal 000075 08 Mal od 13. 2. 2009. godine.

[29] Npr. Presuda Osnovnog suda u Nikšiću, Mal 245/2015 od 21. 9. 2015. godine.

[30] Okružni sud u Užicu, Gž-1618/2007. od 30. 1. 2008. godine.

[31] Presuda Općinskog suda u Slavonskom Brodu – Stalna služba u Novoj Gradiški, br. 1. Povrv-13/2018-7 od 29. 3. 2018. godine. Zahtjev za naknadu za navodnjavanje poljoprivrednog zemljišta, nastao prema odredbama Zakona o vodama, zastarijeva u opštem roku. Пресуда на Врховниот суд на Република Македонија, Рев. бр. 1240/99. од 16. 5. 2002. година.

[32] V.: Radović, M. (2015). Potraživanja na osnovu isporučene električne i toplotne energije. *Pravo i privreda*, (4–6), 522–527.

ne.[33] Korištenje vode potrošene iz javnog vodovoda i *korištenje javne kanalizacije* odnosno odvođenja otpadnih voda zajednički se „prećutno" posmatraju (pa čak i naplaćuju na istom računu) u kontekstu jednogodišnjeg roka zastarjelosti, iako se usluge kanalizacije izričito ne spominju u ZOO.[34] Nekada se naglašava da su to samostalna potraživanja i da zastarjelost teče za svako potraživanje odvojeno, ali da se ipak primjenjuje jednogodišnji rok zastarjelosti.[35] Za primjenu jednogodišnjeg roka od značaja je da li se voda isporučuje domaćinstvu („za potrebe domaćinstva") ili se isporučuje za druge namjene, a ne da li se ista isporučuje fizičkom ili pravnom licu, odnosno preduzetniku.[36] Ovo se odnosi i na isporuku drugih energenata, kao i na pružanje usluga iz t. 1. čl. 378. ZOO. „Potrebe domaćinstva" su opredjeljujuća odrednica, pa se ova odredba ne odnosi na pravna lica i preduzetnike kao korisnike. U pogledu njih (posebno *preduzetnika*) se, prema stanovištu dijela sudske prakse, primjenjuje trogodišnji rok zastarjelosti iz čl. 374. ZOO,[37] a prema stanovištu drugog dijela opšti rok zastarjelosti.[38]

Neke odluke sudova u Republici Srbiji pokazuju da sudovi izgrađuju praksu tumačenja čl. 378. ZOO i potraživanja koja se mogu podvesti pod ovaj član. Tako Viši sud u Novom Sadu u odluci iz 2015. godine obavezu plaćanja *RTV pretplate* podvodi pod

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[33] Odgovori Privrednog apelacionog suda na pitanja privrednih sudova iz 2017. godine, Vidović Živković, J. (2018). Aktuelni pravni stavovi u praksi Privrednog apelacionog suda. *Bilten Vrhovnog kasacionog suda*, (3), 221–222.

[34] Presuda Kantonalnog suda u Sarajevu, 65 0 Mal 573246 17 Gž od 16. 7. 2019. godine i Presuda Općinskog suda u Sarajevu, 65 0 Mal 573246 16 Kom od 28. 4. 2017. godine, Presuda Okružnog suda u Bijeljini, 80 0 Mal 069088 16 Gž od 24. 4. 2018. godine, Presuda Županijskog suda u Zadru, 22 Gž-1413/15-2 od 19. 4. 2018. godine.

[35] Presuda Općinskog suda u Tuzli, 032-0-Mal-06-001 156 od 29. 2. 2008. godine.

[36] Presuda Višeg suda u Požarevcu, Gž 1031/15 od 14. 12. 2015. godine, *Bilten sudske prakse Višeg suda u Požarevcu*, 2/2015, 34–36.

[37] Presuda Okružnog suda u Bijeljini, 80 0 Mal 069088 16 Gž od 24. 4. 2018. godine, Odluka Ustavnog suda BiH, AP-576/19 od 14. 10. 2020. Vid. i Presudu Okružnog suda u Banjaluci, 71 0 P 229576 18 Gž od 16. 7. 2019. godine, Pravno shvatanje Građansko-upravnog odjeljenja Vrhovnog suda Republike Srpske od 29. 11. 2013. godine i Presudu Kantonalnog suda u Tuzli, Pž 202/2008(1) od 29. 3. 2011. godine.

[38] Vrhovni sud FBiH, Pž 248/00. od 31. 8. 2001. godine, prema Bikić, A. (2013). *Obligaciono pravo, opći dio*. Sarajevo: Pravni fakultet u Sarajevu, 319; Presuda Apelacionog suda Brčko distrikta BiH, 96 0 Mal 088708 18 Gž od 13. 12. 2018. godine, *Paragraf Lex*; VPS u Beogradu, Pž-7510/96. od 30. 12. 1996. godine, prema Hajdarević, H., Tajić, H., Simović, V. (2011). *Zakon o obligacionim odnosima (tri decenije sudske prakse – više od 10.000 sentenci i sudskih odluka), knjiga I*. Sarajevo: Privredna štampa d.o.o., 844–847; Okružni sud u Čačku, Gž- 407/08. od 2. 4. 2008. godine; Vrhovni sud Crne Gore, Rev 858/2018. od 26. 9. 2018. godine; Zaključci sa Zajedničke sjednice apelacionih sudova sa Privrednim apelacionim sudom i predstavnicima Vrhovnog kasacionog suda od 8. 12. 2017. godine.

„...potraživanja radio-stanice i radio-televizijske stanice za upotrebu radio-prijemnika i televizijskog prijemnika, jer RTV pretplata ne predstavlja posebnu obavezu radi ostvarivanja opšteg interesa utvrđenog Zakonom o radio-difuziji, na koju bi se primenjivao opšti rok zastarelosti od 10 godina."[39]

Sličan je stav o primjeni jednogodišnjeg roka zastarjelosti u ovom slučaju i kod drugih sudova.[40] Međutim, iako nekada prvostepeni hrvatski sudovi podvode „RTV pristojbe, te ostale režijske troškove" pod jednogodišnji rok zastare, drugostepeni sudovi zaključuju o nepravilnosti takvog stava.[41] U skladu sa tim je i slovenačka sudska praksa, koja smatra da se potraživanja radio i TV stanice ne odnose na obavezu plaćanje RTV takse.[42] Da bi se otklonile dileme, posebno imajući u vidu ove argumente hrvatskih i slovenačkih sudova, zakonodavci bi trebalo da propišu i zastarjelost potraživanja RTV-a za posjedovanje RTV prijemnika u tač. 2. čl. 378. ZOO, u slučaju da odluče da potraživanje RTV takse treba eksplicitno da normiraju kod jednogodišnjeg roka zastarjelosti. Za potraživanja RTV stanice i PTT-a nije od značaja svojstvo dužnika, jer ove odredbe čl. 378. st. 1. t. 2. i 3. ZOO važe i kod pravnih lica.[43]

Najupečatljiviji primjer širenja kruga potraživanja koja zastarijevaju za godinu dana, a koji je izazivao dileme, nalazimo u sudskoj praksi Republike Srbije, dok nije uočen u proučavanoj praksi sudova država u okruženju. Vrhovni kasacioni sud je u jednom predmetu iz 2014. godine zaključio da potraživanja *naknade za parking usluge* prema fizičkim licima zastarijevaju za jednu godinu, jer čl. 378. st. 1. t. 1. ZOO se odnosi na naknade komunalnih

[39] Presuda Višeg suda u Novom Sadu, Gž. 288/14. od 13. 1. 2015. godine, *Bilten sudske prakse Višeg suda u Novom Sadu*, 6/2015, 112.

[40] Presuda Općinskog suda u Tuzli, 032-Mals-09-000895 od 26. 11. 2009. godine. Potraživanje TV pretplate prema pravnim licima zastarijeva za godinu dana. Presuda Privrednog apelacionog suda, Pž. 482/2012. od 20. 4. 2012. godine.

[41] Presuda Općinskog građanskog suda u Zagrebu, P-59/14-20. od 24. 3. 2017. godine i Rješenje Županijskog suda u Splitu, Gž-1545/2017-2. od 18. 12. 2018. godine.

[42] U tom smislu vid. Sodba, Vrhovno sodišče, Upravni oddelek, X Ips 1737/2006. od 28. 5. 2009. godine: „Odredba čl. 355. OZ odnosi se na programe koji se plaćaju u Republici Sloveniji (kao što je program HBO), a ne na uplatu doprinosa za RTVS, zbog čega se na zastarjelost ne primenjuju odredbe čl. 355. OZ. (...) Budući da je obaveza plaćanja RTV takse propisana zakonom, to nije obligacija, već javnopravna taksa. Oni koji su obveznici plaćanja RTV takse ne stupaju u odnos sa RTV na osnovu autonomne volje (ugovornih strana) po ugovoru, već odgovaraju po samom zakonu i mogu samo pobiti zakonsku pretpostavku da posjeduju televizor."

[43] Studin, J. (1980). Čl. 378. Jednogodišnji rok zastarelosti. *Komentar Zakona o obligacionim odnosima,* ur. Borislav Blagojević i Vrleta Krulj. (I, 854). Beograd: Savremena administracija, 854. O primjeni jednogodišnjeg roka u ovom slučaju, vid. presudu Privrednog apelacionog suda, Pž 482/2012 od 20. 4. 2012. godine, Presudu Privrednog apelacionog suda, Pž. 5226/2012. od 6. 11. 2013. godine i Presudu Visokog trgovačkog suda Republike Hrvatske, XLVI Pž-7906/04-3. od 12. 1. 2007. godine.

usluga kada je isporuka izvršena za potrebe domaćinstva, a prema Zakonu o komunalnim uslugama i Odluci o javnim parkiralištima grada Beograda, komunalna djelatnost je, između ostalog, i djelatnost koja se odnosi na javne prostore za parkiranje. Nižestepeni sudovi su smatrali da se radi o potraživanjima na koja se primjenjuje opšti rok zastarjelosti, a Apelacioni sud u Beogradu, pozivajući se na stav Apelacionog suda u Kragujevcu, da se radi o komunalnoj usluzi na koju se primjenjuje jednogodišnji zastarni rok. Da li fizičko lice vozi automobil za potrebe domaćinstva? Vrhovni kasacioni sud smatra da putnički automobil pripada svim članovima domaćinstva bez obzira na čije ime glasi, pa je opredjeljujuće da to nije automobil koji služi za potrebe pravnog lica niti za obavljanje privredne djelatnosti. Čl. 374. ZOO je napravljena jasna razlika između pravnih i fizičkih lica, pa ne može biti presudna okolnost da li fizičko lice koristi automobil za potrebe domaćinstva ili samo za svoje sopstvene potrebe.[44] Sud je kao kriterijum za širenje kruga potraživanja uzeo to da li je riječ o komunalnim uslugama i da li su one učinjene za potrebe domaćinstva. Dakle, Vrhovni kasacioni sud Srbije smatra da za jednu godinu zastarijevaju potraživanja koja se odnose na naknade komunalnih usluga uopšte (iako nisu taksativno navedene u t. 1. čl. 378. ZOO) kada je isporuka odnosno usluga izvršena za potrebe domaćinstva, što važi i za *potraživanja naplate doplatne karte.*[45] S druge strane, u FBiH se smatra da „komunalna naknada predstavlja povremeno potraživanje na koje se primjenjuje trogodišnji rok zastare u smislu čl. 379. st. 2. ZOO-a, što između ostalog proizilazi

[44] Presuda Vrhovnog kasacionog suda, Rev. 430/2014. od 17. 12. 2014. godine, *Izbor sudske prakse*, 3/2016, 52.

[45] Sentenca iz presude Vrhovnog kasacionog suda, Rev 430/2014. od 17. 12. 2014. godine, utvrđena na sjednici Građanskog odjeljenja 10. 3. 2015. godine. Ponegdje se bilježi i stav da se na potraživanja na osnovu usluga korišćenja parkirališta primjenjuje opšti zastarni rok. Presuda Višeg suda u Beogradu, Gž. 5271/15. od 19. 11. 2015. godine. Analogna primjena čl. 378. st. 1. t. 1. ZOO i na potraživanja naplate doplatne karte za korišćenje usluga prevoza u gradskom javnom prevozu naglašena je i u Stavovima sa Zajedničke sednice Vrhovnog kasacionog suda i apelacionih sudova u 2017. godini. Isto v.: Jednoglasno usvojene odgovore na sporna pravna pitanja od strane svih apelacionih sudova, *Bilten sudske prakse Apelacionog suda u Novom Sadu*, 8/2018, 35. i stav Apelacionog suda u Nišu, Su II – 17-3/17 od 18. 4. 2017. godine objavljen u *Biltenu Apelacionog suda u Nišu* iz 2017. godine, 174, povodom odgovora na sporna pravna pitanja Osnovnog suda u Nišu, a koji je usvojen na sjednici Građanskog odjeljenja 9. 3. 2017. godine i na zajedničkoj sjednici Građanskog odjeljenja i Odjeljenja za radne sporove od 20. 3. 2017. godine. O mješovitoj, javnopravnoj i privatnopravnoj prirodi doplatne karte kao privilegije – nadoknade za odgovarajuće povlašćeno parkiranje na bazi komunalnog ugovora polemisalo se i u pravnoj teoriji. Bovan, S. (2010). Pravna priroda doplatne karte za parkiranje. *Pravni život*, (10), 415.

iz prakse Ustavnog suda.“[46] Kada je riječ o potraživanjima na ime pruženih raznih komunalnih usluga koje nisu eksplicitno navedene u čl. 378. ZOO, sigurnije je primijeniti pravila o nekom drugom specijalnom roku zastarjelosti ukoliko je to moguće, a ukoliko nije, pravilo o opštem zastarnom roku. Dakle, smatramo da ne treba širiti polje primjene čl. 378. ZOO širim tumačenjem iz razloga koji će biti navedeni u zaključnim razmatranjima.

