

CHAPTER II

LEGAL PROTECTION OF STATE, NATIONAL AND COMMUNITY SYMBOLS IN CROATIA



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1. Introduction

Symbols of communities express their basic values, historical roots, experiences, endurance, and stability. They connect members into the whole, motivate them to action, and serve as the identity basis of the community. The attitude of the state as a supra-community toward its own symbols and the symbols of other communities, among which the nation has a principal role, indicates the position of communal and individual values in the state as well as the fundamentals on which it rests.

The subject of this chapter is the constitutional and legal protection of the Croatian state symbols, national symbols, and symbols of national minorities and religious communities as the most important communities in Croatia. It analyzes normative framework in constitutional, administrative, criminal, and private law, and indicates the legal status of principal values as expressed through the symbols upon which the state and respective communities are grounded. The study is limited to this framework and does not include other symbols or slogans, or deals with hate speech, unless directly connected with the protection of the examined symbols.

The study encountered serious challenges to which it had to respond. The principal challenge was a lack of methodological, empirical, and comparative basis in the literature, which made it necessary to set the conceptual and methodological ground of the research and identify its empirical basis. An equally difficult challenge was the topical and disciplinary complexity of the research that included symbols of three different types of communities that should be examined within several legal

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disciplines. Another problem was a lack of the respective regulations in the Croatian legal system concerning national symbols, and religious symbols in particular. Finally, the contextualization of the symbolic basis proved to be a challenge, given the complex Croatian tradition that greatly affects the reception of symbols in contemporary time and often turns the respective discourse into a political debate. These challenges determined the framework of the research and shaping of its goals: providing for a review and analysis of the respective regulation, its contextualization, and any indication of deeper layers of determination.

In implementing these goals, we will first present the historical basis of the research, i.e., the process of formation of the respective symbols and their use and status over time, necessary to understand their today's reception in public, legislative policy, and legal practice. The historical overview will also provide the empirical material that will be used in defining the conceptual basis of the research, i.e., in formulating operative definitions of the examined symbols. These preliminary settings are the basis for the principal part of the research that will present and analyze the normative framework, including the main features of the case law, related to the protection of individual symbols in each of the three groups. That will include necessary contextualization and discussion on the major controversies that affected the legislation and legal practice. Finally, the study will try to identify the main structural features related to the regulation of the respective symbols and specificities of the regulation in Croatia after the proclamation of its independence.

2. Symbols of power, national and religious symbols in Croatia from the mid-nineteenth century to 1990

The formation of the modern Croatian symbols was part of the Croatian nation-building process that in the 1830s emerged in the Kingdoms of Croatia and Slavonia, an autonomous land in the Hungarian part of the Habsburg monarchy. The principal demand of the Croatian nineteenth century nation-building was territorial unification of “the Croatian lands,” parts of the former medieval Croatian Kingdom, into the single “proto-state” of the Kingdoms of Croatia, Slavonia, and Dalmatia.¹ The projected unification was not realized, yet the king acknowledged its historical basis, so the name of the Kingdoms of Croatia, Slavonia, and Dalmatia (“the Triune Kingdom”) entered into the official use as the name of the country.

1 Goldstein, 2011, pp. 61, 68. I wish to express my gratitude to my colleagues at the Faculty of Law, University of Zagreb who read and commented this paper or its parts during the writing, in particular to Doc. Dr. Marko Bratković, Prof. Dr. Aleksandar Maršavelski, Prof. Dr. Saša Nikšić and Prof. Dr. Snježana Vasiljević.

