

Authentic Interpretation of the Constitution in the Croatian Parliamentary Law

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ABSTRACT

Having in mind that the authentic interpretation is an interpretation of a legal norm that, due to its ambiguity or misinterpretation in practice, is provided by the same body that enacted it, the paper examines whether Croatian parliamentary law empowers the Croatian Parliament, as a constitution-maker, for giving an authentic interpretation of the Constitution. In addition, the paper examines whether the Parliament has the power to give an authentic interpretation of constitutional provisions in the parliamentary law of three republics of the former Socialist Federal Republic of Yugoslavia (the Republic of North Macedonia, the Republic of Slovenia, and the Republic of Serbia) which, like the Republic of Croatia, have retained the institute of authentic interpretation after gaining their independence. For that purpose, the paper analyzes the relevant provisions of the Constitution, laws, and parliamentary rules of procedure.

It was concluded that in the Republic of Croatia, as well as in mentioned states, there is no interpretative power of the parliament in relation to the provisions of the Constitution. In concrete, individual cases the ordinary (non-authentic) interpretation of constitutional provisions is primarily given by the courts, and ultimately by the Constitutional Court, while the parliament has the power of amending vague or misinterpreted provisions in the procedure of amending the Constitution.

Keywords: authentic interpretation, constitution, parliament, parliamentary law.

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I. INTRODUCTION

Interpretation of legal norms can generally be understood as finding their (true) content and meaning. Legal theory distinguishes several methods of interpretation, such as linguistic, logical, systemic, teleological, and historical, and depending on who (and how) gives it, interpretation can be binding or non-binding, abstract or casuistic (Vrban, 2003). Unlike government institutions (courts, parliament etc.), whose interpretations are binding, other entities (such as scholars) provide non-binding interpretations. Abstract interpretations (which determine the general meaning of a norm) are binding for a group of abstractly determined, unnamed addressees of general legal norms, while casuistic interpretations refer to a specific case (Visković, 2006). As a special form of binding interpretation, some systems also regulate an authentic interpretation of a legal norm which, due to its ambiguity or misinterpretation in practice, is given by the same body that enacted it.

The subject of authentic interpretation is a legal norm. Most often, these are provisions of the law, and the authentic interpretation is given by the parliament as the legislator. However, in comparative constitutional law and practice, there are examples of authentic interpretation of the provisions of other regulations, at the constitutional (*supra*-legal) and the bylaw (*infra*-legal) level. Although there are numerous papers on authentic interpretation (e.g., Antić, 2015; Berner, 2016; Endicott, 2020; Giunio, 2005; Huels, 2012; Rodin, 2005; Struić, 2016a, 2016b, 2018, 2019, 2021), which mainly concern the interpretation of laws, authentic interpretation of constitutional provisions so far has not been in the focus of research attention. Starting from the latter, the paper examines, firstly, whether Croatian parliamentary law¹ empowers Croatian Parliament, as a constitution-maker, for giving an authentic interpretation of the Constitution of the Republic of Croatia. Secondly, the paper examines whether the Parliament has the power to give an authentic interpretation of constitutional provisions in the parliamentary law of other

*The views expressed in this paper are those of the author and do not represent the views of the Croatian Parliament. All translations into English are by the author, unless stated otherwise.

¹ Parliamentary law is a system of constitutional, legal, and procedural norms that refer to the parliament as a „constitutional and political representative of people's sovereignty (...)“ (Bačić, 1999, 124).

former federal units (republics) that were a part of the former Socialist Federal Republic of Yugoslavia (SFRY) in which the institute of authentic interpretation is applied: the Republic of North Macedonia, the Republic of Slovenia, and the Republic of Serbia.

To this end, after the first, introductory part, the second part of the paper briefly outlines the main features of authentic interpretation and some of the key critiques of that institute, and the third part gives an overview of its historical sources. The fourth part analyzes relevant Croatian regulations, while the fifth part discusses the regulations of other states of the former SFRY. In the sixth, final part of the paper, concluding remarks are stated. Bearing in mind that this is a topic that has not been the subject of research so far, it is expected that the results will provide some new insights into the interpretive role of the parliament and stimulate scientific interest in further research on this topic.

II. MAIN FEATURES AND CRITIQUES

There are four main features of authentic interpretation (Struić, 2016a): 1) it clarifies the (true) meaning and content of the norm contained in the regulation; 2) it is considered as an integral part of the interpreted regulation, and it represents a single entity with it; 3) it has retroactive (*ex tunc*) effect and forms an integral part of the interpreted regulation from the date of its entry into force; 4) it is binding on everyone (*erga omnes*). In mentioned features, some authors find a place for several criticisms: for example, that the authentic interpretation violates the constitutional prohibition of retroactivity (because it acts *ex tunc*), the principle of separation of powers (because regulations should be interpreted only by the courts) and the principle of democratic pluralism (because the possibility of public participation is reduced), and that it has an ideological and undemocratic background (Giunio, 2005, 2006; Rodin 2005).