U pretraženoj sudskoj praksi u BiH nisu često uočeni predmeti u kojima se razmatrala primjena jednogodišnjeg roka zastarjelosti potraživanja za pružene *internet* usluge.[47] Može se promišljati o različitim razlozima: blagovremenom utuženju od strane povjerilaca, činjenici da se radi o privrednim društvima u „privatnom vlasništvu“ koja paze na naplatu svojih potraživanja i eventualno odredbe opštih uslova poslovanja odnosno ugovaranje privremene ili trajne obustave pružanja usluge ukoliko se ne izmiri nastalo dugovanje (npr. čl. 27. Opštih uslova pružanja telekomunikacionih usluga MTEL-a).[48] Potraživanja u vezi sa uslugama interneta i kablovske televizije zastarijevaju u jednogodišnjem roku predviđenom za naplatu radio i TV prijemnika koji se analogno može primijeniti i na ovo potraživanje, stav je Okružnog suda u Bijeljini.[49] U jednom predmetu u FBiH, bilo je sporno potraživanje koje je nastalo korištenjem telekomunikacionih usluga, odnosno interneta preko pretplatničkog broja tuženog. Iako su odluke viših sudova išle ka drugačijem kontekstu rješenja spora, Općinski sud u Ljubuškom na jednom mjestu, iako ne prihvata prigovor zastare, konstatuje da je nesporno da je potraživanje o kojem je riječ u konkretnom predmetu zapravo potraživanje iz čl. 378. ZOO koje zastarijeva za godinu dana, kad je isporuka odnosno usluga izvršena za potrebe domaćinstva.[50] Na potraživanja na ime pruženih internet usluga putem ADSL-a (komunikaciona tehnologija za pristup internetu velikom brzinom korištenjem postojeće telefonske linije) kao telekomunikacionih usluga, crnogorski sud primjenjuje čl. 388. st. 1. t. 1. ZOO Crne Gore (dvogodišnji rok

[46] Rješenje Kantonalnog suda u Bihaću, 17 0 Ip 081840 20 Pž 2 od 22. 7. 2020. godine.

[47] Drugačije je stanje u pravnoj praksi kada je riječ o davaocima komunalne usluge isporuke toplotne energije ili vode, kao i utuženje potraživanja za paket telekomunikacionih usluga uz kablovsku TV.

[48] Opšti uslovi pružanja telekomunikacionih usluga MTEL-a. Dostupno na: https://mtel.ba/Binary/397/Opsti-uslovi-za-pruzanje-telekomunikacionih-usluga-nesluzbeni-precisceni-tekst.pdf

[49] Presuda Okružnog suda u Bijeljini, 80 0 Mal 051847 14 Gž od 13. 3. 2014. godine, koja je prošla test Ustavnog suda BiH: Odluka AP-1967/15. od 7. 6. 2016. godine.

[50] Presuda Općinskog suda u Ljubuškom, 063-0-P-08-000 079 od 16. 9. 2008. godine.

zastarjelosti).[51] Na istu t. 1. ovog člana ZOO Crne Gore poziva se i Viši sud u Bijelom polju, ne obrazlažući detaljnije razloge za supsumiranje spornog potraživanja pod ovu tačku, kad je riječ o paket-uslugama telefona i interneta pruženim fizičkim licima.[52] Iz toga se može naslutiti da crnogorski sudovi šire polje primjene t. 1. na druge usluge. Iz jedne odluke Vrhovnog kasacionog suda Srbije se posredno zaključuje da se jednogodišnji rok zastarjelosti potraživanja primjenjuje i na usluge slične telefonskim uslugama (telekomunikacione usluge, internet i sl.).[53] Ovaj rok se primjenjuje kod potraživanja na ime izvršenih telekomunikacionih usluga, bez obzira da li je riječ o fizičkom ili pravnom licu.[54] U jednom slučaju u praksi hrvatskih sudova, iako je prvostepeni sud smatrao da se na potraživanja za izvršene telekomunikacione usluge primjenjuje opšti rok zastarjelosti, žalbeni sud zaključuje da se ova potraživanja podvode pod jednogodišnji zastarni rok iz odredbe čl. 232. st. 1. t. 3. ZOO Hrvatske (potraživanja PTT) obrazlažući to prirodom i ciljem koji se ima u vidu kod jednogodišnjeg roka zastare.[55] S druge strane, makedonski sudovi ne primjenjuju jednogodišnji rok zastarjelosti na potraživanja za pružene usluge pristupa internetu, već trogodišnji rok u smislu čl. 363. ZOO S. Makedonije, jer potraživanje ne potiče od upotrebe televizora, već je za ovu uslugu instalirana posebna tehnička oprema – modem i internet konekcija koji se koriste uz upotrebu računara.[56] Ali, u slučaju računa za korišćenje javne kablovske mreže za javne komunikacione usluge, što pored RTV programa uključuje i dodatne usluge putem te mreže, važiće jednogodišnji rok zastarjelosti.[57] Kada je riječ o paketu usluga kablovske TV, fiksnog telefona i kablovskog interneta onda makedonski sudovi primjenjuju jednogodišnji rok zastarjelosti potraživanja u skladu sa čl. 367. st. 1, t. 2. i 3. ZOO S. Makedonije.[58]

U jednom predmetu, sud u Republici Srpskoj je na potraživanje naknade za upotrebu *kablovske televizije* primijenio jednogodišnji rok zastarjelosti potraživanja koji važi za potraživanja radio-stanice i radio-televizijske stanice za upotrebu radio-prijemnika i televizijskog prijemnika.[59] O primjeni jednogo-

[51] Presuda Osnovnog suda u Nikšiću, Mal 241/2017. od 19. 9. 2017. godine. Odredbe čl. 388. ZOO u Crnoj Gori, kojima je predviđen dvogodišnji zastarni rok, primjenjuju se od 15. 8. 2008. godine.

[52] Viši sud u Bijelom Polju, Gž 515/2013. od 20. 3. 2013. godine.

[53] Presuda Vrhovnog kasacionog suda, Prev 15/2016. od 3. 11. 2016. godine.

[54] Presuda Privrednog apelacionog suda, Pž. 5226/2012. od 6. 11. 2013. godine.

[55] Presuda Županijskog suda u Splitu, Gž-77/2021-2. od 12. 2. 2021. godine.

[56] Апелационен суд Скопје, ГЖ-1100/14. od 9. 4. 2014. godine. V.: Основен суд Скопје 2, 4.ПЛ1-П-138/15. од 16. 4. 2015. године.

[57] Основен суд Кочани, Пл1П. бр. 9/17. од 26. 4. 2017. године.

[58] Основниот суд во Битола, ПЛ1-П-14/12. од 20. 3. 2012. године.

[59] Presuda Osnovnog suda u Prijedoru, 77 0 Mal 057878 14 Kom od 21. 6. 2018. godine.

dišnjeg roka zastarjelosti u ovom slučaju izjašnjavaju se i drugi sudovi zemalja u okruženju.[60] Posebnim propisima o telekomunikacijama ili elektronskim komunikacijama se definišu navedene usluge (uključujući i kablovsku televiziju i internet). Negdje je tim posebnim propisom određen i rok zastarjelosti, kao što je to bilo učinjeno Zakonom o telekomunikacijama u Republici Hrvatskoj, *Narodne novine,* br. 53/94. Ovo je jedan od modela kako mogu da se otklone dileme u pravnoj praksi na legislativnom nivou u pogledu primjene roka zastarjelosti na potraživanja na ime izvršenih telekomunikacionih usluga, posebno jer je ovdje više riječ o pružanju usluga od strane kablovskog operatera nego o potraživanjima RTV stanice za upotrebu RTV prijemnika. Međutim, to je primjerenije učiniti u ZOO kako bi se izbjegla difuznost pravila o zastari potraživanja.

Iako neki sudovi prvog stepena u Republici Hrvatskoj potraživanja na temelju usluga isporuke *TV programa putem satelita* (smart kartice satelitske opreme, Total TV i sl.) tretiraju kao potraživanja koja zastarijevaju u jednogodišnjem roku, prema stanovištu drugostepenih hrvatskih sudova, koje treba podržati, to nisu potraživanja radio ili TV stanice, pa se ne može ekstenzivnim tumačenjem odnosno analogijom proširiti primjena jednogodišnjeg roka zastare na ova potraživanja koja nisu izričito navedena u zakonskoj normi.[61] Ova potraživanja u hrvatskom pravu prema tumačenju jednog drugostepenog suda zastarijevaju u opštem roku zastarjelosti,[62] a prema shvatanju drugog u specijalnom roku za zastaru povremenih potraživanja, jer dospijevaju mjesečno.[63] Ova problematika nije pronađena u sudskoj praksi ostalih proučavanih država, a bilo bi korisno da se riješi na zakonodavnoj ravni jer je usluga isporuke TV programa putem satelita prisutna u realnosti.

Potraživanja po osnovu *usluga mobilne telefonije* zastarijevaju prema stavovima sudova u Republici Srpskoj u jednogodišnjem roku, kao potraživanja telefona za upotrebu telefona iz t. 3. čl. 378. ZOO.[64] Isti je stav sudova u

[60] Presuda Osnovnog suda u Nikšiću, Mal 337/2014. od 17. 10. 2016. godine; Основниот суд во Битола, ПЛ1-П-14/12. од 20. 3. 2012. године; Presuda Županijskog suda u Splitu, Gž-77/2021-2. od 12. 2. 2021. godine i Presuda Privrednog apelacionog suda, Pž. 5226/2012. od 6. 11. 2013. godine.

[61] Presuda Županijskog suda u Zadru, br. 15 Gž-1092/18-2. od 17. 5. 2019. godine i presuda Županijskog suda u Velikoj Gorici, br. Gž-1185/17. od 25. 5. 2018. godine.

[62] V.: presudu Županijskog suda u Zadru, br. 15 Gž-1092/18-2. od 17. 5. 2019. godine.

[63] V.: presudu Županijskog suda u Velikoj Gorici, br. Gž-1185/17. od 25. 5. 2018. godine.

[64] Odluke Osnovnog suda u Prijedoru, 77 0 Mal 058206 14 Kom od 10. 10. 2016. godine i 77 0 I 007258 14 Mal od 10. 9. 2014. godine.

pogledu fiksne telefonije.[65] Pojam telefona je podoban da obuhvati i mobilnu i fiksnu telefoniju, tako da sudovi nisu imali dileme. Stav o primjeni jednogodišnjeg roka zastare kod usluga mobilne telefonije izražen je i kod makedonskih sudova.[66] Na potraživanja na ime „upotrebe mobilnog telefona, pretplate i fiskalnih dažbina", primjenjuje se zastara iz čl. 388. ZOO Crne Gore.[67] Sudovi često ove usluge podvode pod genusni pojam telekomunikacionih usluga, iako taj termin ne koristi ZOO, za razliku od Zakona o zaštiti potrošača (ali na koji zakon se sudovi i ne pozivaju u proučenoj sudskoj praksi).

Interesantan je stav sudova na bivšem jugoslovenskom prostoru u pogledu zastare *potraživanja troškova održavanja zajedničkih dijelova zgrade*. Ranije u jednom slučaju, sud je smatrao da potraživanje radi naplate troškova čišćenja zajedničkih prostorija zastarijeva u roku od jedne godine, jer se čišćenje stepeništa vrši za potrebe domaćinstva.[68] S druge strane, u tom periodu privredni sud je smatrao kada se kod isporuke toplotne energije kao dužnik nalazi stambena zgrada, jer se radi o grijanju zajedničkih prostorija, da se primjenjuje trogodišnji, a ne jednogodišnji rok zastare.[69] Visina mjesečne akontacije za troškove održavanja zgrade prema Zakonu o održavanju stambenih zgrada je potraživanje čiji se iznos unaprijed zna, tj. radi se o povremenim potraživanjima, koja zastarijevaju za tri godine.[70] Ovom stavu sudova u Republici Srpskoj o primjeni trogodišnjeg roka zastare za povremena potraživanja kod troškova održavanja zgrade, odnosno zajedničkih dijelova i uređaja zgrade, odgovaraju stavovi sudova u FBiH i Republici Hrvatskoj.[71] Identičan je stav i Vrhovnog suda Makedonije, jer čl. 378. ZOO ne nabraja potraživanja troškova tekućeg održavanja zajedničkih prostorija zgrade, za razliku od nižestepenih sudova koji su pogrešno smatrali da se radi o primjeni jednogodišnjeg roka zastarjelosti.[72] Za razliku od prava navedenih država, slovenačko pravo je eksplicitno propisalo jednogodišnji rok zastarjelosti potraživanja upravnika

[65] Presuda Osnovnog suda u Prijedoru, 77 0 Mal 030102 13 Mal 2 od 7. 4. 2014. godine.

[66] Пресудено во Основен суд Тетово, Малвп-105/2014. од 30. 5. 2014. године.

[67] Presuda Osnovnog suda u Nikšiću, Mal 645/2016. od 4. 4. 2018. godine.

[68] VŠS u Subotici, Gž-767/84 od 29. 8. 1984. godine, prema Hajdarević, H., Tajić, H., Simović, V. (2011). *Zakon o obligacionim odnosima (tri decenije sudske prakse – više od 10.000 sentenci i sudskih odluka), knjiga II*. Sarajevo: Privredna štampa d.o.o., 893.

[69] Viši Privredni sud, Gž 2172/83. od 12. 8. 1983. godine.

[70] Presuda Osnovnog suda u Prijedoru, 77 0 Mal 028979 11 Mal od 2. 7. 2013. godine.

[71] Presuda Kantonalnog suda u Sarajevu, 65 0 Mal 289158 14 Gž od 12 12. 2016. godine; Odluka Ustavnog suda BIH, AP-1056/17 od 11. 10. 2017. godine. V.: i Presudu Vrhovnog suda Republike Hrvatske, Rev-2347/1998-2 od 27. 2. 2002. godine.

[72] Врховни суд Републике Македоније, Гзз. бр. 125/03. од 9. 10. 2003. године.

više stambenih zgrada *za usluge upravljanja i druga njihova potraživanja*[73] koja se plaćaju u roku od tri mjeseca ili u kraćim rokovima.[74] Međutim, sudovi su zauzeli stav da se ovo pravilo ne primjenjuje na upravnika poslovne zgrade, na potraživanja prema vlasniku poslovnog prostora i na situaciju poslovne potrošnje.[75] Ova sudska praksa može da bude od značaja i u slučaju zakonodavne intervencije kod nas, a koja bi razriješila ovo pitanje u pravnoj praksi. Dakle, preporuka je da treba izvršiti dopunu čl. 378. ZOO i izričito propisati da i ova potraživanja zastarijevaju u jednogodišnjem roku. Pri tome, na legislativnom nivou treba riješiti i pitanje neprimjene ove odredbe na situaciju poslovne potrošnje, a imajući u vidu svrhu uvođenja ovog rješenja, kako je to obrazloženo u slovenačkom pravu. Prema sadašnjem stanju, opravdano je smatrati da potraživanje troškova održavanja zajedničkih dijelova zgrade zastarijeva kao povremeno potraživanje, jer riječ je o potraživanju čiji se iznos unaprijed zna, a ono se ne može podvesti pod pravila o jednogodišnjem roku zastarjelosti zbog toga što nije eksplicitno navedeno u čl. 378. ZOO.