The Croatian national symbols were coined on this basis in 1848 and were soon after accepted as official symbols of the land. In that year, in accordance with the triune name of the land, the historical coats of arms of Croatia, Slavonia, and Dalmatia were merged into a single three-part coat of arms, and their characteristic colors were united in a red-white-blue flag.² The united coats of arms and the tricolor flag were immediately accepted in public use, and from the very beginning, they were used in official practice as well. Gradually, these symbols became the official symbols of the autonomous government (“state”) of the Kingdoms of Croatia and Slavonia, as well as the symbols of the virtual territorial integrity of the Triune Kingdom. The particular Croatian flag and the coat of arms were legally recognized in the Croatian–Hungarian Settlement of 1868, but neither the Settlement nor laconic decree of the Croatian–Slavonian government provided for precise description of these symbols or their elaborated protection.³ Therefore, in practice, they appeared in different forms, so the tricolor flag most often appeared with the coat of arms in the middle, but sometimes without it, the Croatian “chequered” coat of arms appeared with different number of fields (mostly 25) and different initial field (mainly white). Gradually, the Croatian “chequered” coat of arms prevailed in popular use thus becoming a single symbol of the all-Croatian national and territorial unity, even though the three-part coat of arms remained exclusive in official use until 1918 and occasionally until 1924.⁴ Different versions of the Croatian coat of arms and tricolor flags were widely used not only in Croatia–Slavonia but also in Dalmatia and other Croatian regions, as well as among Croatian émigrés in overseas countries, thus becoming widely accepted national symbols.⁵ However, even the use of this single symbol varied in regard to numbers of fields and colors of the initial field. In 1846, the ceremonial song “Our Beautiful Homeland” was composed that gradually, being performed on public events and on official occasions, became accepted as the *de facto* official anthem.⁶

Apart from the emergence of these symbols of power and national symbols, particularly important in this period was the standardization of the Croatian language. Led by Ljudevit Gaj, Croatian linguists in the 1830s shaped the variant of the Štokavian dialect grounded in the Croatian literary tradition⁷ into the common “Illyrian” (i.e., South

2 The Croatian coat of arms consisted of several red and white fields (“chessboard”); the Slavonian coat of arms consisted of a blue shield with two horizontal white beams (rivers) in the middle, separated by a red field with a marten on it, and a six-pointed star in the right-hand upper corner; the Dalmatian coat of arms presented three crowned golden lions’ or leopards’ heads on the blue shield (Jareb, 2010, pp. 17, 27, 56).

3 The ban’s decree of 1876 provided for rudimentary description of the coat of arms and the flag as well as for a few casuistic clauses on the use (Ibid., pp. 89–90).

4 Ibid., pp. 117ff, 175.

5 Ibid., pp. 118, 122ff, 207.

6 According to oral tradition the ceremonial song “Our Beautiful Homeland,” based on the poem “Croatian Homeland” by Croatian poet Antun Mihanović, was composed in 1846 by Josif Runjanin, an Austrian Army cadet of Serbian-Orthodox origin (Tomašek, 1990, pp. 30–35).

7 Ljudevit Gaj conceived his variant of the Štokavian dialect based on the written Croatian literary tradition as well as on the rather rich philological tradition of dictionaries and grammars. For more on the shaping of the Croatian language, see Šokčević, 2016, pp. 235ff)

Slavic) language, which was the basis of the projected “Illyrian” unification. Most Croats and all Serbs spoke Štokavian but neither Serbs nor Slovenes accepted “the Illyrian movement.” It soon turned into an exclusively Croatian national integration movement with the Gaj’s variant of the Štokavian as the basis of the standard Croatian language.⁸ However, the Serbian philologist Vuk Karadžić already codified the Serbian language based on the Serbian (Štokavian) vernacular.⁹ In this way, two similar languages appeared, having a common linguistic basis, yet having two different literary and cultural traditions. However, Karadžić spoke of the single Serbian language, the single literary tradition, and the single Serbian nation, declaring all speakers of the Štokavian dialect, including Štokavian Croats, to be Serbs.¹⁰ This ethno-linguistic discourse neglected the Croatian national identity and gradually became the source of serious controversies that culminated in the twentieth century, making the question of the name and features of the Croatian language a first-class political and symbolic issue.¹¹

In addition to language, one of the important Croatian identity features was the wide acceptance of the Catholic faith and its symbols as a longstanding hallmark of the Croatian tradition that accompanied the Croatian national identification.¹² Apart from that, the national romanticism of the 19th century “discovered” the continuity of cultural development in Croatia as a distinctive element in comparison to some neighboring nations, which gave rise to the idea of “the millennial Croatian culture” as one of the elements of the Croatian national identity.¹³ This element got its symbolical expression in the form of the medieval wickerwork pattern,¹⁴ which became more widely established as a national symbol between the two world wars, but did not reach the symbolic power of the coat of arms or language. The Croatian *ban*, the head of the Croatian autonomous executive, and the Croatian Diet, both of medieval origin,¹⁵ emerged in the nineteenth century as immaterial symbols of the Croatian

8 Goldstein, 2011, pp. 59–61.

9 Up to Vuk Karadžić, Serbian literary tradition was almost exclusively grounded on the “Church-Slavic language” of the Orthodox Church with hardly existing literary tradition in Štokavian (Šokčević, 2016, pp. 232–233).