Some of the criticisms were answered by the Constitutional Court of the Republic of Croatia (2004a, 2007a) which expressed the view that the power of the parliament to give an authentic interpretation of legal provisions derives from its constitutional power to pass laws, and that it does not violate the principle of separation of powers by encroaching on the judiciary because legal provisions, for which an authentic interpretation is given, are interpreted abstractly, and not in relation to specific cases. The Constitutional Court of the Republic of Croatia (2007a) pointed out that the authentic interpretation applies only to cases that are being resolved and will be resolved after the authentic interpretation enters into force, which is why, in principle, the effect of such an interpretation is seemingly retroactive, because it only determines the meaning of a provision of a law that has already entered into force. A similar view, according to which authentic interpretation only determines the legal meaning of the interpreted norm, exists in the practice of the Constitutional Court of the Republic of Slovenia (1999) and the Constitutional Court of the Republic of Macedonia (2013). Regarding criticism of the principle of democratic pluralism, some authors point out that the rules of procedure of the parliaments of the former SFRY, which regulate authentic interpretation, contain various instruments of public participation (Struić, 2021) which can influence the views in the debate, and that it could not be spoken of as a relic of the past, faithful to totalitarian practice (Struić, 2018).

III. HISTORICAL SOURCES

The sources of the concept according to which only the legislator can be the authentic interpreter of the law can be traced back to the Codex Iustinianus² of 529, and the Justinian's Digesta³ of 533, which were based on the idea that the people delegate legislative power to the ruler for the common good, through the *lex regia*, or (later) *lex de imperio* (Iancu, 2012), on the basis of which the ruler could pass and interpret regulations in a generally binding manner. Since Roman law was applied in the countries of Central and Western Europe in the 15th and 16th century, an authentic interpretation was incorporated into several legal documents at the time (e.g., Alvazzi del Frate, 2014; Struić, 2016a).

For example, according to Article 7 of the Ordinance of Louis XIV (1667), the judges were forbidden to interpret certain provisions in cases of doubt and difficulties in their application, with the obligation to stop the proceedings until they find out the true will of the legislator. Also, a similar provision was contained in Article XIII of the Code of Joseph II, Holy Roman Emperor of 1786 (Neumann, 1992) which

² „Quis legum aenigmata solvere et omnibus aperire idoneus esse videbitur, nisi is, cui soli legis latorem esse concessum est?“, or: „Who will be considered capable of resolving the ambiguities of the law and clarifying them for everyone, but the one who is the only one allowed to pass the law (i.e. the legislator)?“ (Romac, 1988, 338). „Eius est interpretari legem, cuius est condere.“, or: „Laws must be interpreted by on who is authorized to pass them. (Authentic interpretation of the law is given by the legislator.“ (*Ibid.*, 392).

³ „Quod principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat“ (Mommsen, 1870: 14), or: „Everything that pleases the ruler has the power of law, because by the royal law (*lege regia*), which was passed before his reign, the people hand over to him and transfer to him all their rule and authority.“ (Stres, 2001, 174).

resulted in the judges' mechanical application of regulations to individual cases and their frequent inquiries to the legislature. Realizing that this was a long-term unsustainable situation, with the amendment to the Code of 22 February 1791, Leopold II, Holy Roman Emperor, repealed this provision and authorized judges to ask the crown (legislator) for interpretation only in cases of unclear laws from which it is not possible to read the true intention of the legislator (Derenčin, 1880). Such a legal arrangement was valid until the entry into force of the Austrian General Civil Code (1811) which applied, *inter alia*, in Croatian territory.⁴ Pursuant to paragraph 8 of the General Civil Code, the legislator had the power to interpret the law in a manner that binds everyone equally, and such an interpretation was applied to all legal cases that had yet to be decided, and was considered as an integral part of the interpreted law with retroactive effect (*Ibid.*). The Code was applied in Croatian territory until the entry into force of the Law on the invalidity of legal regulations adopted before 6 April 1941 and during the enemy occupation (1946).⁵

On the other hand, under the influence of the Soviet theory of state and law (Struić, 2018) and the understanding of the role of the Communist Party in representing class interest as an authentic interpreter of the will of the working class (Rodin, 2005), the Constitution of the Union of Soviet Socialist Republics (USSR) of 1936 established a normative framework by which the power to interpret USSR laws belonged to the Presidium of the Supreme Soviet of the USSR until 1988, and after the constitutional revision of 1988 to the Supreme Soviet of the USSR as the highest legislative body (until 1990). Conceptions of the Soviet doctrine of the state and law on the authentic interpretation were adopted by Eastern European and communist states (Struić, 2018) and incorporated such an interpretation into their constitutional framework.