Stav(ovi) sudija i advokata – empirijsko istraživanje kod relevantnih pravosudnih institucija u Banjoj Luci

Prateći *Grafikon 1*. uočava se da postoji apsolutna saglasnost između anketiranih sudija oba stepena da se odredba čl. 378. ZOO može analogno primijeniti i na srodna potraživanja, i to na potraživanja na ime usluga Interneta, kablovske i satelitske TV i mobilne telefonije. U velikom procentu (78,9–88,2 %) takav stav dijele i anketirani advokati AK RS – Zbor advokata Banja Luka. Primijećuje se da je veći procenat potvrdnih odgovora povodom navedenih potraživanja kod anketiranih sudija nego kod advokata. Najrazličitiji stav odnosno nesaglasnost između anketiranih grupa jeste u pogledu analogne primjene jednogodišnjeg roka zastarjelosti na potraživanja na ime usluga upravljanja i održavanja zajedničkih dijelova zgrade. Za analognu primjenu u ovom slučaju se zalaže 100 % anketiranih sudija Okružnog suda u

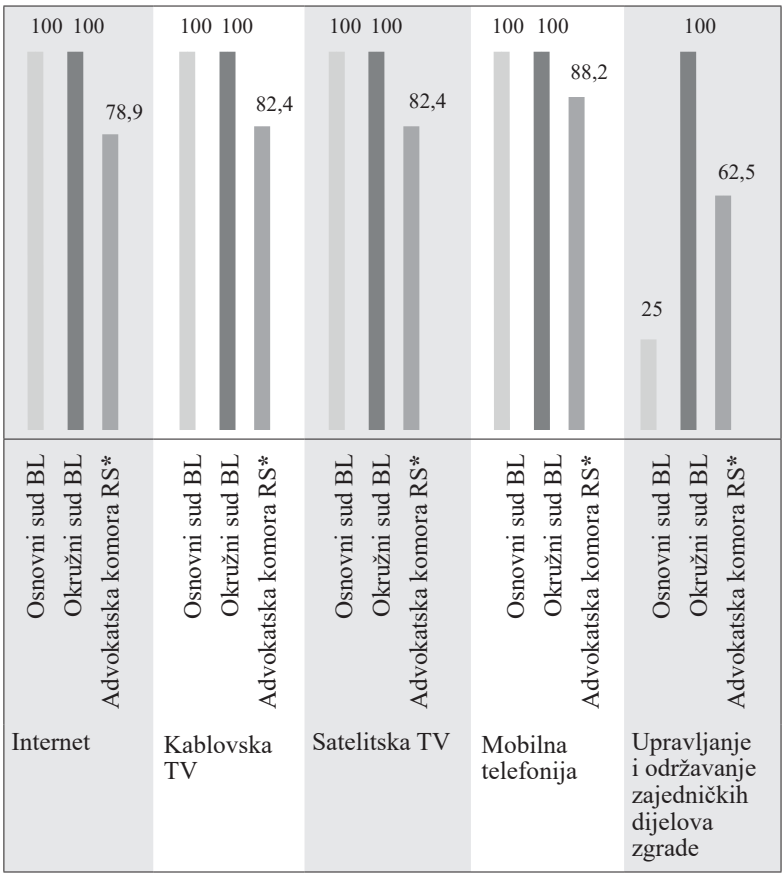
[73] Potraživanja za naknadu operativnih troškova, koje je upravnik „založio" za vlasnika stana. Sodba Vrhovno sodišče, Gospodarski oddelek, III Ips 23/2014. od 2. 9. 2014. godine.

[74] Svrha uvođenja ovog rješenja je izjednačavanje pravnog položaja etažnih vlasnika koji duguju plaćanje upravnicima sa onim etažnim vlasnicima koji za istu uslugu duguju direktno dobavljaču. Sodba Vrhovno sodišče, Gospodarski oddelek, III Ips 23/2014. od 2. 9. 2014. godine.

[75] Odluka Višje sodišče v Ljubljani, Gospodarski oddelek, I Cpg 968/2014. od 8. 10. 2014. godine; Sklep Vrhovno sodišče, Gospodarski oddelek, III Ips 120/2015. od 7. 3. 2017. godine; Sklep Vrhovno sodišče, Gospodarski oddelek, III Ips 85/2017. od 10. 5. 2019. godine.

Banjoj Luci, a samo 25 % anketiranih sudija Osnovnog suda u Banjoj Luci, a 62,5 % anketiranih advokata. Dakle, stavovi nisu jedinstveni i veoma su različiti. Neophodno je ovakve stavove ispitanika o analognoj primjeni, dovesti u vezu sa rezultatima dokumentacione analize sudskih presuda, što se čini u narednom poglavlju.

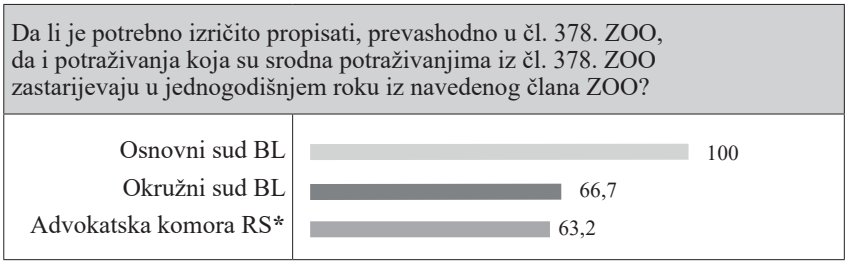
Grafikon 1. *Procentualni prikaz (%) potvrdnih odgovora anketiranih sudija i advokata o tome da li se odredba čl. 378. ZOO o jednogodišnjem roku zastarjelosti potraživanja može analogno primijeniti na srodna potraživanja koja nisu eksplicitno navedena u čl. 378. ZOO*



Zvezdica (*) označava Advokatsku komoru Republike Srpske – Zbor advokata Banja Luka.

Sumirajući rezultate sprovedenog upitnika (niže prikazani *Grafikon 2*), zaključuje se da natpolovična većina anketiranih smatra da ipak treba izričito propisati, prevashodno u čl. 378. ZOO, da i srodna potraživanja onima iz navedenog člana zastarijevaju u jednogodišnjem roku. Tako, 100 % anketiranih sudija Osnovnog suda u Banjoj Luci, 66,7 % anketiranih sudija Okružnog suda u Banjoj Luci i 63,2 % advokata AK RS – Zbora advokata Banja Luka smatra da je neophodna zakonodavna intervencija. Zakonodavna intervencija može da ide u pravcu unošenja generalne klauzule ili, što je bolje rješenje zbog pravne sigurnosti, izričitog nabrajanja novih potraživanja koja zastarijevaju u ovom roku. Dobijeni stav sudija i advokata u Banjoj Luci je u određenom smislu i neobičan jer su se anketirani uglavnom izjasnili natpolovičnom većinom (vidi *Grafikon 1*) o analognoj primjeni čl. 378. ZOO na određena srodna potraživanja. Razlog za to može da leži u tome što su kod nas sudovi organi primjene prava, a kako odredbe o zastari treba da budu precizne u pogledu kruga potraživanja koja zastarijevaju i imajući u vidu razloge pravne sigurnosti, to je najsvrsishodnije da se eksplicitno nabroje „nova" potraživanja čija bi zastarjelost nastupila u jednogodišnjem roku, ma koliko sudovi trenutno šire tumačili određenu odredbu. Time bi sudovi imali ugodnu, sigurnu, pa i najbezbrižniju poziciju u pogledu primjene prava. U ovome vidimo motiv za ovakav rezultat anketiranja u pogledu istraživačkog pitanja koje je predstavljeno u *Grafikonu 2*. Može se reći da ne postoje prepreke da se formalno ozakoni nešto što se iskristalisalo u pravnoj praksi. Takve situacije su zabilježene u našoj pravnoj tradiciji. Dakle, ovakvi rezultati očigledno ukazuju na to da ispitanici *de lege lata* smatraju da se određena srodna potraživanja mogu podvesti pod odredbu o jednogodišnjem roku zastarjelosti jer pravnici „praktičari" iznalaze različite mehanizme da „pokriju" određene životne situacije, ali da bi *de lege ferenda* bilo svrsishodno da se „nova potraživanja" izričito unesu u ZOO čime bi bila pojednostavljena pozicija u pogledu primjene prava. Imajući u vidu da analiza sudske prakse, kao objektivni pokazatelj nasuprot subjektivnim stavovima ispitanika, pokazuje da nije jedinstven stav sudova u pogledu analogne primjene jednogodišnjeg roka zastarjelosti na srodna potraživanja u svakom pojedinom slučaju, tim prije je važniji zaključak o potrebi zakonodavne intervencije.

Grafikon 2: Procentualni prikaz (%) potvrdnih odgovora anketiranih sudija i advokata o potrebi izričitog propisivanja „novih" potraživanja kod jednogodišnjeg roka zastarjelosti



Zvezdica (*) označava Advokatsku komoru Republike Srpske – Zbor advokata Banja Luka.

ZAKLJUČNA RAZMATRANJA

Sumarno posmatrajući stavove sudova država na području bivše Jugoslavije koji baštine sličnu odredbu o jednogodišnjem roku zastarjelosti, zaključuje se da sudovi nekada različito, a nekada gotovo identično rezonuju u pogledu tretiranja zastare nekih kategorija potraživanja kod jednogodišnjeg roka zastare, koja su se iskristalisala u praksi usljed tehničko-tehnološkog razvoja sistema usluga. Slični stavovi su u situacijama nemogućnosti primjene jednogodišnjeg roka iz t. 1. čl. 378. ZOO kod preduzetnika kao korisnika i kod troškova održavanja zajedničkih dijelova zgrade (osim Slovenije koja je propisala ovaj slučaj zastare u jednogodišnjem roku). Ali slične stavove su zauzimali sudovi i u slučaju mogućnosti nastupanja jednogodišnje zastarjelosti potraživanja na ime usluga javne kanalizacije/odvođenja otpadnih voda, mobilne telefonije i kablovske TV. Posebno se u posljednja dva primjera radi o slučajevima koji se lakše mogu tumačenjem podvesti pod odgovarajuće kategorije potraživanja iz čl. 378. ZOO. U pogledu usluga satelitske TV pronađeni su negativni stavovi hrvatskih sudova o analognoj primjeni jednogodišnjeg roka zastare kod ovih potraživanja. Podijeljeni su stavovi sudova kad je riječ o analognoj primjeni odredbe o jednogodišnjem roku zastare kod potraživanja na ime različitih pratećih naknada uz račun za vodu, RTV takse, naknade za parking usluge i doplatne karte i internet usluga. Kad je riječ o naplati RTV takse, izričito se samo hrvatski i slovenački sudovi izjašnjavaju protiv analogne primjene, dok se kod internet usluga tako izjašnjavaju, za razliku od ostalih, makedonski sudovi, osim u slučaju kablovskog interneta. Kod zastare

potraživanja internet usluga nije jedinstven stav posmatranih sudova, pa tako npr. neki sudovi u Republici Srpskoj ova potraživanja podvode pod t. 3. a neki sudovi u FBIH i Crnoj Gori pod t. 1. čl. 378. ZOO. Samo su se sudovi u Republici Srbiji bavili pitanjem zastare naknade za parking usluge i doplatnu kartu. Prije konačnog stava, sudovi su lutali. Kako ovo pitanje nije iskristalisala sudska praksa drugih država, ne postoji potreba da se ono razmatra na legislativnom nivou u slučaju intervencije njihovog zakonodavca u odredbu o jednogodišnjem roku zastare. Ostaje da se vidi da li su srpski sudovi konačnim stavom o analognoj primjeni jednogodišnjeg roka zastarjelosti na ovu komunalnu uslugu prokrčili put široj primjeni analogije u ovim slučajevima ili će, kako nam se čini, ipak biti učinjena zakonodavna intervencija kakvu predviđa budući Građanski zakonik Srbije.

Uopšteno, da li je sudijska sloboda veća nego što to sudije žele da priznaju?[76] U jednom slučaju iz 2007. godine je Vrhovni sud Srbije proširio primjenu čl. 201. ZOO i na maćehu koja ne spada u zakonski krug lica koja imaju pravo na naknadu štete prema ovom članu iz razloga pravičnosti i otklanjanja vrijednosnih protivrječnosti, kao što su to činili i francuski sudovi u slučajevima širenja granica analogije.[77] Postoji i stav da je stvar slobodnog sudijskog uvjerenja da li će, primjera radi, sud naknadu za isporučenu električnu energiju za kategoriju „ostala potrošnja“ (prvenstveno za preduzetnike) podvesti pod jednogodišnji ili opšti rok zastarjelosti.[78]

U pogledu empirijskog istraživanja, postoji saglasnost između anketiranih da se odredba čl. 378. ZOO može analogno primijeniti i na neka srodna potraživanja, i to na potraživanja na ime usluga interneta, kablovske i satelitske TV i mobilne telefonije. Ovo odgovara stavovima izraženim u pronađenoj sudskoj praksi, osim kad je u pitanju satelitska TV. S druge strane, stavovi anketiranih nisu jedinstveni i veoma su različiti u pogledu zastarjelosti potraživanja kod usluga upravljanja i održavanja zajedničkih dijelova zgrade, što djelimično odgovara (posebno negativan stav anketiranih sudija Osnovnog suda u Banjoj Luci) stavovima u analiziranoj sudskoj praksi. Zakonodavstvo većinu navedenih potraživanja eksplicitno ne navodi.