10 In one of his most important articles “Serbs All and Everywhere?” Vuk Karadžić defined Catholic speakers of the Štokavian dialect as “Serbs of the Roman faith,” and consequently substituted denomination “Croat/Croatia” with various regional denominations (Miller, 1998, p. 27).

11 Goldstein, 2011, pp. 79, 176–177.

12 The Evangelical faith was not widespread in Croatian areas, where it was mainly related to the ethnic Hungarian and ethnic German population, while the “Greek-Eastern Church” (i.e., the Serbian Orthodox Church), the Jewish faith, and Islam were in principle related to ethnic Serbs, Jews, and Muslims who had settled from Bosnia and Herzegovina. The affiliation of Croats with Catholicism was not intransigent, but open to a certain degree toward these religions (Budak, 2010, p. 7; Čepulo, 2002, p. 170ff; Dobrovšak, 2014, 30ff).

13 Budak, 2010, p. 7.

14 Wickerwork pattern was widespread in the early medieval Croatian Kingdom, yet under the influence from the Langobard and Carolingian culture and not as an exclusive Croatian artefact (Budak, 2010, p. 7; Jareb, 2010, 182ff).

15 The institution of the ban enjoyed uninterrupted continuity from the tenth century to 1921, and the Diet has existed from the thirteenth century to 1918 and then again from 1939 to today, yet with breaks in four different states.

statehood and autonomous power. Finally, image of the crown of the early medieval Croatian ruler was promoted by the end of the century but only modestly exploited in practice till 1920s.¹⁶

After the disintegration of the multicultural Habsburg Monarchy in 1918, the Kingdom of Serbs, Croats, and Slovenes was founded as a nation-state of the single “three-named people” with a single Serbo-Croatian-Slovene language. The complex coat of arms of the new state that should unite coats of arms of the three “tribes” was in fact the Serbian coat of arms amended with symbols of the Croats and Slovenes. The Croats were represented with the historical Croatian coat of arms with 25 fields and the initial red field. The state flag combined the national colors of the three peoples in a new combination (blue-white-red). At first, the concept of South Slavic national unity was widely accepted among Croats, but the imposition of this idea based on the language and tradition of the most numerous and politically dominant Serbian people soon provoked revolt, which was accompanied by extensive public use of the Croatian national symbols.¹⁷

The political crisis in the country culminated in the assassination of three Croatian members of the state parliament in 1928, and the *coup d'état* of King Alexander in 1929. The king changed the country's name to the Kingdom of Yugoslavia and introduced radical Yugoslav unitary ideology. Only the public display of the Yugoslav flag was allowed and the use of national names and symbols for political purposes was banned or severely restricted. The regime was moderately liberalized after the 1934 king's assassination by radical Croatian (*Ustasha*) and Macedonian (VMRO) nationalists. The “Croatian question” was resolved in 1939 by a political compromise and formation of an autonomous unit of the Banovina of Croatia in a quarter of the state territory. The Banovina of Croatia officially accepted as its symbol the historical coat of arms with 25 fields, and initial red field, crowned over by the crown of dynasty Kardordević. The wickerwork pattern was extensively used in official communication, and the tricolor flag in practice.¹⁸

The Kingdom of Yugoslavia and the Banovina of Croatia disappeared in the short April 1941 war. Shortly afterward, Germany and Italy established the Nazi fascist puppet state, the Independent State of Croatia (ISC), under the leadership of the *Ustasha* movement that collectively persecuted the Jews, Roma, and Serbs. Soon after the founding of that state, its symbols were precisely arranged. The coat of arms of the Independent State of Croatia consisted of the historical Croatian coat of arms with the initial white field, elements of wickerwork, and the capital “eared” letter U (symbol of the *Ustasha* movement), and the same elements were incorporated

16 The symbolic use of the medieval Croatian crown was particularly intensified since the millennial celebration of the Croatian Kingdom in 1925. It was extensively used in official practice of the Banovina of Croatia (1939–1941) as well as in the Independent State of Croatia (1941–1945) (Jareb, 2010, pp. 133–134, 183).