The influence on the introduction of the institute of authentic interpretation in the legal system of the Federal People's Republic of Yugoslavia (FPRY) is generally attributed to the Constitution of the USSR of 1936 (e.g. Giunio, 2005, Rodin, 2005). Namely, the Constitution of the FPRY of 1946 prescribed the power of the Presidium⁶ of the National Assembly of the FPRY to give the so-called obligatory interpretations of federal laws, and after the abolition of the Presidium in 1953 that power was entrusted to a special parliamentary commission for the interpretation of laws (1953-1963), then to the Federal Assembly (1963-1974); after that, the power to give authentic interpretations of federal laws was entrusted to the Federal Council and the Council of Republics and Provinces (1974-1990). Federal constitutional solutions were taken over at the republican level, so the Croatian Parliament incorporated such provisions on obligatory interpretation into the Constitution of the People's Republic of Croatia (PRC) of 1947, and then into later constitutions, prescribing the power to give obligatory interpretation to the Presidium (until 1953), special parliamentary commission for the interpretation of laws (1953-1963), and, finally, to the Parliament of the Republic of Croatia (1963-1990). Although such power was explicitly prescribed at the constitutional level from the Constitution of 1947 to the Constitution of 1990, after 1990 it was explicitly prescribed only by parliamentary rules of procedure. Lastly, of all the six republics that made up former SFRY, only the Republic of Croatia, the Republic of North Macedonia, the Republic of Slovenia, and the Republic of Serbia have retained the authentic interpretation in their legal system, while Montenegro abandoned it in 2010, and Bosnia and Herzegovina in 2015.

Furthermore, it is worth noting that the authentic interpretation is present in canon law. Namely, in the Middle Ages, canon law accepted the Roman law principle that the one who makes laws is authorized to interpret them (Huels, 2000). Bull *Benedictus Deus*, by which Pope Pius IV 1564 confirmed the conclusions of the Council of Trent, forbade any unauthorized interpretation, and established an obligation to address the Pope (as legislator) whenever doubts arose about the interpretation (Alvazzi del Frate, 2014). The Code of Canon Law (*Codex iuris canonici*) of 1917 – as the first official code of the Catholic Church, which remained in force throughout the Roman Catholic (Western) Church until the proclamation of the new Code of Canon Law in 1983 – explicitly stipulated that the law shall be interpreted by the legislature, his successor or the one to whom they gave that authority. A similar provision is contained in the Code of Canon Law⁷ of 1983, which is still in force today, according to which laws are authoritatively interpreted by the legislator or the person to whom he has given that authority. An identical provision is contained in the Code of Canons of the Eastern Churches⁸ of 1990 (*Codex canonum ecclesiarum orientalium*).

⁴ The Code entered into force in 1812 in the Habsburg hereditary lands and the Military Frontier, and in other Croatian territories under Austrian rule (Dalmatia, Istria) it was gradually introduced in 1814-1820, while in Hungary, Croatia, and Slavonia it was introduced in 1852 and entered into force 1853. See more: Čepulo, 2012.

⁵ Due to the need to fill legal gaps, the Law on the manner of application of legal regulations adopted before 6 April 1941 (1991), stipulates that the legal regulations in force on 6 April 1941 (i.e. on the day of the beginning of the Second World War in Croatia) continue to apply as legal rules in the Republic of Croatia, under the prescribed conditions. However, some authors (e.g. Giunio, 2005) point out that paragraph 8 of the General Civil Code has not been transposed into Croatian law and has not been applied in the former SFRY or in Croatia, because it has already been regulated by positive regulations (Struić, 2016a).

⁶ It was a body of parliament elected by the National Assembly of the FPRY.

⁷ See Canon 16 paragraph 1. On the mentioned Code, as a relevant source of law in the Croatian legal system, see Petrak, 2020.

⁸ See Canon of 1498 paragraph 1.

IV. NORMATIVE FRAMEWORK IN THE REPUBLIC OF CROATIA

The power of the Croatian Parliament to give authentic interpretations is not *explicite* prescribed in the Constitution (1990) but it derives from Article 81 subparagraph 2 of the Constitution which prescribes its power to pass laws, and from Article 159 of the Rules of Procedure of the Croatian Parliament (2013) which stipulates that the Parliament enacts laws and gives authentic interpretations of individual provisions of laws. The procedure for authentic interpretation is regulated by Articles 208-210 of the Rules of Procedure, and the provisions governing the legislative procedure are applied *mutatis mutandis*, with a total of four phases: first, a proposal is sent to the competent working body to assess its validity; second, the opinions necessary to assess its validity are provided; third, there is an assessment of its validity; fourth, a proposal for a decision on giving (or not giving) an authentic interpretation is discussed at a plenary session, and a decision is made (Struić, 2016b). A proposal for an authentic interpretation of the law can only be submitted by authorized proposers of the law (MPs, deputy clubs, working bodies of the Croatian Parliament or the Government).