Teleološko-sistematskim tumačenjem u Republici Srpskoj (uzimajući u obzir čl. 47. st. 6. Zakona o zaštiti potrošača – ZZP[79]) može se doći do primjene jednogodišnjeg roka zastare kad su u pitanju „nova“ potraživanja na

[76] Meier Hayoz, A. (1951). *Der Richter als Gesetzgeber*. Zurich, 206, prema: Bovan, S. (2012). *Contra legem* judiciranje – pandorina kutija pravne hermeneutike. *Anali Pravnog fakulteta u Beogradu*, (2), 112.

[77] *Ibid*., 113, 115.

[78] Račić, R. (2006). Zastarjelost potraživanja naknade za isporučenu električnu energiju. *Pravo i privreda*, (5–8), 427.

[79] *Službeni glasnik Republike Srpske*, br. 6/12, 63/14. i 18/17.

osnovu telekomunikacionih usluga, jer ih Zakon o zaštiti potrošača spominje kod propisivanja jednogodišnje zastare, iako u proučenoj sudskoj praksi nije uočeno pozivanje sudova na ovu odredbu. Kad su u pitanju ostala srodna potraživanja koja su se iskristalisala u pravnoj praksi, a koja se ne mogu prostom primjenom i tumačenjem supsumirati pod neke od slučajeva iz čl. 378. ZOO, njihovo podvođenje pod odredbe o jednogodišnjem roku zastare moglo bi se diskutovati i na terenu *praeter* ili *contra legem* judiciranja sudija. Sudovi znaju da tumačenjem podvedu određena „nova" potraživanja (koja nisu eksplicitno propisana) pod odredbu o jednogodišnjem roku zastare, ali ne sva. Kod nekih usluga sudovi nemaju jedinstven stav o tome pod koju tačku čl. 378. ZOO treba podvesti određeno potraživanje. Gdje su granice sudijske slobode i slobodnog sudijskog uvjerenja i da li bi utiranje puta širem tumačenju kod nas bilo dobro? Ni u pravnoj teoriji, u onom manjinskom dijelu koji se uopšte bavi ovim pitanjem, nema jedinstvenog stava o primjeni jednogodišnjeg roka zastarjelosti na srodna potraživanja koja nisu eksplicitno propisana ZOO. Na opštijem nivou, oprečni su stavovi oko mogućnosti proširenja kruga potraživanja analogijom odnosno tumačenjem čl. 378. ZOO.

Polazeći od te nejedinstvenosti, kako na terenu pravne prakse tako i na terenu pravne teorije, smatramo kao bolje rješenje zagovaranje stava da ne treba dopustiti analognu primjenu jednogodišnjeg roka zastarjelosti na istovrsna, slična (komunalna) potraživanja koja nisu eksplicitno predviđena u ZOO, kao ni na slučajeve kada se potraživanja ne mogu podvesti pod pravila o jednogodišnjoj zastarjelosti jednostavnim, uobičajenim, klasičnim metodama tumačenja i primjene prava, sve dok ne dođe do dopune propisa odnosno ZOO. U suprotnom, narušila bi se pravna sigurnost. Kako su kod nas sudovi organi primjene, a ne stvaranja prava, njima nije dato ovlašćenje da šire krug potraživanja kod kojih nastupa zastarjelost u jednogodišnjem roku. Dodatno, treba imati u vidu da je ZOO propisao opšti rok zastarjelosti za sva potraživanja za koja nije zakonom određen poseban rok zastarjelosti, a u ovom slučaju je određen poseban rok. Kao dodatni argument može se navesti i to da je zakonodavac precizno, taksativnim, a ne primjeričnim metodom normirao slučajeve kada nastupa jednogodišnja zastarjelost potraživanja. Tako se Viši sud u Ljubljani protivio proširenju tumačenja jednogodišnjeg roka zastare potraživanja upravnika višespratnih stambenih zgrada na poslovne zgrade, navodeći važan argument koji može da posluži i na ovom mjestu da

> „..pravila zastare moraju biti jasno definisana kako bi pravni subjekti mogli unaprijed predvidjeti kada i nakon koliko vremena ističe njihovo pravo da zahtijevaju ispunjenje obaveze odnosno kada građanska obaveza prelazi u prirodnu."[80]

[80] Sodba in sklep Višje sodišče v Ljubljani, Gospodarski oddelek, II Cpg 1388/2014. od 28. 11. 2014. godine.

Striktno formalnopravno nema osnova za podvođenje i drugih potraživanja pod čl. 378. ZOO, osim npr. u t. 3. gdje se govori i o drugim potraživanjima. Odredbe iz t. 1. i 2. čl. 378. ZOO su najkruće formulisane, bez primjeričnog navođenja.

Analiza zakonodavstva država sa područja bivše Jugoslavije pokazuje da su neke države u ZOO već proširile krug potraživanja kod jednogodišnjeg roka zastarjelosti (Crna Gora i Slovenija), a neke su planirale ili planiraju budućim obligacionim kodeksima da prošire taj krug (BiH, Srbija, S. Makedonija). Zakonodavna intervencija može da ide u pravcu unošenja generalne klauzule ili, što je bolje rješenje zbog pravne sigurnosti, izričitog nabrajanja novih potraživanja koja zastarijevaju u ovom roku. Time bi sudovi kao organi primjene prava imali ugodnu, sigurnu, pa i najbezbrižniju poziciju u pogledu primjene prava. Može se reći da ne postoje prepreke da se formalno ozakoni nešto što se iskristalisalo u pravnoj praksi i to ne bi bio prvi put u našoj pravnoj tradiciji. Ovome ide u prilog stav uporednog zakonodavstva ili planirana zakonodavna intervencija, kao i stav anketiranih sudija i advokata o potrebi zakonodavne intervencije. Dodatno, istorijski razvoj pokazuje da se kod jednogodišnjeg roka zastarjelosti širio krug srodnih potraživanja zakonodavnom intervencijom u skladu sa tehničko-tehnološkim napretkom pružanja srodnih usluga i isporuke energenata. Imajući sve prethodno u vidu, može se zaključiti da su dokazane obe postavljene hipoteze u ovom istraživanju, te da se može dati *de lege ferenda* prijedlog za nomotehničko osavremenjivanje odredbe ZOO o jednogodišnjem roku zastarjelosti na bazi uporednopravnog iskustva, odnosno da treba podržati rješenja budućih građanskih kodeksa koja idu u ovom pravcu. Osavremenjivanje navedene odredbe ZOO prevashodno podrazumijeva (u Republici Srpskoj) dodavanje potraživanja naknade za korištenje javne kanalizacije odnosno odvođenja otpadnih voda u tački 1. čl. 378. ZOO, kao i dodavanje posebnih tačaka vezanih za potraživanja za usluge pristupa internetu i elektronskim komunikacijama, potraživanja iz osnova pružanja usluga kablovske i satelitske televizije i potraživanja za usluge upravljanja i održavanja zajedničkih dijelova zgrade.

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Presuda Osnovnog suda u Nikšiću, Mal 245/2015 od 21. 9. 2015. godine.
Presuda Osnovnog suda u Nikšiću, Mal 337/2014. od 17. 10. 2016. godine.
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EXPANDING THE SCOPE OF CLAIMS FALLING UNDER THE ONE-YEAR STATUTE OF LIMITATIONS**

ABSTRACT: This paper analyses the possibility of an analogous application of Art. 378 of the Law of Contract and Torts (LCT) to other similar (identical) claims. The aim of the research is to try to answer the central question of whether it is necessary to update the provisions of the LCT regarding the one-year statute of limitations in accordance with modern trends in terms of the scope of claims that should become statute-barred within this period. In order to answer this question, scientific research methods, that is, techniques are used, such as the dogmatic-normative, historical-legal, and comparative-legal one, content analysis and a questionnaire. This apparatus is used within the study of legislation, case law and legal literature, as well as in empirical research. Knowing the scope of claims that become statute-barred in a year is not only important for theoretical analysis, but is also of practical importance for court actions , as well as for consumers.

Keywords: obsolescence, one-year statute of limitations, Law of Contract and Torts, scope of claims, consumers

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INTRODUCTION

In the fourth chapter on the termination of obligations, Sections 2 and 4, the LCT contains general and special (specific) statutes of limitations, under the title "Time Required for Obsolescence". Special statutes of limitations are grouped according to the type of claims that become obsolete. Thus, the statute of limitations is set for periodical claims, for mutual claims derived from contracts on trade in goods and services, for claims for rent, damages, claims determined before a court or other competent authority and in the case of insurance contracts, while Art. 378. of the LCT is named "One-Year Statute of Limitations".[1] This speaks to the variety of claims that are subsumed under this article, which states:

"1) Become obsolete in one year:

1) claims for compensation for delivered electricity and heat, gas, water, for chimney sweeping services and for cleanliness maintenance services, when the delivery or service is performed for household needs;

2) claims coming from a radio station and a radio-television station for the use of a radio receiver and a television receiver;

3) claims coming from a post office, telegraph and telephone for the use of telephones and mailboxes, as well as other claims from them that are charged within three months or shorter periods;

4) claims for subscription to periodical publications, counting from the date of the expiration of the period for which the publication was ordered.

2) The statute of limitations is running even if deliveries or services have been extended."

This legal provision refers to utilities and other related services that are continuously provided by certain companies to households and other users, where receivables are due at short intervals.[2] These are all cases of providing services without which it is impossible to imagine life in an urban environment.[3] By the statute of limitations (*prescription, limitation, statute of limitations*, German: *Verjährung*), the right to demand fulfilment of the obli-

[1] Law of Contract and Torts – LCT, *Official Gazette of the SFRY*, no. 29/1978, 39/1985, 45/1989 – decision USJ and 57/1989 and *Official Gazette of the RS*, no. 17/1993, 3/1996, 37/2001 – other law, 39/2003 and 74/2004.

[2] Đorđević, S. (2019). *Posebni rokovi zastarelosti, master's thesis*. Niš: Faculty of Law, University in Niš, 41.

[3] Stojanović, D. (1980). Član 378. Jednogodišnji rok zastarelosti. *Komentar Zakona o obligacionim odnosima (ed. Slobodan Perović and Dragoljub Stojanović)*. (I, 926). Kragujevac – Gornji Milanovac: Faculty of Law and Cultural Center. In addition to providing services, this is also about the sale of movables – goods – energy.

gation ceases when the time specified by law within which the creditor could have demanded its fulfilment elapses (Art. 360. of the LCT). Roman law did not recognize the statute of limitations in terms of receivables and claims.[4] Prescribing general, but also special statutes of limitations as they are known today, is acceptable in the context of the case law of the European Court of Human Rights in Strasbourg (ECHR).[5]

This paper analyses the one-year statute of limitations for claims from Art. 378 of the Law of Contracts and Torts (LCT), i.e. the possibility of applying this article analogously to other similar (identical) claims. Are the existing rules on the one-year limitation period too rigid and should their scope be expanded with regard to the level of technical and technological development of providing certain standard services similar to those referred to in the LCT provision on the one-year statute of limitations? In that case, does the general or some other special statute of limitations apply? Existing rules on the special one-year limitation period have been becoming, over time and under the influence of the development of technology and the provision of related services, incomplete and subject to different interpretations in legal practice and theory. The aim of the research is to try to answer the central question of whether it is necessary to update the provisions of the LCT on the one-year statute of limitations in accordance with modern trends in terms of the scope of claims that should become statute-barred within this period. Clearly identifying the scope of claims that become obsolete in one year is not only important for the theoretical elucidation and shaping of this institute, but is also of practical importance for courts to act on when applying and interpreting law. This question is of special importance for consumers, from the point of view of knowing their rights.

In current jurisprudence, no serious attention has been paid, nor has a detailed or comprehensive analysis of the problem of analogous application of Art. 378. of the LCT on other similar claims that are not explicitly regulated in the said provision been conducted, which also applies to the analysis of a possible amendment of the LCT in that regard. A comprehensive analysis would include, in addition to the analysis of legal doctrine, a comparative analysis of legislation and case law in the territory of the states created by the dissolution of Yugoslavia, because they inherit a similar norm of one-year statute of limitations, as well as empirical research.

[4] Meyer, T. (2003). Änderungen im Verjährungsrecht des deutschen Bürgerlichen Gesetzbuches. *Annals of the Faculty of Law in Belgrade*, 51 (3–4), 495. For differences between obsolescence and other similar institutes see Radulović, S. (2012). Zastarelost i drugi slični pravni instituti. *Glasnik of the Bar Association of Vojvodina*, (6), 401–409.

[5] See: Mihelčić, G. (2020). Zastara u svjetlu konvencijske zaštite (odabrana pitanja). *Hrvatski časopis za osiguranje*, (3), 153–171. and the therein listed case law of the ECHR.

THE HYPOTHETICAL AND METHODOLOGICAL FRAMEWORK

The paper will test the following hypotheses:

– The existing special one-year statute of limitations for claims becomes the subject of different interpretations in terms of claims that should become obsolete within that period, not only in theoretical terms, but also in legal practice, bearing in mind modern trends.

– There are no obstacles to the modernization of the provisions of the LCT on the one-year statute of limitations for claims, in accordance with the degree of technical and technological development in terms of the scope of claims that should become statute-barred within this period.

The article is based on the application of methods, that is, techniques of scientific research, such as dogmatic-normative, historical-legal, comparative-legal, content analysis and questionnaire. The following instruments were used as means of interpretation: linguistic, logical, systematic, targeted and historical. This apparatus was used to test the set hypotheses in certain segments. A separate documentary analysis of relevant court decisions of various court instances in the countries of the former Yugoslav circle was performed, because they inherit the tradition of the "Yugoslav" LCT which contains the analyzed provision. In order to determine the positions of the courts, available case law was searched, according to key determinants, which includes databases and collections / bulletins of case law available on the Internet, as well as in libraries. Court decisions related to the research subject were also collected.