17 Ibid., 2010, pp. 194ff.

18 Ibid. pp. 238–240.

into the red-white-blue flag.¹⁹ Other decrees banned the Cyrillic script, introduced a radical reform of orthography with the state Office for the Language responsible for the purity of the Croatian language in public use;²⁰ the wickerwork pattern was used extensively in official and public communication.²¹

On the other side, the communist-led partisan resistance movement proclaimed Democratic Federal Yugoslavia in 1943, and the federal system based upon the Soviet model was constitutionalized in 1946. Croatia, like the other six republics, was defined as the federal state with its own constitution and its own state symbols based on historical symbols (the “chequered” coat of arms, tricolor flag) that, in the spirit of Soviet heraldry, were amended with “socialist features” i.e., red star, ears of grain, anvil, sun and sea. The song “Our Beautiful Homeland,” which has been continuously performed as de facto Croatian anthem, was officially proclaimed the anthem of the Socialist Republic of Croatia in the amendment to its Constitution in 1972. The basis of the language practice in the new state was the semi-official 1954 Novi Sad Agreement among a group of linguists and writers from Bosnia and Herzegovina, Croatia, Montenegro, and Serbia on the common language of Serbs, Croats, and Montenegrins under the name Serbocroatian or Croatoserbian. However, most of the Croatian linguists, writers and other cultural actors criticized that solution as the basis for imposing the name and the language standards of the Serbian language.²² The 1974 Constitution of the Socialist Republic of Croatia²³ defined the official language in Croatia as “the Croatian standard language...called Croatian or Serbian language.”²⁴ This ambiguous definition reduced, but did not remove, tensions over the language.

Political liberalization in the second half of the 1960s was reflected in the less restricted public use of the Croatian historical coat of arms without prescribed ideological features. However, occasional yet still fairly inconsequential cases of penal persecution became more frequent after the mass repression against the nationalist “Croatian Spring” movement in 1971 and with the radicalization of Yugoslav crisis in the 1980s. The indictments primarily targeted the public use of the Croatian coats of arms and flags without “socialist insignia,” but penalties were occasionally imposed

19 It is not clear why *Ustasha*s chose the initial white field on the coat of arms—as an opposition to the coat of arms of the Kingdom of Serbs, Croats, and Slovenes/Yugoslavia, or based upon some historical document (Ibid., p. 272).

20 Samardžija, 2006, pp. 20–21.

21 Jareb, 2010, pp. 183, 275.

22 Croatian linguists recognized the common linguistic basis of the Croatian and Serbian languages, but also demonstrated the individuality of the two languages and insisted on the right of each people to call a language by its own name (Goldstein, 2011, pp. 176–177).

23 Ustav Socijalističke Republike Hrvatske, *Narodne novine*, 8/1974, 31/1981, 5/1986, 24/1989, 71/1990, 31/1990.

24 Full text of the Art. 138 of the 1974 Constitution of the Socialist Republic of Croatia reads: “Language in public use in the Socialist Republic of Croatia is Croatian standard language—standard form of the language in popular use by Croats and Serbs in Croatia that is called Croatian or Serbian language.”

for displaying the coat of arms with the initial white field or for linking national colors and religious symbols.²⁵

After the multiparty elections in Croatia in 1990, the new Croatian parliament amended the Constitution of the Socialist Republic of Croatia in July and removed ideological features from the previous state symbols, replacing the red star in the tri-color flag with the Croatian coat of arms. However, since the new Constitution of the Republic of Croatia did not provide for a precise description of these symbols, versions of the coat of arms with both white and red initial fields were used in practice until there was definite regulation of the matter in December 1990.²⁶

The transition of power and the process of building up Croatia's independence were confronted with the armed rebellion of a part of the Serbian population in Croatia, supported by the Yugoslav People's Army, Serbia, and Montenegro. The rebel forces seized almost a third of the Croatian state territory, denouncing the Croatian state and its symbols as "*Ustasha's*," and proclaimed the Serbian para-state that sought integration with Serbia and Montenegro.²⁷ The independence of the Republic of Croatia was proclaimed in such circumstances, on June 25, 1991, and recognized on January 15, 1992 by all the Member states of the then-European Economic Community. Among the conditions for recognition, these countries particularly insisted on the adoption of the broad guarantees of human rights and the rights of national minorities, in particular the rights of Serbs in Croatia.²⁸

The establishment of the new government affected the attitude toward religion and religious communities. The previous strict form of the model of separation of church and state was replaced with a cooperation (concordat) model.²⁹

3. Concepts of state symbols, national symbols, and symbols of national minorities and religious communities in Croatia

Before moving on to the analysis of particular types of symbols, it is necessary to clarify their concept and scope, in particular the specific and "fluid" concept of the national symbols.