However, neither the Constitution nor the Rules of Procedure of the Croatian Parliament provide an explicit answer to the question of whether the Croatian Parliament, as a constitution-maker, is empowered to give an authentic interpretation of constitutional provisions. Therefore, the question is whether the power of the parliament to give an authentic interpretation of the provisions of the Constitution should be considered to derive from its power to decide on the adoption and amendment of the Constitution.⁹ Or, having in mind the fact that the Constitution prescribes only the power to give an authentic interpretation of the law (therefore, not other regulations), could it be concluded that the Croatian Parliament does not have the power to authentically interpret the Constitution?

Unlike the positive regulations, the Rules of Procedure of the Parliament of the Republic of Croatia of 27 March 1992 explicitly stipulated that the Croatian Parliament “gives an authentic interpretation of the Constitution and laws” (Article 134 paragraph 1). All citizens, their organizations and associations had the right to submit the initiative to give an authentic interpretation of the Constitution, but the right to submit a proposal for such an interpretation – which was, then, sent to the parliamentary Constitutional Commission to assess its validity – belonged only to the President of the Republic, President of the Croatian Parliament, working bodies, 30 deputies, the Government, and the Constitutional Court (Article 188). However, as early as 24 September 1992, with the entry into force of the Rules of Procedure of the House of Representatives of the Croatian Parliament (1992) there was no longer a provision on the power to give such an interpretation of the Constitution. Moreover, the provision on the mentioned power of the parliament and on the procedure for giving such an interpretation of the Constitution was not noticed neither in previous nor in later rules of procedure,¹⁰ nor in any other regulation. In addition, no authentic interpretation of the constitutional provisions was found in the Official Gazette of the Republic of Croatia.

The current Croatian normative framework does not prescribe the power to give an authentic interpretation of the provisions of bylaws. The reasons for such an approach are primarily revealed by the practice of the Constitutional Court of the Republic of Croatia (2007b) according to which enactors of the bylaws do not have the power to give authentic interpretations due to the constitutional prohibition of their retroactive effect. Namely, Article 90 paragraph 4 of the Constitution of the Republic of Croatia prescribes that “laws and other regulations of governmental bodies and bodies vested with public authority shall not have retroactive effect”. The legal *ratio* of this prohibition stems from the requirement of legal certainty and the rule of law because only regulations that citizens are aware of can guarantee their ability to predict the consequences of a particular act or omission, and to align their act or omission with those consequences (Pauwels, 2013).¹¹ However, considering the possibility of specific social circumstances in which it is necessary to deviate from the principle of prohibition of retroactivity due to the existence of exceptionally justified reasons, the Constitution stipulates that only “individual provisions of a law may have a retroactive effect” (Article 90 paragraph 5). Having in mind that the mentioned constitutional exception applies only to the provisions of the law, and not to other regulations, it follows that the individual provisions of other regulations (*infra*-legal, as well as *supra*-legal) do not

⁹ In a separate opinion annexed to the Ruling of the Constitutional Court of the Republic of Croatia (2004b) of 28 January 2004, one of the constitutional judges pointed out that “it is inadmissible and impossible that the Constitutional Court itself determines the substantive meaning of the constitutional provision, because this is reserved for the Parliament, which is authorized to give an authentic interpretation”. The power of the Parliament to adopt and amend the Constitution is regulated by Article 81 subparagraph 1 of the Constitution.

¹⁰ Article 158 of the Rules of Procedure of the Parliament of the Socialist Republic of Croatia (1965) stipulated that the Parliament gives an authentic interpretation of the law “and other acts” it enacts. However, the remainder of that provision shows that “other acts” implied social plans, decisions, declarations, resolutions, recommendations, and conclusions, but not the Constitution. In later rules of procedure, the wording “and other acts” was no longer used, but only the power of the parliament to give authentic interpretations of the law.

¹¹ Therefore, Article 90 paragraph 3 of the Constitution prescribes *vacatio legis*, a period between the publication of a law and its entry into force that enables citizens to become acquainted with the law that will apply to them after it enters into force.

have retroactive effect, which would lead to the conclusion that authentic interpretation – whose retroactive effect is one of its main features – is not allowed for any regulation other than the law, and that the Croatian Parliament does not have the power to give an authentic interpretation of the Constitution. But then, who has the power to give such an interpretation, if not the constitution-maker?