In addition, within the empirical research, the answers obtained by interviewing judges of the Basic Court in Banja Luka and the District Court in Banja Luka were analysed, namely those of judges belonging to the civil and litigations departments, as well as lawyers of the Bar Association of the Republic of Srpska – Bar Association of Banja Luka, with emphasis on lawyers dealing with civil law matter. The questionnaire was completed by 4 judges of the litigation department of the Basic Court in Banja Luka, 3 judges of the civil department of the District Court in Banja Luka and 19 lawyers of the Bar Association of the Republic of Srpska – Bar Association of Banja Luka. The questionnaire for each group of respondents contained the same questions for easier comparison. The survey, that is, questionnaire, was of a closed type, anonymous and it served to determine the positions of the professional public (those who apply norms) regarding the application of Art. 378. of the LCT on the one-year statute of limitations. Some research questions from the questionnaire will not be covered in this paper due to the limited scope of the paper. The criteria for this sampling and directing the research to the area of the city of Banja Luka were: the number of judges, the assumed probability

and number of disputes presented to the courts, the size and development of the city and the prevalence of energy sales, utilities and telecommunications and similar activities in connection with which the considered claims arise. The Basic Court was chosen because it resolves civil disputes in the first instance in which the issue of the statute of limitations arises; the District Court because it decides in the second instance in these proceedings; and the representatives of the legal profession were chosen because they are engaged as proxies of the parties in these cases. As consumers are the most numerous group of users of the services in question, commercial courts were not surveyed. The relevant disputes are mostly minor disputes which are usually conducted before the first-and second-instance courts. There is an idea for a new survey that would include a survey of judges of other courts and lawyers in the Republic of Srpska, but also in the rest of former Yugoslavia, in order to see the extent to which the results of the published survey coincide with the results of surveys of judges of other courts and lawyers. It would also be interesting to determine the attitude of the consumers themselves.

RESEARCH RESULTS AND DISCUSSION

The position(s) in legal theory

In legal theory, as a part of the issue of obsolescence of claims, one can also find an opinion on the application of Art. 378. of the LCT on other similar claims. Earlier, F. Stanković considered that the provisions of Art. 22. of the Law on Obsolescence of Claims,[6] which for the most part continues to exist through the LCT, apply analogously to other claims from factually or legally similar obligations, and not only to claims that are explicitly stated in it.[7] However, J. Studin in the Commentary of the LCT (eds. B. Blagojević and V. Krulj) considers that it is difficult to accept some views of practice and theory, which are the exception, and according to which this statute of limitations can be applied by analogy to other similar deliveries, starting from the fact that these provisions are precise and that the exceptions should be narrowly interpreted.[8] In contrast, listing telephones and mailboxes in line 3 of the then Art. 378. of the LCT is significant as a characteristic example, so

[6] *Official Gazette of FNRY*, No. 40/53 and 57/54.

[7] Stanković, F. (1969). *Zastara potraživanja*. Zagreb, 98.

[8] Studin, J. (1980). Član 378. Jednogodišnji rok zastarelosti. *Komentar Zakona o obligacionim odnosima,* eds. B. Blagojević i V. Krulj. (I, p. 854). Belgrade: Savremena administracija. Also see: Brković – Mujagić, S. (2012). *Posebni rokovi zastarjelosti po Zakonu o obligacionim odnosima,* Magister's Thesis. Sarajevo: Faculty of Law of the University of Sarajevo, 57.

it is not a taxative enumeration.[9] According to some views, in case of doubt whether a claim becomes statute-barred due to a special statute of limitations, the general statute of limitations should be applied, because special statutes of limitations are an exception to the general rule.[10]

There is an opinion found in some recent studies that examine all special statutes of limitations, that the wider application of the one-year statute of limitations from the LCT to other communal services determined by the Law on Communal Services in the Republic of Serbia should be prescribed, as well as the opinion that the statute of limitations should be regulated within the Law on Communal Services itself.[11] In contrast, it seems to us that a better solution is to regulate all issues of the statute of limitations in the LCT, because the LCT already systematically contains a set of rules on the statute of limitations. This would avoid the fragmentation of frameworks and rules regarding the statute of limitations.

The textbook literature does not open or discuss the need to expand the scope of claims based on the delivery of goods or services in relation to the one-year statute of limitations.[12] B. Morait classifies the claims from line 1 of Art. 378. of the LCT into compensation claims for the performed deliveries of communal energy sources (energy, gas, water, and similar deliverables) and those for the performed communal services (cleanliness maintenance, chimney sweeping services, and similar services), stating legal cases and the determinant "and similar" from which it may be concluded, although he does not explicitly state it, that he considers that this provision also applies to other similar cases under the stated typological categories.[13]

Thus, most of the existing legal theory focuses on authors failing to express their positions on the possible analogous application of Art. 378 of the LCT on similar claims and, within the framework of broader considerations regarding claims becoming obsolete or special statutes of limitations, on

[9] Studin, J. (1980). Član 378. Jednogodišnji rok zastarelosti. *Komentar Zakona o obligacionim odnosima,* eds. B. Blagojević i V. Krulj*,* I, 854. Belgrade: Savremena administracija. Also see: Brković – Mujagić, S. (2012). *Posebni rokovi zastarjelosti po Zakonu o obligacionim odnosima,* Magister's Thesis. Sarajevo: Faculty of Law of the University of Sarajevo, 854.

[10] Vizner, B. (1978). *Komentar Zakona o obveznim (obligacionim) odnosima*. Zagreb, 1317.

[11] Đorđević, S. (2019). *Posebni rokovi zastarelosti, master's thesis*. Niš: Faculty of Law, University in Niš, 62.

[12] See e. g. Pajtić, B., Radovanović, S., Dudaš, A. (2018). *Obligaciono pravo*. Novi Sad: Faculty of Law in Novi Sad, 202. Bikić, A. (2013). *Obligaciono pravo, opći dio*. Sarajevo: Faculty of Law in Sarajevo, 327–328. Stanković, O., Vodinelić, V. (1996). *Uvod u građansko pravo*. Belgrade, 209–212. Vodinelić, V. (2012). *Građansko pravo, Uvod u građansko pravo i opšti deo građanskog prava*. Belgrade, 520–525. Radišić, J. (2004). *Obligaciono pravo, opšti deo*. Belgrade: Nomos, 363.

[13] Morait, B. (2010). *Obligaciono pravo*. Banja Luka: Komesgrafika, 148.

secondary points of view on the application of Art. 378. of the LCT on other similar claims not being possible. In contrast, the views on the possible analogous application of the analyzed provision of the LCT are less represented.

It is necessary to look at theoretical views in light of a comparative view on both legislation and case law, especially in the countries created by the dissolution of the former Yugoslavia, because they inherit the same legal tradition regarding a one-year statute of limitations. Also, an analysis of the attitudes of the implementers of the provision in question (judges and lawyers) can provide useful feedback on the subject of this research.

The position(s) in legislation

On the basis of the tabular presentation (see *Table 1*), as well as on the basis of linguistic and dogmatic-normative analysis of the relevant provisions of the LCT and planned contract codes of the observed countries, certain conclusions on the comparative legal situation regarding the considered issues can be clearly reported.

***Table 1**: Comparative review of existing and planned provisions of the contractual regulations regarding the considered issue*

LCT*	*De lege lata*		Is it considered in the planned regulation
	Provision of the LCT	"New" scope of claims (compared to the former Yugoslavia LCT)	Expanding the scope of claims
Serbia	Art. 378, paras. 1 and 2.	No	Yes
RS/FBiH	Art. 378, paras. 1 and 2.	No	No (2003) Yes (2010)
Montenegro	Art. 388, paras. 1 and 2.	Yes	–
Croatia	Art. 232, paras. 1 and 2.	No	–
Slovenia	Art. 355. paras. 1–3	Yes	–
North Macedonia	Art. 367, paras. 1 and 2.	No	Yes

* Source: LCT of the observed states and planned codes of contracts (laws and civil codes).

" – " „ indicates that it is not known whether a future code or amendments to an existing regulation are planned.

The draft Code of Obligations and Contracts of professor Konstantinović did not contain these provisions on statutes of limitations, and the previously mentioned Law on Obsolescence of Claims from 1953 was passed. Many of its solutions can be found in the LCT. In the Republic of Srpska, the Law on Communal Services[14] does not contain rules related to the statute of limitations on the, so-called, utility claims. European countries recognize the general statute of limitations and special statutes of limitations for certain types of claims. For example, in Italy the fee for the sale of goods to consumers expires within a special one-year statute of limitations.[15] In the European area, a potential reform of statutes of limitations is being considered.

Amendments to the Serbian Civil Code of 5 of May 1864 introduced short statutes of limitations, as well as provision 928 c)[16] based on the *Code Civil*.[17] Just as the Serbian Civil Code stipulates the statute of limitations for claims for certain services specific to that period,[18] the LCT stipulates a one-year statute of limitations for some claims for services provided or goods delivered typical for the period and the given level of technical and technological development. The LCT should follow modern trends in the future as well.

In the Law on the Obsolescence of Claims from 1953, the provision on the one-year term for the claim for compensation for delivered thermal energy was not stated in point 1, and in point 2 that was the case with the claim for the use of a television receiver. This means that the services or deliveries that fall under this provision depend on technical and technological development. Therefore, it is justified to think that at the current level of technical and technological development of the sale of goods and provision of services, some other goods or services can be discussed, similar to those from the Art. 378. of the LCT, and for which claims should become obsolete in one year. At the

[14] *Official Gazette of the Republic of Srpska, No.* 124/11 and 100/17.

[15] See: Commercial Law Group (2014). *Periods of Limitation and Other Time Limits in Europe, A country by country summary of limitation and time limits in Europe*, 1–26.

[16] "In the case of 928 a and 928 b, the statute of limitations runs and stops, even if the issuance, service, or work has been extended, only if the bill of sale is concluded or a contract issued, or a lawsuit has been initiated before a court."

[17] Čubinski, A. (1927). *O zastarelosti u građanskom pravu, preface written by Ž. Perić*. Belgrade, 151.

[18] "Lawsuits by doctors and surgeons for visits, operations and medications; lawsuits by traders for giving espap to non-traders (see 14 and 15 of the Commercial Code); the lawsuit by those take who care of others' children and give them food; a lawsuit by other masters and teachers over tuition fees; and the lawsuit of servants who make one-year deals, for the payment of their salary, become obsolete in a year." – provision 928 b) of the Serbian Civil Code, amendment of 5 May 1864.

"...services, which are to be performed annually, and in general, everything that is paid or done annually or in shorter terms, which are to be paid annually, get obsolete in three years"– provision 928 d) of the Serbian Civil Code.

end of the 1970s, there was a more intensive supply of thermal energy in the former Yugoslavia, and the first TV station was established in 1956[19], while the first TV set was produced in Serbia in 1959.[20] Cable television appeared later. Therefore, it takes a certain amount of time for a certain system of services to become a part of regular services.

The cited Art. 378. of the LCT of the Republic of Srpska is identical to the LCT of the FBiH, Serbia, Croatia and Northern Macedonia.[21] The Draft Law of Contract and Torts of BiH, which was not adopted by the BiH Parliamentary Assembly in 2010, provided for the modernization of this provision by extending the application of the one-year statute of limitations to compensation claims based on management and maintenance of common parts of buildings, cable television and cable internet, that is, internet, compensation claims for *other* services provided for household needs.[22] The last formulation does not limit the scope of claims related to services provided for household needs, but this provision would also apply to other similar claims on behalf of those services. In this way, this part of the provision would be sufficiently adaptable to legal reality. However, as it would lead to the deviation from the legislator's taxative approach to this set of rules and thus violate legal certainty, we are not inclined to support this solution. The Draft LCT of the RS/FBIH from 2003 did not contain a proposal to amend the provision on the one-year limitation period.

The proposed Civil Code of the Republic of Serbia (working text prepared for public discussion with alternative proposals from May 2015) provides for the amendment of the provision on the one-year statute of limitations with regard to the claims of the issuer of parking space (Article 583, paragraph 1, line 2, together with claims of radio and TV stations). As an alternative to this article, the Civil Code provides for the addition of claims for Internet access and electronic communications services (line 5) and claims of managers or

[19] SFRY. Available at: https://bs.wikipedia.org/wiki/Socijalisti%C4%8Dka_Federativna_Republika_Jugoslavija

[20] Information available at: https://rs.n1info.com/regiona452878-zasto-smo-voleli-sfrj-a-od-kuma-televizor-ambasador/

[21] See Art. 378. of the LCT of FBIH, *Official Gazette of the SFRY*, no. 29/1978, 39/1985, 45/1989 – decision USJ and 57/1989, *Official Gazette of RBiH*, no. 2/1992, 13/1993 and 13/1994 and *Official Gazette FBiH*, no. 29/2003 and 42/2011), Art. 378. of the LCT of the Republic of Serbia, *Official Gazette of the SFRY*, no. 29/78, 39/85, 45/89 – decision USJ and 57/89, *Official Gazette of SRY*, no. 31/93 and *Official Gazette of Serbia and Montenegro*, no. 1/2003 – Constitutional Charter and *Official Gazette of Serbia*, no. 18/2020, Art. 232. of the LCT – consolidated text (LCT of the Republic of Croatia), *Official Gazette*, no. 35/05, 41/08, 125/11, 78/15 and 29/18) and Art. 367. of the LCT (LCT of North Macedonia), *Official Gazette of the Republic of Macedonia*, no. 18/01, 78/01, 04/02, 59/02, 05/03, 84/08, 81/09, 161/09, 23/13 and 123/13.

[22] Art. 428. p. 1. points e, f, g Of the Draft Law of Contract and Torts of the FBIH.

persons performing the function of management in apartment buildings (condominiums) for management services and other claims charged quarterly or in shorter timeframes (line 6). In the latter case, it may be disputable whether the other claims relate to the claims of the managers referred to in line 6 or if it is a special category in the form of a general clause with a one-year statute of limitations. We believe that the first interpretation should be accepted. This position is based on the fact that the other claims, which are charged quarterly or in shorter terms, are not found within separate lines, but are functionally related to the rest of the formulation of line 6. In the case of claims from line 1, which were also recognized in Art. 378. paragraph 1, line 1 of the "Yugoslav" LCT, the writers of the Serbian Civil Code used the determinant "when the delivery or service was performed for the needs of the household" in parentheses, which gives the impression that it is considering whether to leave it or delete it. If it would be deleted, the current meaning of this point would change and the legal solutions of the surrounding countries would be deviated from.