The concept of state symbols is the easiest to define due to its formal and rather exact nature. State symbols are those that represent the state and enjoy special formal status. Conventional state symbols are the coat of arms, flag, and anthem, but each state provides specific state symbols of its own. These symbols point to

25 Jareb, 2010, pp. 311, 313.

26 Ibid., p. 343–348, 348; "*Crveno ili bijelo polje*," Jutarnji list, May 13, 2020.

27 Goldstein, 2011, pp. 212–222; Šokčević, 2016, pp. 537ff.

28 Tatalović and Lacović, 2011, p. 380.

29 Petrak and Staničić, 2020, p. 13.

the fundamentals of the state, reflect the tradition and historical experience of state-building, manifest the integrity of the state territory, and unite members of the nation–state (citizens) as its human basis. For these reasons, state symbols are also emblems of the political community of all its members (citizens) i.e., the “nation,” regardless of the ethnicity of individual members.

However, such definition of a nation is in principle applicable to Western states and nations that emerged in the synchronous processes of nation-building and state-building at the end of the 18th and through the 19th century, but not to the concept of the nation in Central Europe where nation and nation–state did not emerge simultaneously.³⁰ The concept of the nation in the countries of Central Europe therefore in principle does not correspond to the concept of the nation as a community of all citizens.

Modern nations in Central Europe, unlike Western countries and nations, were constituted as ethnocultural entities at the time when they were part of the broader empires, and in the mature stage of their nationalism, they sought for their own nation–states as a basis of their protection and development.³¹ Nation–states in Central Europe were thus formed as the states of the particular “core” or “constituent” ethnocultural nations that marked the state and its identity, while other ethnocultural entities (nations) in the state became national minorities. The concept of the nation in the countries of Central Europe in the past as well as today primarily implies the affiliation of an individual to a particular ethnocultural community established as the “core” of the political community of citizens. From this, it follows that the discussion of what Croatian national symbols are must begin with the question of what is “the Croatian nation”—only after that the concept of “the Croatian national symbols” can be defined.

The already presented historical overview indicated that the processes of the Croatian nation-building and state-building were part of the respective Central European tradition that sought for establishment of national states of particular nations.³² The respective Croatian historical experience in the nineteenth and twentieth century affected the definition of Croatia in the 1974 Constitution of the Socialist Republic of Croatia, as the nation–state of the Croatian people.³³ That definition was accepted as the basis of the definition of the Republic of Croatia in the preamble

30 Čepulo, 2019, p. 3; Smith, 1986, pp. 229, 230.

31 Smith, 1986, pp. 241–242.

32 Čepulo, 2019, pp. 4–6.

33 The Art. 1 of the 1974 Constitution of the Socialist Republic of Croatia defined Croatia as “the national state of the Croatian people, the state of the Serbian people in Croatia, and the state of the nationalities living in it.” Yugoslav constitutions and constitutional doctrine distinguished between “nations,” that constituted Yugoslavia based on the right of self-determination, secession and association, and “nationalities,” a politically correct term for “national minorities.” The decisions of the 1943 Antifascist Council of Peoples Liberation of Yugoslavia, that were seen as fundament of the Yugoslav constitutional order, identified Serbs, Croats, Slovenes, Macedonians and Montenegrins as “the nations,” and the doctrine perceived them as the constituent nations.

of the current 1990 Constitution of the Republic of Croatia:³⁴ “The Republic of Croatia is the nation–state of the Croatian people, and the state of the members of the autochthonous minorities..., and the others who are its citizens.”³⁵ The mentioned definition indicates the “constituent” meaning of “the Croatian people,” as an ethnocultural community, for the Republic of Croatia. From such a determination of the Republic of Croatia and the Croatian people (nation) follows, for example, the constitutional obligation of the Republic of Croatia provided in Art. 10 of the Constitution to guarantee special protection to parts of the Croatian people in other states. However, the “normative” part of the Constitution is based on the civic concept with the people’s sovereignty and equal rights of citizens proclaimed as the fundament of the Republic of Croatia in Art. 1 that is complemented with the rest of the Constitution. In fact, this “demos” concept predominates over “ethnocultural” concept in the general Croatian constitutional scheme³⁶ with the Croatian Constitutional Court gradually developing the concept of “the constitutional identity” that includes both dimensions.³⁷