Given the complexity of the social reality regulated by abstract legal norms, it is very difficult to expect that these norms can be clearly and unambiguously applied to a variety of specific cases. Therefore, it is generally believed that it is the judge who should find the answer to the question what to do when the norm to be applied has several meanings or does not give a clear answer to a specific question (e.g. Zierlein, 2000). Since courts adopt decisions on the basis of the “Constitution, laws, international treaties and other valid sources of law” (Article 118 paragraph 3 of the Constitution), judges apply constitutional, legal and other norms in specific cases and give their interpretations. From this perspective, the Constitutional Court of the Republic of Croatia (2014) points out that the task of courts is to “interpret legal norms based on the goal and purpose which the legislator wanted to achieve by prescribing them and to apply the relevant norm in accordance with the specific circumstances of the case”. In doing so, no constitutional provision may be interpreted in such a way as to result in unconstitutional consequences (Constitutional Court of the Republic of Croatia, 2017). However, only the Supreme Court of the Republic of Croatia, as the highest court, has the constitutional task of ensuring “uniform application of laws and equality of all in its application” (Article 119 paragraph 1 of the Constitution), which means that all courts are obliged to respect its legal views (Constitutional Court of the Republic of Croatia, 2010).¹²

At the same time, judges, just like other citizens, must adhere to those interpretations of the Constitution which the Constitutional Court provides in its decisions and rulings. This follows from the Constitutional Act on the Constitutional Court of the Republic of Croatia (1999) according to which the “decisions and the rulings of the Constitutional Court are obligatory and every individual or legal person shall obey them” (Article 31 paragraph 1). Some authors argue that constitutional courts, as guardians and protectors of the constitution, are called upon to establish the true meaning of the will of the constitution-maker (Stalev, 2000), and that interpretations of constitutional courts are final, binding and, according to their effect, they should be considered authentic¹³ (Böckenförde, 1999/2017). However, interpretations of the Constitutional Court could not be authentic *per definitionem* – although its decisions and rulings are binding and must be respected by everyone – because authentic interpretations of regulations can only be given by their enactors.¹⁴ Even when Article 250 of the Constitution of the Socialist Federal Republic of Yugoslavia of 1963 prescribed the power of the SFRY Constitutional Court to determine the meaning of a regulation, if it found in the assessing its constitutionality and legality that the regulation was not contrary to the federal Constitution or federal law, it was not some special interpretative power of the SFRY Constitutional Court, but “a special decision-making technique” (Testen, 2000, 276) which does not represent an authentic interpretation.

Therefore, the notion of authentic interpretation should not include examples of official interpretations of constitutional provisions that are authorized to be given by the constitutional courts of some states, such as Ukraine,¹⁵ or the Slovak Republic.¹⁶ It follows that there is no power of the Constitutional Court to give an authentic interpretation of the provisions of the Croatian Constitution, nor of any other body of public authority.

V. IUS INTERPRETANDI IN COMPARATIVE PERSPECTIVE

There are various examples of the regulation of authentic interpretation in comparative parliamentary law. In some states the institute of authentic interpretation is regulated at the constitutional level, but

¹² Moreover, Article 40 paragraph 2 of the Law on Courts (2013) stipulates that the legal understanding (interpretation) accepted at the session of all judges, or the judicial department of the Supreme Court, the High Commercial Court, the High Administrative Court, the High Criminal Court, the High Misdemeanour Court and the County Court department shall be binding on all second-instance councils or individual judges of that department or court.

¹³ In the Ruling of the Constitutional Court of the Republic of Croatia of 14 September 2020 one of the judges expressed the view that “the Constitutional Court (...) is the authoritative interpreter of the Constitution”. In addition, in the Ruling of the Constitutional Court of the Republic of Croatia of 21 February 2017 one of the judges expressed the view that “constitutional terms should be interpreted by the Constitutional Court” and that “the Constitution (...) is what the Constitutional Court says the Constitution is”.

¹⁴ Although it is generally believed that an authentic interpretation of a regulation can only be given by its enactor (see e.g. Antić, 2015; Berner, 2016; Struić, 2016a; Vidaković Mukić, 2015), i.e. that it is such an interpretation “in which the creator and interpreter coincide” (Pravni leksikon, 2007, 52), some authors, such as Hans Kelsen (1967), under the notion of authentic interpretation also mean the interpretation of a norm by a law enforcement body, and especially by the courts of last instance (*Ibid.*, 355), which also *de facto* create law. Having in mind that the notion of authentic interpretation – as an interpretation of the legal norm given by its enactor – is predominantly represented in the literature, this paper adheres to this understanding and the term authentic interpretation is consistently used in the described meaning.

¹⁵ See Article 147 paragraph 1, and Article 150 of the Constitution of Ukraine (1996). The provisions on the interpretative power of the Constitutional Court are further elaborated in the Law on the Constitutional Court of Ukraine (2017).

¹⁶ See Article 128 of the Constitution of the Slovak Republic (1992).

without its elaboration in their parliamentary rules of procedure (e.g. in the Kingdom of Belgium,¹⁷ the Hellenic Republic¹⁸ and the Grand Duchy of Luxembourg¹⁹), while in some other states the *ius interpretandi* of the parliament is not explicitly contained in the constitution, but in the parliamentary rules of procedure, which also regulate the procedure for preparing and giving an authentic interpretation (e.g. in the Republic of Slovenia²⁰).