The future Civil Code of the Republic of Macedonia prescribes expanding the scope of claims that become obsolete within one year.[23] Thus, in the alternative to Art. 367. paragraph 1, in line 1, the claim for compensation for performed utility services (and maintenance of cleanliness) is added, in addition to the already existing categories (some utility services are already listed), and in line 2, in addition to the existing one, the claim for internet access services, and in line 5, claims for different types of relations that include payments for services are added. It is stipulated that other regulations may regulate which claims will become obsolete in one year, as well as that claims may become obsolete in periods shorter than one year in accordance with this Code or special regulations. While such a general clause may seem appealing and flexible, on the other hand it can undermine legal certainty and lead to consumer confusion due to the large number of deadlines scattered in different regulations and in different places.

On the other hand, positive Montenegrin and Slovenian contract law also recognize a "new" circle of claims, in addition to those prescribed by the Yugoslav legislator. The Montenegrin legislator has made several amendments to the considered provision in relation to the "Yugoslav" LCT: (a) the provision is contained in Art. 388. of the LCT (new numbering), (b) introduced a two-year statute of limitations instead of the one-year one from the "Yugoslav" LCT and (c) extended the scope of claims that become obsolete within that two-year period to claims of owners of special parts of residential

[23] See the Decision on the establishment of the Commission for drafting the Civil Code of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia*, no. 04/11 and the Decision on Amendments to the Decision on Establishment of the Commission for Drafting the Civil Code of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia*, no. 19/12.

buildings for management services and other claims payable quarterly or in shorter periods (new line 5).[24]

Slovenian positive law provides for "new" claims that become obsolete in one year: for Internet access services, for the provision of e-mail and e-mail inbox services, for websites maintenance services and services related to access to cable and satellite radio and television programs, which are paid for quarterly or in shorter terms, for claims of apartment building managers for management services and their other claims that are paid within three months or in shorter terms.[25] Slovenian law contains an interesting solution regarding the beginning of the one-year statute of limitations, because the statute of limitations begins to run after the end of the year in which the claim is due.[26]

So, to a large extent, the existing or future contractual regulations of the surrounding countries prescribe the expansion of the scope of claims with a one-year statute of limitations, and history shows that this range was determined by the development of related services and the delivery of goods within the general technical – technological stage of development.

The position(s) in case-law

The documentary analysis showed that the largest number of court decisions found in the countries created by the dissolution of the former Yugoslavia on the application of the one-year statute of limitations refers to cases of energy supply, such as *electricity*[27] and *heating*[28]*, water*[29] and the like. When

[24] See: Art. para. 1. of the Law on Contracts and Torts – LCT of Montenegro, *Official Gazette of Montenegro*, No. 47/2008, 4/11 and 22/17.

[25] Art. 355. paragraph 1, lines 5. and 6. Obligations Code – OC, *Uradni list Republike Slovenije*, No. 97/07 – official consolidated text in 64/16 – decision US.

[26] Art. 355. paragraph 2 of the OC of Slovenia.

[27] Verdict of the Municipal Court in Mostar, 07 58 P 001197 05 P from 17 November 2011, decisions of the Brčko District Court of Appeals, 96 0 Mal 003293 10 Gž from 8 October 2010 and Higher Court in Podgorica, Gž. No. 51/16–10 from 5 April 2016. On the other hand, the claim for compensation for unauthorized use of electricity becomes obsolete within the general statute of limitations (acquisition without grounds). Conclusions and positions verified at the session of the Civil Division of the Supreme Court of Cassation of Serbia on March 3, 2015. The same can be found in the Judgement of the Higher Court in Pancevo, Gž. 2395/10 from 25 January, 2011. However, some courts in BiH consider that this is compensation for damage due to the unauthorized consumption of electricity, in which case the statute of limitations for claiming damages applies. Judgement of the Cantonal Court in Livno, 10 0 Mal 001564 11 Gž from 5 April, 2011.

[28] Judgement of the Basic Court in Prijedor, 77 0 Mal 019598 14 Mal from 27 October, 2014 and the Municipal Court in Zenica, 43 0 Mal 000075 08 Mal from 13 February 2009.

[29] For example, Judgement of the Basic Court in Nikšić, Mal 245/2015 from 21 September, 2015.

interpreting and applying the law, the courts act differently in the context of subsuming various cases under line of Art. 378 of the LCT. Thus, some courts treat the claim related to the payment of the contribution fee for used water, which is stated in the water bill, as a claim that becomes obsolete within one year[30], and other courts treat the fee for water protection, fixed maintenance costs – drainage, drainage service and development fee as fees that do not fall under this statute of limitations, because they do not apply to the fee for the service of water consumption.[31] Sometimes there are conflicting opinions of legal theory and case law regarding whether the supply of electricity and the like fall under periodical supply[32] or not.[33] The use of water consumed from a public water supply and the use of public sewage or wastewater disposal are jointly "implicitly" treated (and even charged on the same bill) in the context of a one-year statute of limitations, although sewerage services are not explicitly mentioned in the LCT.[34] It is sometimes emphasized that these are individual claims and that the statute of limitations runs for each claim separately, but that a one-year statute of limitations still applies.[35] For the application of the one-year deadline, it is important whether the water is delivered to the household ("for household needs") or is delivered for other purposes, and not whether it is delivered to a natural or legal person, that is, an entrepreneur.[36] This also refers to the delivery of other energy sources, as well as to the provision of services from line 1 of Art. 378 of the LCT. "Household needs" are the defining determinant, so this provision does not apply to legal entities and entrepreneurs as beneficiaries. With regard to them (particularly entrepreneurs), according to the position of one segment of case law, the three-

[30] District Court in Uzice, Gž-1618/2007 from 30 January 2008.

[31] Judgement of the Municipal Court in Slavonski Brod – Permanent Section in Nova Gradiška, No. 1. Povrv-13/2018-7 from 29 March, 2018. The claim for compensation for watering agricultural land, based on the provisions of the Law on Waters, is statute-barred within the general term. Judgement of the Supreme Court of Macedonia, Rev No. 1240/99 from 16 May, 2002.

[32] See: Radović, M. (2015). Potraživanja na osnovu isporučene električne i toplotne energije. *Pravo i privreda*, (4–6), 522–527.

[33] Responses of the Commercial Appellate Court to questions from commercial courts from 2017, Vidović Živković, J. (2018). Aktuelni pravni stavovi u praksi Privrednog apelacionog suda. *Newsletter of the Supreme Court of Cassation*, (3), 221–222.

[34] Judgement of the Cantonal Court in Sarajevo, 65 0 Mal 573246 17 Gž from 16 July, 2019 and Judgement of the Municipal Court in Sarajevo, 65 0 Mal 573246 16 Kom from 28 April, 2017, Judgement of the District Court in Bijeljina, 80 0 Mal 069088 16 Gž from 24 April, 2018, Verdict of the Zadar County Court, 22 Gž-1413/15–2 from 19 April, 2018.

[35] Judgement of the Municipal Court in Tuzla, 032-0-Mal-06-001 156 from 29 February, 2008.

[36] Judgement of the Higher Court in Požarevac, Gž 1031/15 from 14 December, 2015, *Newsletter of case law of the Higher courtin Požarevac*, 2/2015, 34–36.

year statute of limitations from Art. 374 of the LCT[37] applies, and according to the other segment, the general statute of limitations is the one that applies.[38]

Some decisions of courts in the Republic of Serbia show that courts have been establishing a practice of interpreting Art. 378 of the LCT and claims that can be subsumed under this article. Thus, in a decision from 2015, the Higher Court in Novi Sad classifies the obligation to pay the *radio and television subscription fee* under

> "claims by a radio station and a radio-television station for the use of a radio receiver and a television receiver, because the radio and television subscription does not represent a special obligation of general interest established by the Act on Broadcasting, to which a general limitation period of 10 years would apply."[39]

The positions of other courts on the application of the one-year statute of limitations in this case are similar.[40] However, although the first-instance Croatian courts sometimes put "radio and television fees and other utility charges" under the one-year statute of limitations, the second-instance courts conclude that such a position is incorrect.[41] Slovenian judicial practice is in line with that and considers that the claims by the radio and TV stations do not refer to the obligation to pay the radio and television fee.[42] In order to remove the

[37] Judgement of the District Court in Bijeljina, 80 0 Mal 069088 16 Gž from 24 April, 2018, Ruling of the Constitutional Court of BiH, AP-576/19 from 14 October 2020. Also see Judgement of the District Court in Banja Luka, 71 0 P 229576 18 Gž from 16 July 2019, Legal understanding of the Civil-Administrative Department of the Supreme Court of the Republic of Srpska from 29 November, 2013 and Judgement of the Cantonal Court in Tuzla, Pž 202/2008(1) from 29 March, 2011.

[38] Supreme Court of FBiH, Pž 248/00 from 31 August 2001, cited according to Bikić, A. (2013). *op. cit.*, 319; Judgement of the Court of Appeals of the Brčko District of BiH, 96 0 Mal 088708 18 Gž from 13 December 2018, *Paragraf Lex*; Higher Commercial Court, Pž-7510/96 from 30 December 1996, cited according to Hajdarević, H., Tajić, H., Simović, V. (2011). *Zakon o obligacionim odnosima (tri decenije sudske prakse – više od 10.000 sentenci i sudskih odluka), knjiga I.* Sarajevo: Privredna štampa LTD, 844–847; District Court in Čačak, Gž-407/08 from 2 April 2008; Supreme Court of Montenegro, Rev 858/2018 from 26 September 2018; Conclusions from the Joint Session of the Courts of Appeal with the Commercial Court of Appeal and the representatives of the Supreme Court of Cassation from 08 December 2017.

[39] Judgement of the Higher Court in Novi Sad, Gž. 288/14 from 13 January 2015, *Newsletter of case law of the Higher Court in Novi Sad*, 6/2015, 112.

[40] Judgement of the Municipal Court in Tuzla, 032-Mals-09-000895 from 26 November 2009. Claims for a TV subscription against legal entities become obsolete in one year. Judgement of the Commercial Court of Appeal, Pž. 482/2012 from 20 April, 2012.

[41] Judgement of the Municipal Civil Court in Zagreb, P-59/14-20 from 24 March, 2017 and Ruling of the County Court in Split, Gž-1545/2017-2 from 18 December 2018.

[42] See: Judgement, Supreme Court, Administrative Department, X Ips 1737/2006 from 28 May 2009: "The provision of Art. 355 of the Slovenian LCT refers to programs

dilemmas, especially having in mind the arguments of the Croatian and Slovenian courts, the legislators should also prescribe the obsolescence of radio and television claims for possession of a radio and television receiver in line 2, Art. 378 of the LCT, in case they decide that the claim of the radio and television fee should be explicitly standardized within the one-year statute of limitations. For the claims by a radio and television station and a PTT, the capacity of the debtor is not important, because these provisions of Art. 378, paragraph 1, lines 2 and 3 of the LCT are valid for legal entities as well.[43]

The most notable example of expanding the scope of claims that become obsolete in a year, and which caused dilemmas, can be found in the case law of the Republic of Serbia, while it was not observed in the studied practice of courts in neighboring countries. In one case from 2014, the Supreme Court of Cassation concluded that *claims for parking services* against individuals become obsolete in one year, because Art. 378, paragraph 1, line 1 of the LCT refers to utility fees when the delivery is made for household needs, and according to the Law on Communal Services and the Decision on Public Parking Lots of the City of Belgrade, the utility activity is, among other things, the activity related to public parking spaces. The lower-level courts considered that these were claims to which the general statute of limitations applied, and the Court of Appeals in Belgrade, referring to the position of the Court of Appeals in Kragujevac, that it was a communal service to which a one-year statute of limitations applied. Does a natural person drive a car for household-related purposes? The Supreme Court of Cassation considers that a passenger car belongs to all members of the household, regardless of to whom it officially belongs, so the decisive fact is that it is not a car that serves the needs of a legal entity and it is not used for performing economic activity. Art. 374 of the LCT has made a clear distinction between legal and natural persons, so it cannot be a

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that are paid in the Republic of Slovenia (such as the HBO program), and not to the payment of fees for radio and television stations, which is why the provisions of Art. 355 do not apply to obsolescence…" Since paying the radio and television fee is prescribed by law, it is not a contract, but a public law fee. Those who are obliged to pay the fee do not enter into a relationship with radio and television stations on the basis of autonomous will (of the contracting parties) under the contract, but are liable under the law itself and can only refute the legal presumption that they own a television."

[43] Studin, J. (1980). Član 378. Jednogodišnji rok zastarelosti. *Komentar Zakona o obligacionim odnosima,* eds. Borislav Blagojević i Vrleta Krulj. (I, p. 854). Belgrade: Savremena administracija. Also see: Brković – Mujagić, S. (2012). *Posebni rokovi zastarjelosti po Zakonu o obligacionim odnosima,* Magister's Thesis. Sarajevo: Faculty of Law of the University of Sarajevo, 854. For more details about the the application of the one-year statute of limitations in this case, see the judgement of the Commercial Court of Appeal, Pž 482/2012 from April 20th, 2012, judgement of the Commercial Court of Appeal, Pž. 5226/2012 from 6 November, 2013 and the judgement of the High Commercial Court of the Republic of Croatia, XLVI Pž-7906/04-3 from 12 January 2007.

decisive circumstance whether a natural person uses a car for household needs or only for his own needs.[44] For the court, a criterion for expanding the scope of claims was whether the services were actually utilities and whether they were performed/used for the needs of a household. Therefore, the Supreme Court of Cassation of Serbia considers that claims related to utility fees in general become obsolete in one year (although they are not explicitly listed in line 1 of the Art. 378 of the LCT) when the delivery or service is performed for household needs, *which also applies to surcharge ticket collection claims.*[45] On the other hand, in the FBiH it is considered that "utility fee is a periodical claim to which a three-year statute of limitations applies in terms of Art. 379, paragraph 2 of the LCT, which, among other things, arises from the practice of the Constitutional Court."[46] When it comes to claims on behalf of various utility services provided that are not explicitly listed in Art. 378 of the LCT, it is safer to apply the rules on some other special statute of limitations if possible, and if not, the rule on the general statute of limitations. Therefore, we believe that the scope of application of Article 378 of the LCT should not be expanded and interpreted more broadly for the reasons that will be stated in the concluding remarks.

Cases in which the application of the one-year statute of limitations for claims for provided internet services was considered were not often noticed within the considered court practice in BiH.[47] Various reasons can be consid-

[44] Judgement of the Supreme Court of Cassation, Rev. 430/2014 from 17 April. *Izbor sudske prakse*, 3/2016, 52.