The concept of the nation is the basis for defining the concept of the Croatian national symbols as symbols of the Croatian people as an ethnocultural and political community, which is at the same time the constituent nation of the Republic of Croatia. This is the fundamental conceptual ground upon which the national symbols can be defined more closely. In this regard, the Croatian national symbols can be defined as those whose content or nature symbolizes the Croatian nation and the affiliation of individuals to it, and which in this meaning have long been accepted by the Croatian nation as an ethnocultural and political community.³⁸ The “list” of elements of the Croatian identity compiled by the Croatian historian Neven Budak seems to match this definition: Croatian language, Latin script, affiliation to the Western civilization, affiliation to Christianity or Catholicism, millennial culture, and tradition of the statehood.³⁹

34 Ustav Republike Hrvatske, *Narodne novine*, 6/1990, 135/1997, 113/2000, 28/2001, 76/2020, 5/2014.

35 Quoted provision defines constituencies of the Republic of Croatia as a) “the Croatian people” as collective (nation), b) individual members of the 22 enumerated national minorities, and c) other citizens of the Republic of Croatia. It should be mentioned that similar definitions of national sovereignty are accepted in the preamble of the Constitution of the Republic of North Macedonia and in the Art. 1 of the Constitution of Republic of Serbia while Art. 3 of the Constitution of the Republic of Slovenia defines Slovenia as the state of its citizens but reserves the right of self-determination for the Slovenian people only. Bosnia and Herzegovina is defined as the state of three constituent peoples (Bosniaks, Croats and Serbs). The constitutions of the Republic of Kosovo and of Montenegro do not provide for such provisions.

36 Toplak and Gardašević, 2017, p. 270.

37 Ibid., 288–289. See the discourse on the concept of the constitutional identity in Croatia (Ibid., 265ff, 278ff).

38 The fact that these symbols are (primarily) national symbols of the Croatian people does not imply their “exclusivity”—the Croatian flag and the colors of the Croatian coat of arms are widely accepted among fans of the Croatian national football team regardless of their ethnicity or nation.

39 Budak, 2010, p. 7.

These are the elements that have formed the basis of national cohesion; they integrate members of the Croatian nation and provide them with distinctive features concerning other nations. Some of these elements itself have a form of a symbol such as the Latin script, others have indirect expressions such as the millennial culture represented by wickerwork, or tradition of statehood represented in the Croatian Parliament.

It seems that, based on these considerations, the principal Croatian national symbols are formal and informal variants of the Croatian “chequered” coat of arms and tricolor flag and their characteristic features (combination of red and white fields, red-white-blue colors), national anthem, name of the nation and the state, Croatian language, and Latin script, while considerably less important is the wickerwork pattern. Apart from that, we believe that the name of the nation and the name of the state should also be considered as the symbols that represent the nation and the state *de rerum natura*, and later we will provide for more arguments in favor of that.

Apart from these symbols, the main symbols of Christianity and the Catholic Church should probably be included among Croatian national symbols too, and such an attitude could be supported not only by substantive-historical reasons but also by a legal argument concerning the respective agreement of the Republic Croatia and the Holy See.⁴⁰ However, the question of “delimitation” of the national and religious dimension of the same symbol or of principal identification of the context that turns a religious symbol into a national symbol exceeds the limits of this paper. Still, some “mingled” cases will be mentioned later, and the question of regulation of religious symbols will be discussed in the respective chapter.

Part of the national symbolism belongs to the capital of cultural artefacts. The list of such potential symbols can be extensive,⁴¹ but in the chapter on national symbols only the basic regulation will be referred to, without entering into a substantial discussion on the individual symbols. We will be rigid concerning national symbolism of the natural beauties, even though some of them, such as the Adriatic islands or the Plitvice Lakes, are internationally recognized as the Croatian images. However, this paper deals with complex representation of the national identity and none of these phenomena incorporates Croatian tradition like, for example, Thingvellir, the rocky seat of the Iceland’s medieval “parliament.”