Furthermore, there are states that have regulated this matter by law and rules of procedure (e.g. the Republic of Serbia²¹), constitution and rules of procedure (e.g. the Republic of North Macedonia²²), but also those that do not *explicite* regulate the interpretive power of the parliament and the procedure of giving authentic interpretation in constitution or parliamentary rules of procedure, but the rules on such interpretation derive from certain principles and practices (e.g. the Republic of Italy²³).

In addition, there are states that explicitly regulate, at the constitutional level, the power of parliament to give (authentic) interpretation of legal²⁴ provisions (e.g. in the Constitution of the Kingdom of Belgium), while there are examples of states entrusting the interpretative power to a parliamentary body, such as the Standing Committee of the National People's Congress, which has the power to interpret the Constitution of the People's Republic of China,²⁵ or the Finnish Parliamentary Committee on Constitutional Law (Perustuslakivaliokunta).²⁶ However, focusing this paper on states that were part of the former SFRY, which, like the Republic of Croatia, have retained the institute of authentic interpretation after gaining their independence, it was necessary to examine their normative framework to answer the question whether the parliament has the power to give an authentic interpretation of constitutional provisions.

First of all, from the constitutions, laws and the parliamentary rules of procedure of the three states of the former SFRY, it can be noticed that in the Republic of Slovenia, just as in the Republic of Croatia, the interpretive power of the parliament is regulated by the parliamentary rules of procedure,²⁷ while in the Republic of Serbia it is regulated by the law²⁸ and in the Republic of North Macedonia by the Constitution.²⁹ As in the Republic of Croatia, the procedure for giving an authentic interpretation is regulated by the parliamentary rules of procedure in the Republic of North Macedonia, the Republic of Slovenia, and the Republic of Serbia.³⁰ In this regard, in all the states of the former SFRY that have retained the institute of authentic interpretation, four phases of acting on the proposal for such an interpretation coincide (Struić, 2016b, 2021): first, a proposal is sent to the competent body to assess its validity; second, the opinions necessary to assess its validity are provided; third, there is an assessment of its validity; fourth, a proposal for a decision on giving (or not giving) an authentic interpretation is discussed at a plenary session, and a decision is made.

However, none of these regulations prescribe the interpretive power of the parliament in relation to constitutional provisions, nor the procedure for giving an authentic interpretation of constitutional provisions, but only legal³¹ provisions. Furthermore, the interpretive power and the procedure to give an

¹⁷ See Articles 84 and 133 of the Constitution of Belgium (1994).

¹⁸ See Article 72 paragraph 1 and Article 77 paragraph 1 of the Constitution of the Hellenic Republic (1975).

¹⁹ See Article 48 of the Constitution of the Grand Duchy of Luxembourg (1868).

²⁰ See Articles 107 and 149-152 of the Rules of Procedure of the National Assembly (2002).

²¹ See Article 8 paragraph 1 of the Law on the National Assembly (2010), as well as Articles 194-195 of the Rules of Procedure of the National Assembly (2010).

²² See Article 68 paragraph 1 subparagraph 2 of the Constitution of the Republic of North Macedonia (1991) and Articles 175-176 of the Rules of Procedure of the Assembly of the Republic of North Macedonia (2008).

²³ See more closely: Antić, 2015.

²⁴ It is interesting to mention that Article 58 paragraph 1 subparagraph 3 of the former Constitution of the Kyrgyz Republic (1993) explicitly stipulated that the House of Representatives shall give official interpretations of the Constitution and laws.

²⁵ See Article 67 paragraph 1 of the Constitution of the People's Republic of China (1982).

²⁶ See more details: Hautamäki, 2007.

²⁷ See Article 107 of the Rules of Procedure of the National Assembly (2002).

²⁸ See Article 8 paragraph 1 of the Law on the National Assembly (2010).

²⁹ See Article 68 paragraph 1 subparagraph 2 of the Constitution of the Republic of North Macedonia (1991).

³⁰ See Articles 149-152 of the Rules of Procedure of the National Assembly (of the Republic of Slovenia, 2002); see Articles 194-195 of the Rules of Procedure of the National Assembly (of the Republic of Serbia, 2010); see Articles 175-176 of the Rules of Procedure of the Assembly of the Republic of North Macedonia (2008).

³¹ In 1999 the Constitutional Court of the Republic of Slovenia expressed its view on the issue of authentic interpretation of laws stating, *inter alia*, that it is an integral part of the law and that it cannot be subject to constitutional or legal review, because it only determines the legal meaning of the provision to which that interpretation refers. However, in 2021 the Constitutional Court of the Republic of Slovenia assessed that authentic interpretation of laws was not in accordance with the principle of separation of powers and repealed Article 107 of the Rules of Procedure in the part which stipulates that the National Assembly gives authentic interpretations of laws. Also, the Constitutional Court repealed Articles 149-152 of the Rules of Procedure, which regulate the procedure for giving an authentic interpretation of laws, except in the part which prescribes the procedure for giving an authentic interpretation of the Rules of Procedure. Namely, the Constitutional Court emphasized that authentic interpretation enables the legislator to *ex post* influence the outcome of concrete court proceedings and thus to encroach on the constitutional powers of the judiciary and the executive. It is also worth noting that the Constitutional Court referred to a case *Stran Greek Refineries and Stratis Andreadis against Greece* in which the European Court of Human Rights (1993) has clarified that the rule of law and the idea of a fair trial prevent the legislature from interfering with the judiciary, which aims to influence the outcome of court proceedings. Due to that Decision of 2021, Slovenian parliamentary law no longer prescribes the authentic interpretation of the law, but only the authentic interpretation of the Rules of Procedure. However, it is worth noting that, in accordance with the Decision of the