[45] Sentence from the judgement of the Supreme Court of Cassation ,Rev 430/2014 from 17 April, 2014, determined at a session of the Civil Department held on 10 March, 2015. An opinion can also be found according to which the general statute of limitations applies to claims based on parking use services. Judgement of the Higher Court in Belgrade, Gž. 5271/15 from 19 November, 2015. Analogous application of Art. 378. paragraph 1, line 1 of the LCT and the claims for payment of the additional ticket for the use of transport services in public transport is also emphasized in the paragraphs from the Joint Session of the Supreme Court of Cassation and Courts of Appeal in 2017. Also see: Unanimously adopted answers to controversial legal issues by all courts of appeal. *Newsletter of case law of the Court of Appeals in Novi Sad*, 8/2018, 35 and the position of the Court of Appeals in Niš, Su II – 17-3/17 from 18 April, 2017, published in the Newsletter of the Court of Appeals in Nis from 2017, 174, on the occasion of the answer to the disputed legal issues of the Basic Court in Niš, which was adopted at the session of the Civil Department on March 9, 2017 and at the joint session of the Civil Department and the Department for Labor Disputes from 20 March 2017. The mixed, public and private nature of the surcharge ticket as a privilege – compensation for appropriate privileged parking on the basis of a utility contract has been debated in legal theory. Bovan, S. (2010). Pravna priroda doplatne karte za parkiranje. *Pravni život*, (10), 415.

[46] Decision of the Cantonal Court in Bihać, 17 0 Ip 081840 20 Pž 2 from 22 July 2020.

[47] The situation is different in legal practice when it comes to providers of utility services for the supply of heating or water, as well as the claim for a package of telecommunications services with cable TV.

ered: timely lawsuits by creditors, the fact that these are "privately owned" companies that pay attention to the collection of their claims and possibly the provisions of the general business conditions, or contracting a temporary or permanent suspension of service if the debt has not been paid (e.g. Article 27 of the General Terms and Conditions for the Provision of MTEL Telecommunication Services).[48] The position of the District Court in Bijeljina is that claims related to Internet and cable television services become obsolete within the one-year period provided for the payment of radio and TV receivers, which can be applied analogously to this claim.[49] In one case in the FBiH, there was a disputed claim that arose from the use of telecommunications services, i.e. the Internet service used by the means of the defendant's subscriber number. Although the decisions of the Higher Courts lean towards a different context of resolving the dispute, the Municipal Court in Ljubuški in one place, although not accepting the objection of the statute of limitations, finds that it is indisputable that the claim in question in this case is actually a claim under the Art. 378 of the LCT which becomes obsolete in one year, when the delivery or service is performed for the needs of the household.[50] The Montenegrin court applies Art. 388, paragraph 1, line 1 of the LCT of Montenegro (two-year statute of limitations) to claims on behalf of Internet services provided via ADSL (high-speed Internet access communication technology using an existing telephone line) as telecommunications services.[51] The Higher Court in Bijelo Polje also refers to the same item 1 of this Article of the LCT of Montenegro, without explaining in more detail the reasons for subsuming the disputed claim under this item, when it comes to the package of telephone and internet services provided to individuals.[52] From this it can be inferred that Montenegrin courts extend the scope of line 1 to other services. Based on one decision of the Supreme Court of Cassation of Serbia it can be indirectly concluded that the one-year statute of limitations for claims also applies to services similar to telephone services (telecommunications services, internet, etc.).[53] This statute

[48] General conditions for providing telecommunication services of MTEL. Available at: https://mtel.ba/Binary/397/Opsti-uslovi-za-pruzanje-telekomunikacionih-usluga-nesluzbeni-precisceni-tekst.pdf

[49] Judgement of the District Court in Bijeljina, 80 0 Mal 051847 14 Gž from 13 March, 2014., which passed the test of the Constitutional Court of BiH: Ruling AP-1967/15 from 07 June, 2016.

[50] Judgement of the Municipal Court in Ljubuški, 063-0-P-08-000 079 from 16 September, 2008.

[51] Judgement of the Basic Court in Nikšić, Mal 241/2017 from 19 September, 2017. Provisions from Art. 388 of the LCT of Montenegro, which provide for a two-year statute of limitations, have been applied from 15 August, 2008.

[52] Higher courtin Bijelo Polje, Gž 515/2013 from 20 March, 2013.

[53] Judgement of the Supreme Court of Cassation, Prev 15/2016 from 03 November, 2016.

of limitations applies to claims on behalf of performed telecommunications services, regardless of whether they are delivered to a natural or legal person.[54] In one case in Croatian case law, although the first instance court considered that the general statute of limitations applies to claims for telecommunications services, the appellate court concluded that these claims fall under the one-year statute of limitations under the Art. 232, paragraph 1, line 3 of the Croatian LCT (PTT claims), explaining this by the nature and purpose that is taken into account in the one-year statute of limitations.[55] On the other hand, Macedonian courts do not apply a one-year statute of limitations to claims for Internet access services provided, but a three-year period according to Art. 363 of the LCT of North Macedonia, because the claim does not originate from the use of a television, but special technical equipment – the modem and internet connection used via computers is installed for this service.[56] However, in the case of bills for the use of the public cable network for public communication services, which, in addition to the radio and television station program, also includes additional services through that network, the one-year statute of limitations shall apply.[57] When it comes to the package of cable TV, fixed telephone and cable internet services, then the Macedonian courts apply a one-year statute of limitations in accordance with the Art. 367, paragraph 1, lines 2 and 3 of the LCT of North Macedonia.[58]

In one case, a court in the Republic of Srpska applied a one-year statute of limitations to a claim for a fee for the use of cable television, which applies to the claims by a radio station and a radio and television station for the use of a radio and television receiver.[59] Other courts of the surrounding countries also ruled on the application of the one-year statute of limitations in this case.[60] These services (including cable television and the internet) are defined by special regulations on telecommunications or electronic communications. In some places, this special regulation also determines the statute of limitations, as was done by the Telecommunications Act in the Republic of

[54] Judgement Of the Commercial Court of Appeal, Pž. 5226/2012 from 6 November, 2013.

[55] Judgement of the County Court in Split, Gž-77/2021-2 from 12 February, 2021.

[56] Court of Appeal Skopje, Gž -1100/14 from 09 April 2014. Also see: Basic Court skopje 2, 4.PL1-P-138/15 from 16 April, 2015.

[57] Basic Court in Kočani, PL1P. no. 9/17 from 26 April, 2017.

[58] The Basic Court in Bitola, PL1-P-14/12 from 20 March, 2012.

[59] Judgement of the Basic Court in Prijedor, 77 0 Mal 057878 14 Kom from 21 June, 2018.

[60] Judgement of the Basic Court in Nikšić, Mal 337/2014 from 17 October, 2016; The Basic Court in Bitola, PL1-P-14/12 from 20, March, 2012; Judgement of the County Court in Split ,Gž-77/2021-2 from 12 February, 2021 and Judgement of the Commercial Court of Appeal, Pž. 5226/2012 from 6 November, 2013.

Croatia, Official Gazette, no. 53/94. This is one of the models for resolving dilemmas in legal practice at the legislative level regarding the application of the statute of limitations to claims on behalf of performed telecommunications services, especially since this is more about the provision of services by the cable operator than about the claims of the broadcaster for the use of a radio and television receiver. However, it is more appropriate to do so in the LCT to avoid the diffusion of the rules on the statute of limitations.

Although some courts of first instance in the Republic of Croatia treat claims based on *satellite TV delivery services* (smart cards of satellite equipment, Total TV, etc.) as claims that become obsolete within one year, according to the position of second instance Croatian courts, which should be supported, they are not claims by a radio or TV station, so the application of a one-year statute of limitations cannot be extended to these claims that are not explicitly stated in the legal norm by extensive interpretation or analogy.[61] According to the interpretation of one second-instance court, these claims in Croatian law become statute-barred in the general statute of limitations,[62] and according to the understanding of another second-instance court, it becomes statute-barred via the special statute of limitations for periodical claims, because they fall due monthly.[63] This issue has not been found in the case law of other countries studied, and it would be useful to address it at the legislative level because the service of satellite TV delivery is present in reality.

Claims based on mobile telephony services become obsolete in one year according to the positions of the courts in the Republic of Srpska, as claims for telephones regarding the use of telephones from line 3 of Art. 378 of the LCT.[64] The same is the position of the courts regarding landline telephony.[65] The term telephone can refer to both mobile and landline telephony, so the courts had no dilemmas. The position on the application of the one-year statute of limitations for mobile telephony services was also expressed by the Macedonian courts.[66] On claims for "mobile phone use, subscription and fiscal duties", the statute of

[61] Judgement of the Zadar County Court, no. 15 Gž-1092/18-2 from 17 May, 2019 and the judgement of the County Court in Velika Gorica, no. Gž-1185/17 from 25 May, 2018.

[62] See: the judgement of the Zadar County Court, no. 15 Gž-1092/18-2 from 17 May, 2019.

[63] See: the judgement of the County Court in Velika Gorica, no. Gž-1185/17 from 25 May, 2018.

[64] Rulings of the Basic Court in Prijedor, 77 0 Mal 058206 14 Kom from 10 October, 2016. and 77 0 I 007258 14 Mal from 10 September, 2014.

[65] Judgement of the Basic Court in Prijedor, 77 0 Mal 030102 13 Mal 2 from 07 April, 2014.

[66] Judgement of the Basic Court Tetovo, Малвп-105/2014 from 30 May, 2014.

limitations from Art 388 of the LCT of Montenegro is applied.[67] Courts often classify these services under the genus term "telecommunications services", although the term is not used in the LCT, unlike in the Law on Consumer Protection (but the latter is not referred to in the studied case law).

The position of the courts in the former Yugoslavia regarding the statute of limitations for *claims for the costs of maintaining common parts of the building* is interesting. Earlier in one case, the court held that a claim for the cost of cleaning common areas became obsolete in one year because the cleaning of the staircase was done for household needs.[68] On the other hand, in that period, the commercial court considered that when a debtor in the case of the delivery of heating is a residential building, because it is about heating common areas, a three-year and not one-year statute of limitations is to be applied, since the energy is delivered for the purposes of heating common areas.[69] Monthly advance payment for the costs of building maintenance according to the Law on Maintenance of Residential Buildings is a claim whose amount is known in advance, i.e. these are periodical claims, which become obsolete in three years.[70] This position of the courts in the Republic of Srpska on the application of the three-year statute of limitations for periodical claims for building maintenance costs, i.e. common parts and devices of the building, corresponds to the positions of the courts in FBiH and the Republic of Croatia.[71] The position of the Supreme Court of Macedonia is identical, because Art. 378 of the LCT does not list the claims for the costs of the ongoing maintenance of the common areas of the building, unlike the lower courts which erroneously considered that it was a matter of applying a one-year limitation period.[72] Unlike the laws of the listed countries, Slovenian law explicitly prescribes a one-year statute of limitations for claims by apartment building managers for management services *and their other claims*[73] that are to be paid within three months

[67] Judgement of the Basic Court in Nikšić, Mal 645/2016 from 4 April, 2018.

[68] Higher Court in Subotica, Gž-767/84 from 29 August, 1984, cited according to Hajdarević, H., Tajić, H., Simović, V. (2011). *Zakon o obligacionim odnosima (tri decenije sudske prakse – više from 10.000 sentenci i sudskih odluka), knjiga II*. Sarajevo: Privredna štampa Ltd., 893.

[69] Higher Commercial Court, Gž 2172/83 from 12 August, 1983.

[70] Judgement of the Basic Court in Prijedor, 77 0 Mal 028979 11 Mal from July, 2013.

[71] Judgement of the Cantonal Court in Sarajevo, 65 0 Mal 289158 14 Gž from 12 December, 2016; Ruling of the Constitutional Court of BiH, AP-1056/17 from 11 October, 2017. Also see: Judgement of the Supreme Court of the Republic of Croatia, Rev-2347/1998-2 from 27 February, 2002.

[72] Supreme Court of the Republic of Macedonia, Gzz. no. 125/03 from 9 October, 2003.

[73] Claims for reimbursement of operating costs, which the manager "pledged" to the owner of the apartment. Judgement of the Supreme Court, Commercial Division, III Ips 23/2014 from 02 September, 2014.

or less.[74] However, the courts have taken the view that this rule does not apply to the manager of an office building, to claims against the owner of the business premises and in the case of business consumption.[75] This case law may be important in the case of legislative intervention in our country, which would resolve this issue in legal practice. Therefore, the recommendation is that Art. 378 of the LCT is amended so that it explicitly prescribes that these claims also become obsolete in one year. At the same time, at the legislative level, the issue of non-application of this provision in the case of business consumption should be resolved, bearing in mind the purpose of introducing this solution, as explained in Slovenian law. According to the current situation, it is justified to consider that the claim for maintenance costs of common parts of the building becomes obsolete as a periodical claim, because it is a claim whose amount is known in advance, and it cannot be subsumed under the one-year statute of limitations, since it is not explicitly listed in Art. 378 of the LCT.