40 The preamble of the Agreement between the Holy See and the Republic of Croatia on Cooperation in the Field of Education and Culture points to “the irreplaceable role of the Catholic Church in the education of the Croatian people and its historical and substantive role in the social, cultural and educational fields” and to the fact that “most citizens of the Republic of Croatia are affiliated with the Catholic Church.” See the Law on the Ratification of the Agreement between the Holy See and the Republic of Croatia on Cooperation in the Field of Education and Culture (Zakon o potvrđivanju Ugovora između Svete Stolice i Republike Hrvatske o suradnji na području odgoja i kulture, *Narodne novine. Međunarodni ugovori*, 2/1997).

41 We can mention the image of the medieval royal crown, the 12th century Baška stone tablet in the Croatian language and Glagolitic script, the Glagolitic script itself, the image and the walls of Dubrovnik, the Zagreb Cathedral, the Ban’s Palace, the building of the Croatian Parliament, etc.

The concept of symbols of national minorities and religious communities are easier to define due to the formal or traditional definability of these communities, and because our definition of national symbols can be *mutatis mutandis* extended to symbols of national minorities as well.

National minorities are individually enumerated in the preamble of the Constitution of the Republic of Croatia, and the Constitutional Law on the Rights of National Minorities (CLRNM)⁴² authorizes the official bodies of these minorities to provide for the signs and symbols of national minorities. In addition to these formally established symbols of the national minorities, we will, analogous to the symbols of the Croatian nation, take in account unofficial variations of the coat of arms and flag, as well as the languages and scripts of the national minorities as their national symbols.

Religious symbols, whose origins are traditional, are determined by religious communities themselves on the ground of the constitutionally proclaimed separation of church and state, and guaranteed religious freedoms, while the state provides a framework for their free and equal use and protection.⁴³

Finally, it must be mentioned that the use of the term “national” in the Croatian legislation contradicts the meaning of that term in our definition of “the national symbols.” The term “national” that appears in the Croatian laws is used in its “civic” meaning and refers to the affiliation with the state or with the community of all citizens: national parks, the National Council for Science, Education and Technology, national theaters, the national classification of professions, national subsidies for elderly people, and the national pension, to name a few.⁴⁴ Obvious differences are the laws on national minorities that are founded upon ethnocultural identification and explicitly regulate symbols of national minorities (“nations,” in substantial meaning). However, we will skip over the challenge of a complex and demanding conceptual discourse that emerges from this ground and stay with our operative definitions of the key concepts, including the definition of “the national symbols” as substantially relevant for this study.

4. Constitutional and legal protection of state symbols

The conventional symbols of the state that are specially protected in the Croatian legislation are the coat of arms, the flag, and the anthem. The Law on the Coat of Arms, the Flag and Anthem of the Republic of Croatia, and the Flag and Sash of the

42 Ustavni zakon o pravima nacionalnih manjina, *Narodne novine*, 155/2002, 47/2020, 80/2020, 93/2011.

43 Ustav Republike Hrvatske, Arts. 40–41.

44 See the results for derivatives of “*nacionalno*” in the IusInfo.hr search engine.

President of the Republic of Croatia of December 21, 1990 (LCAFA),⁴⁵ proclaims that the coat of arms, flag, and anthem represent the Republic of Croatia and express affiliation to the Republic of Croatia. These symbols enjoy special protection provided by this and other laws and it seems obvious that they should be considered as the state symbols.

Apart from that, as already noted, we think that the name of the state also represents the state and therefore should be considered the state symbol too. Even though this law does not regulate it, the name of the state enjoys special protection by some other laws, comparable to the protection of the coat of arms, flag, and the anthem. The 2019 Law on Institutions in its Art. 18 implicitly defines the name of the state as the state emblem: “The words “Croatia,” “Republic,” “state” and their derivatives as well as other state emblems...”⁴⁶

As for the flag and sash of the president of the Republic, the LCAFA defines the sash as “the sign of presidential honor” and omits to define the presidential flag. Neither presidential flag nor sash enjoy the protection provided by this and other laws comparable to the coat of arms, state flag and the anthem. In fact, the sash seems to be a remnant of the period of the semi-presidential system of government (1990–2000) that was adapted to the strong personality of the first president of the Republic Franjo Tuđman. This system was replaced with a parliamentary system in 2000 by amendments to the constitution that removed the definition of the president of the Republic as “the head of the state” and essentially reduced his power. However, it seems that complementary provisions on the flag and sash passed unnoticed at the time and have remained unchanged since then. Nevertheless, all the presidents elected after Tuđman bypassed the provided use of the sash in their inaugurations as it has been perceived as “the monarchist” emblem.⁴⁷ Because of all this, it seems that the sash and the presidential flag do not have the meaning of the state symbols.