authentic interpretation of constitutional provisions were also not noticed in previous regulations of these states. Moreover, from their official gazettes,³² it follows that no authentic interpretation of the constitutional provisions has been given.

The reasons for this, just as in the Republic of Croatia, could be attributed to the avoidance of possible constitutional antinomy in the regulation of this matter, especially bearing in mind that the constitutional exception to the prohibition of retroactive effect of regulations applies only to laws, which is why the prohibition of retroactivity is of an absolute nature for all other (*infra*-legal, as well as *supra*-legal) regulations. Namely, according to Article 197 paragraph 1 of the Constitution of the Republic of Serbia (2006), laws and all other general acts cannot have retroactive effect, but paragraph 2 of the same article exceptionally enables certain provisions of the law to have such effect, if required by the general interest established in the enactment of the law. Further, according to Article 155 paragraph 1 of the Constitution of the Republic of Slovenia (1991), laws, other regulations, and general acts cannot have retroactive effect, while paragraph 2 of the same article stipulates that only the law may prescribe that its individual provisions have such effect, if the public interest requires so and if it does not encroach on acquired rights.

Article 52 of the Constitution of the Republic of North Macedonia also stipulates that the laws and other regulations cannot have retroactive effect; however it is interesting that the stipulation of the constitutional exception to the rule prohibiting retroactivity does not specify laws, but generally prescribes “except in cases more favourable to citizens”. From this it can be concluded that the prohibition of retroactivity is of a relative nature not only for laws, but for *infra*-legal and *supra*-legal regulations as well, and it can be overcome by any reason that consists of a more favourable outcome for citizens. However, despite such a broad constitutional exception, the possibility of authentic interpretations of constitutional provisions should be ruled out because the constitution-maker explicitly prescribed the power of the parliament to give an authentic interpretation of laws (Article 68 paragraph 1 subparagraph 2). It follows that the interpretative power of the parliament is reserved by the Constitution itself exclusively for legal, not constitutional, provisions.

Therefore, comparative examples of the three states of the former SFRY show that the interpretive power of the parliament refers only to the authentic interpretation of the provisions of the law, but also raises the question of who has the power to give such an interpretation, if not the constitution-maker. Do the regular courts, or the constitutional courts of those states have it, or, perhaps, no one? Very similar to the Republic of Croatia, in the three considered states of the former SFRY it is generally prescribed that courts adjudicate, *inter alia*, on the basis of the Constitution, and that the decisions of constitutional courts are generally binding, final and enforceable.³³ Although the interpretations of constitutional courts contained in their decisions are called authentic by some authors (e.g. Böckenförde, 1999/2017), they could not be authentic³⁴ – as explained in the previous chapter – because authentic interpretations of regulations, *per definitonem*, can be given only by their enactor, and in a special procedure.

The latter understanding can be observed, for example, in the practice of the Slovenian Constitutional Court, which expressed the view that it is not competent to interpret provisions of the Constitution in a special procedure, but when and to the extent necessary to decide on matters within its jurisdiction.³⁵ Similarly, the Serbian Constitutional Court points out that there is no constitutional norm that would empower him as the official interpreter of the Constitution, but also that in assessing the conformity of provisions of laws, other regulations or general acts with the Constitution, the Constitutional Court in each individual case shall interpret those constitutional provisions that are relevant in that particular

Constitutional Court of 3 April 1997, the Rules of Procedure in the legal system have – “at least in the part that regulates the procedure for passing acts of the National Assembly – a hierarchical position of law, although in the formal sense it is not law” because it regulates legal relations in an abstract and original way (Constitutional Court of the Republic of Slovenia, 1997).

³² North Macedonian Služben vesnik [Службен весник], Slovenian Uradni list and Serbian Službeni glasnik [Службени гласник].

³³ The Constitution of the Republic of North Macedonia (1991) prescribes that courts adjudicate on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution (Article 98 paragraph 1), and that decisions of the Constitutional Court are final and enforceable (Article 112 paragraph 3). According to the Constitution of the Republic of Slovenia (1991), judges are independent in their performance of judicial duties and bound by the Constitution and the law (Article 125). Furthermore, the Law on the Constitutional Court (1994) prescribes that decisions of the Constitutional Court are obligatory (Article 1 paragraph 3). The Constitution of the Republic of Serbia (2006) stipulates that judge “adjudicate on the basis of the Constitution, ratified international treaties, laws, generally accepted rules of international law and other general acts, adopted in accordance with the law” (Article 144 paragraph 1). The decisions of the Constitutional Court are “final, enforceable and generally binding” (Article 166, paragraph 2). The latter provision is also found in Article 7 paragraph 1 of the Law on the Constitutional Court (2007).