The position(s) of judges and lawyers – empirical research in terms of relevant judicial institutions in Banja Luka

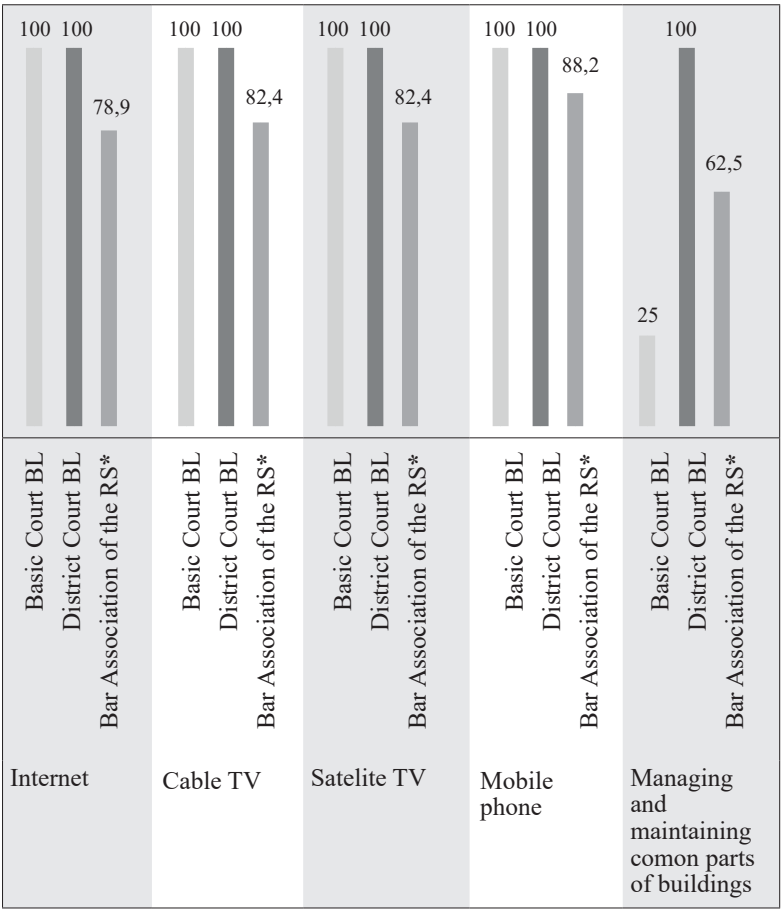
Following *Graph 1*, it can be seen that there is absolute agreement between the surveyed judges of both levels that the provision of the Art. 378 of the LCT may apply by analogy to related claims, namely claims on behalf of Internet services, cable and satellite TV and mobile telephony. A large percentage (78.9–88.2 %) of surveyed lawyers of the Bar Association of the Republic of Srpska – Bar Association Banja Luka share the same position. It can be noticed that a higher percentage of affirmative answers regarding the stated claims came from the surveyed judges than with lawyers. The biggest difference in opinions or disagreement between the surveyed groups is regarding the analogous application of the one-year statute of limitations to claims for the management and maintenance of the common parts of a building. As for the analogous application in this case, 100 % of the surveyed judges of the District Court in Banja Luka are in favor, and only 25 % of the surveyed judges of the Basic Court Banja Luka, and 62.5 % of the surveyed lawyers share the same

[74] The purpose of introducing this solution is to equalize the legal position of condominium owners who owe payment to managers with those condominium owners who owe payment directly to the supplier for the same service. Judgement of the Supreme Court, Commercial Division, III Ips 23/2014 from 02 September, 2014.

[75] Ruling of the Higher Court in Ljubljana, Commercial Department, I Cpg 968/2014 from 08 October, 2014; Order of the Supreme Court, Commercial Division, III Ips 120/2015 from 07 March, 2017; Order of the Supreme Court, Commercial Division, III Ips 85/2017 from 10 May, 2019.

attitude. So, the attitudes are significantly different. It is necessary to notice the relationship between such positions of the respondents on the analogous application with the results of the documentary analysis of court verdicts, which will be done in the next chapter.

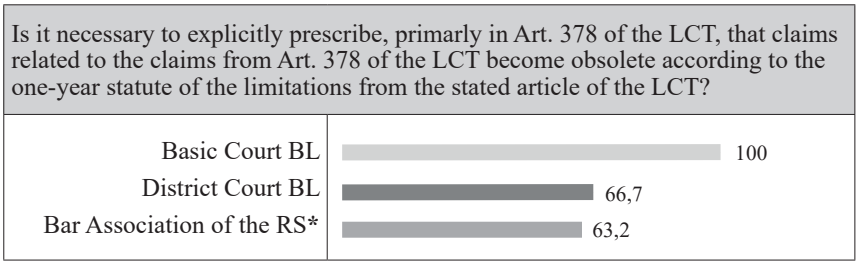
Graph 1: *Percentage (%) of affirmative answers of the surveyed judges and lawyers on whether the provision od Atr. 378 of the LCT on the one-year statute of limitations of claims may be analaogously to related claims that are not explicitly statet*



* – refers to the Bar Association of the Republic of Srpska – Bar Association Banja Luka

Summarizing the results of the conducted questionnaire (*Graph 2* shown below), it is concluded that more than half of the respondents believe that it should be explicitly prescribed, primarily in Art. 378 of the LCT, that related claims to those referred to in the said Article become obsolete in one year. Thus, 100 % of the surveyed judges of the Basic Court in Banja Luka, 66.7 % of the surveyed judges of the District Court in Banja Luka and 63.2 % of the lawyers of the Bar Association of the Republic of Srpska – Bar Association Banja Luka believe that legislative intervention is necessary. Legislative intervention may go in the direction of introducing a general clause or, as a better solution for reasons of legal certainty, an explicit enumeration of new claims that become obsolete in this period. The obtained position of judges and lawyers in Banja Luka is in a way unusual because the respondents mostly voted by a simple majority (see *Graph 1*) on the analogous application of Art 378. of the LCT on certain related claims. The reason for this may lie in the fact that in our country the courts are bodies for the application of law, and as the provisions on limitation should be precise regarding the scope of claims that become obsolete and having in mind the reasons of legal certainty, it is most expedient to explicitly list "new" claims whose statute of limitations would occur in one year, no matter how broadly the courts currently interpret a particular provision. This would give the courts a comfortable, safe, and even the most carefree position in terms of applying law. In this we find the cause of the result of the survey in terms of the research question presented in *Graph 2*. It can be said that there are no obstacles to formally legalizing something that has already been clear and obvious in legal practice. Such situations have been recorded in our legal tradition. These results clearly indicate that respondents *de lege lata* believe that certain related claims can be classified under the one-year statute of limitations because legal "practitioners" find different mechanisms for "covering" certain life situations, but that *de lege ferenda* it would be effective for "new claims" to be explicitly entered in the LCT, which simplify the position regarding the application of the law. Bearing in mind that the analysis of case law, as an objective indicator, as opposed to the subjective views of respondents, shows that the courts' position regarding the analogous application of the one-year statute of limitations to related claims in each case is not uniform, which makes the conclusion about the need for legislative intervention even more important.

***Graph 2**: Percentage (%) of affirmative answers of surveyed judges and lawyers on the need to explicitly prescribe "new" claims with a one-year statute of limitations*



* – refers to the Bar Association of the Republic of Srpska – Bar Association of Banja Luka

CONCLUDING REMARKS

Summarizing the positions of the courts of the states in the former Yugoslavia that inherit a similar provision on the one-year statute of limitations, it is concluded that the courts sometimes use different reasoning and sometimes almost identical regarding the treatment of the statute of limitations for some categories of claims, which have been frequent in contemporary legal practice due to the technological development of service systems. Position on the one-year statute of limitations from line 1, Art. 378 of the LCT not being applied to entrepreneurs as users and for the costs of maintaining common parts of buildings (except for Slovenia, which prescribed the one-year statute of limitations in this case) are similar. However, similar positions were taken by the courts on applying the one-year statute of limitations on claims on behalf of public sewerage / wastewater disposal services, mobile telephony and cable TV. The last two examples are two cases that can be more easily interpreted under the appropriate categories of claims from Art. 378 of the LCT. In terms of satellite TV services, Croatian courts expressed a negative attitude regarding the analogous application of the one-year limitation period for these claims. The positions of the courts are divided regarding the analogous application of the provision on the one-year statute of limitations for claims in the name of various accompanying fees received with water bills, radio and television fees, parking fees and additional tickets and internet services. When it comes to the radio and television fee, only Croatian and Slovenian courts explicitly oppose the analogue application, while in the case of internet services, the Macedonian courts declare themselves in this way, except in the case of cable internet.

With regard to the statute of limitations for claims for internet services, the position of the observed courts is not unanimous; for example, some courts in the Republic of Srpska subsume these claims under line 3 and some courts in the FBIH and Montenegro under the line 1 of Art. 378 of the LCT. Only the courts in the Republic of Serbia dealt with the issue of the statute of limitations for parking fees and the additional tickets. Before adopting their final position, the courts did not have a clear attitude towards these issues. As this issue has not been crystallized within the case law of other states, there is no need to consider it at the legislative level in case of intervention of their legislator in the provision on the one-year statute of limitations. It remains to be seen whether the Serbian courts, with their final position on the analogous application of the one-year statute of limitations to this utility service, paved the way for the wider application of the analogy in these cases, or, as it seems, a legislative intervention as envisaged by the future Civil Code of Serbia will take place after all.

In general, is judicial freedom greater than judges want to admit?[76] In one case from 2007, the Supreme Court of Serbia extended the application of Art. 201 of the LCT to the stepmother who does not belong to the legal circle of persons entitled to compensation under this article for reasons of fairness and elimination of value contradictions, as did the French courts in cases of expanding the boundaries of analogy.[77] There is also a position according to which it is a matter of free judicial belief whether, for example, the court will bring the fee for electricity supplied for the category of "other consumption" (primarily for entrepreneurs) under a one-year or general statute of limitations.[78]

In terms of empirical research, there is an agreement among respondents that the provision of Art. 378 of the LCT may apply analogously to some related claims, namely claims on behalf of Internet services, cable and satellite TV and mobile telephony. This corresponds to the positions expressed in the available case law, except in the case of satellite TV. On the other hand, the positions of the respondents are not unanimous and are very different regarding the obsolescence of claims for services of management and maintenance of common parts of buildings, which partially corresponds (especially the negative position of the interviewed judges of the Basic Court in Banja Luka) to the analyzed case law. Most of these claims are not explicitly stated by legislation.

[76] Meier Hayoz, A. (1951). *Der Richter als Gesetzgeber*. Zurich, 206, cited according to Bovan, S. (2012). Contra legem judiciranje – pandorina kutija pravne hermeneutike. *Annals of the Faculty of Law in Belgrade*, (2), 112.

[77] *Ibid*., 113, 115.

[78] Račić, R. (2006). Zastarjelost potraživanja naknade za isporučenu električnu energiju. *Pravo i privreda*, (5–8), 427.

Teleological-systematic interpretation in the Republic of Srpska (taking into account Art. 47, paragraph 6 of the Law on Consumer Protection – LCP[79]) can justify the application of a one-year statute of limitations on "new" claims based on telecommunications services, because they are mentioned in the Law on Protection within prescribing a one-year statute of limitations, although courts from the studied case law do not reference this provision. When it comes to other related claims that are clear in legal practice, and which cannot be subsumed under some of the cases from Art. 378 of the LCT by simple application and interpretation, classifying them within the provisions on the one-year statute of limitations could also be discussed in relation to *praeter* or *contra legem* practice by judges. Courts know how to interpret certain "new" claims (which are not explicitly prescribed) under the provision of a one-year statute of limitations, but not all of them. In case of some services, the courts do not have a unanimous position on the exact line of Art. 378 of the LCT under which they should classify a certain claim. Where are the limits of judicial freedom and free judicial belief, and would paving the way for a broader interpretation in our country be a good thing? Even in legal theory, in its small part that deals with this issue in general, there is no unanimous position on the application of the one-year statute of limitations to related claims that are not explicitly prescribed by the LCT. At a more general level, there are conflicting views on the possibility of expanding the scope of claims by analogy or suitable interpretation of Art. 378 of the LCT.

Starting from the fact that there is no unanimous position regarding the issue, both within legal practice and legal theory, we consider as a better solution the advocacy of the position according to which analogous application of one-year statute of limitations should not be allowed to identical, similar (communal) claims not explicitly listed in the LCT nor in cases when claims cannot be subsumed under the rules of one-year statute of limitations by simple, common, classical methods of interpretation and application of law, until the regulations or the LCT are amended. Otherwise, legal certainty would be violated. As the courts in our country can only apply and not create laws, they have not been given the authority to expand the scope of claims to which a one-year statute of limitations would apply. Also, it should be borne in mind that the LCT has prescribed a general statute of limitations for all claims for which no special statute of limitations has been determined by law, and in this case a special statute of limitations has been set. As an additional argument, it can be stated that the legislator precisely, by taxative, and not by an exemplary method, regulated the cases when the one-year statute of limitations for claims applies. Accordingly, the Higher Court in Ljubljana opposed the extension of the interpretation of the one-year statute of limitations for claims of managers

[79] *Official Gazette of the Republic of Srpska*, no. 6/12, 63/14 and 18/17.

of multi-storey residential buildings to office buildings, stating an important argument that can serve here and according to which "the statute of limitations must be clearly defined so that legal entities know in advance when and after what period of time their right to demand the obligation to be fulfilled expires, i.e. when the civil obligation becomes natural."[80] From a strictly legal point of view, there are no grounds for subpoenaing other claims under Art. 378 of the LCT, except, for example, in linet 3 where other claims are also discussed. Provisions from lines 1 and 2 of Art. 378 of the LCT are most rigidly formulated, without any exemplary enumeration.

The analysis of the legislation of former Yugoslavian states shows that some states have already expanded the scope of claims in the LCT in regard to the one-year statute of limitations (Montenegro and Slovenia), and some have planned or are planning to expand that range by the means of future contract codes (BiH, Serbia, North Macedonia). Legislative intervention can go in the direction of introducing a general clause or, which is a better solution for reasons of legal certainty, an explicit enumeration of new claims that become obsolete within this timeframe. This would give the courts, as bodies that apply laws, a comfortable, safe, and the most carefree position in terms of applying law. It can be said that there are no obstacles to formally legalizing something that has become clear and obvious in legal practice and this would not be the first time in our legal tradition for that to happen. This is supported by the position of comparative legislation or planned legislative intervention, as well as the position of surveyed judges and lawyers on the need for legislative intervention. In addition, historical development shows that with a one-year statute of limitations, the range of related claims has expanded through legislative intervention in accordance with the technical and technological progress in terms of providing related services and energy supply. Having all the above in mind, it can be concluded that both hypotheses in this research have been proven, and that a proposal for nomotechnical modernization of the LCT provision on the one-year statute of limitations can be given *de lege ferenda* on the basis of comparative experience, i.e. that solutions of future civil codes that go in this direction should be supported. The modernization of the mentioned provision of the LCT primarily refers to (in the Republika Srpska) adding claims for compensation for the use of public sewerage, i.e. wastewater disposal in line 1 of Art. 378 of the LCT, as well as to adding special lines related to claims for Internet access and electronic communications services, claims based on the provision of cable and satellite television services and claims for services of management and maintenance of common parts of buildings.

[80] Judgement of the Higher Court in Ljubljana, Commercial Division, II Cpg 1388/2014 from 28 November, 2014.

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