³⁴ In a separate opinion annexed to the Ruling of the Constitutional Court of the Republic of North Macedonia of 2021, it is pointed out that the Constitutional Court is the body that should give an authentic interpretation of constitutional provisions that binds the enactors of bylaws.

³⁵ The same understanding is contained in the answers of the Constitutional Court of the Republic of Slovenia to the Questionnaire for XIV Congress of the Conference of European Constitutional Courts on problems of legislative omission in constitutional jurisprudence (2008a).

case.³⁶ In the Republic of North Macedonia, a similar view is shared by some authors (e.g. Karakamisheva Jovanovska, 2018; Saveski, 2020), who argues that there is no jurisdiction of the Constitutional Court or any other public authority to determine the true meaning of constitutional provisions.

VI. CONCLUSION

In search for an answer to the first question in this paper – whether Croatian parliamentary law empowers the Croatian Parliament, as a constitution-maker, to give an authentic interpretation of the Constitution of the Republic of Croatia – the relevant provisions of the Constitution and the Rules of Procedure of the Croatian Parliament have been analyzed. Although they do not provide an explicit answer to that question, the provisions of the previous parliamentary rules of procedure show that the authentic interpretation of the provisions of the Constitution was prescribed in 1992, but very soon, after only six months, such a solution was abandoned. Since 1992, the interpretive power of the parliament refers only to the provisions of the law, while the constitutional court and parliamentary practice show that in that period – neither before nor after – the Croatian Parliament did not give authentic interpretations of constitutional, but only legal provisions. The reasons for that could be found in the intention of the constitution-maker to avoid possible antinomy in regulating this matter, especially bearing in mind that the constitutional exception to the prohibition of retroactive effect of regulations applies only to laws, while for *infra*-legal and *supra*-legal regulations such a prohibition is absolute.

This raised the question of who, in that case, is the authentic interpreter of constitutional provisions, if not the parliament, as the constitution-maker. Namely, although the interpretation of legal norms in accordance with the real goal of their enactor is the primary task of courts, only the Supreme Court ensures uniform application of laws, while all courts, as well as citizens, must respect decisions and rulings of the Constitutional Court, including its interpretation of constitutional norms. However, such interpretations of the Constitutional Court – although its decisions and rulings are generally binding and must be respected by all – are not authentic, because authentic interpretations of regulations can only be given by their enactors. It follows that neither the Constitutional Court nor other public authorities are competent to give an authentic interpretation of the provisions of the Constitution. In Croatian parliamentary law, an authentic interpretation is provided exclusively for the provisions of the law, while in concrete cases the ordinary (non-authentic) interpretation of constitutional provisions is primarily given by the courts, and ultimately by the Constitutional Court. Of course, if a certain constitutional provision proves to be so vague or incorrectly applied in practice that it requires the intervention of the constitution-maker himself, instead of giving an authentic interpretation, the parliament has the power of amending it in the procedure of amending the Constitution.

In search for an answer to the second question in this paper – whether the parliament has the power to give an authentic interpretation of constitutional provisions in the parliamentary law of three republics of the former SFRY – the relevant provisions of the Constitution, laws, and parliamentary rules of procedure of the three considered states of the former SFRY have been analyzed. It was concluded that none of these regulations envisages neither the interpretative power of the parliament in relation to constitutional provisions, nor the procedure for giving an authentic interpretation of constitutional provisions. Furthermore, the interpretive power and the procedure to give an authentic interpretation of constitutional provisions were not noticed in previous regulations of these states; also, the constitutional and the parliamentary practice show that no authentic interpretation of the constitutional provisions has been given. In these three states, as in the Republic of Croatia, neither the Constitutional Court nor other public authority is competent to give an authentic interpretation of constitutional provisions. In concrete cases, the ordinary, i.e. non-authentic, interpretation of constitutional provisions is primarily given by the courts, and ultimately by the Constitutional Court, while the parliament has the power to amend vague or misinterpreted provisions in the procedure of amending the Constitution.

In addition to this topic, some other issues could be examined, such as a closer comparison of the way in which the authentic interpretation of constitutional provisions is regulated in parliamentary law of other states in which this institute is applied, as well as their parliamentary and constitutional court practices. However, these issues should be covered by special research which goes beyond the scope and purpose of this paper.

³⁶ The same understanding is contained in the answers of the Constitutional Court of the Republic of Serbia to the Questionnaire for XIV Congress of the Conference of European Constitutional Courts on problems of legislative omission in constitutional jurisprudence (2008b).

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