Anyway, the focal symbolic point of the Croatian state is the coat of arms. The first coat of arms and flag of the Republic of Croatia were provided by Amendment LXVI to the Constitution of the Socialist Republic of Croatia, adopted by the Croatian Parliament on July 25, 1990. The amendment defined the state symbols of the Republic of Croatia (the amendments changed the name of the republic as well) to be the historical Croatian coat of arms with 25 red and white fields, the tricolor flag with the historical Croatian coat of arms in the middle, and provided that their images shall be described by the law.

45 Zakon o grbu, zastavi, i himni Republike Hrvatske te zastavi i lenti predsjednika Republike Hrvatske, *Narodne novine*, 155/2002, 47/2020, 80/2020, 93/2011.

46 Dragan Zlatović enumerated presidential flag and sash among “the other state emblems” yet without any particular reflection to that (Zlatović, 2022, Ch. 4).

47 “*Poput Chaveza*,” *Jutarnji list*, 41 (January 2015). The use of the sash has been occasionally discussed in public but, interesting enough, it has not been the case with the presidential flag. Possible reasons are its lesser “pomposity” and more discrete use—it is much smaller than the ordinary flag and waved in the presidential residence at the outskirt of Zagreb, in some ceremonials and on the president’s car.

These provisions were accepted with only minor modifications by the Constitution of the Republic of Croatia of 22 December 1990 that also accepted “Our Beautiful Homeland” as the state anthem. The anthem was slightly changed with the verse on the whirr of the river being replaced by the verse on “the deep blue sea” that emphasized the maritime dimension of Croatia.

The images of the coat of arms and the flag are precisely described by the LCAFA. The law provides for the coat of arms that begins with a red field, and has the “crown” above it that consists of “the oldest known Croatian coat of arms” and the historical coats of arms of the Republic of Ragusa, Dalmatia, Istria, and Slavonia.⁴⁸ The law describes in details the image of the tricolor state flag with the coat of arms in the middle, and provides for the text and melody of the anthem. The law stipulates that the coat of arms, flag and anthem may be used only in the form provided by the constitution and the law, and that nothing can be changed in the coat of arms and flag. Exceptionally, the law allows parts of the coat of arms or flag to be used as integral parts of other emblems or signs if provided by the statute or other provisions of the legal persons under the condition that it does not offend the reputation and dignity of the Republic of Croatia. The use of all three symbols is free in artistic and musical creation and for educational purposes, provided that the reputation and dignity of the Republic of Croatia are not offended.

This law also regulates the official use of the coat of arms on seals and stamps, in official inscriptions, on the seats of the state and public bodies, in official acts and in other occasions provided by the law. It similarly defines the occasions and ways of displaying the flag as well as the performance of the anthem. Similar provisions, *mutatis mutandis*, refers to the use of the flag and sash of the president of the Republic. The law prohibits the public display of worn-out and damaged coat of arms or the flag of the Republic of Croatia.

The law defines the violations of individual provisions of the law. This in particular refers to the use of the respective symbols in a way that is not provided by law, or to the violations of obligation of their mandatory use, and their use in a way that offends the reputation and dignity of the Republic of Croatia, the use of damaged symbols, etc. For these offenses, only fines are provided, as well as the protective measures in the respective cases (confiscation, temporary seizure, revocation of the permission to perform particular activity).

48 Part of the professional public criticized the “crown” of the coats of arms from a heraldic and historical point of view, and part of the public was reserved (Jareb, 2010, pp. 354–355). In 2017, the proposal to review the conformity of provided description of the coat of arms with the Constitution was submitted by the citizen who argued that the “crown” over the coat of arms never existed in Croatian history and that the description of the law does not provide for a description of “the oldest known Croatian coat of arms.” The Constitutional Court dismissed the proposal as not being based on the relevant constitutional ground. Constitutional Court, U-I/1729/2017.

Certain cases related to the use of the coat of arms were decided by the Constitutional Court.⁴⁹

Special protection of the state symbols in penal law is provided by the current Criminal Code of 2011 (CC 2011),⁵⁰ which in Art. 349 provides for the criminal offense of the “violation of the reputation of the Republic of Croatia.” This article incriminates mockery, contempt or rude belittling of the Republic of Croatia, its flag, coat of arms or anthem with the sentence of imprisonment provided for up to one year. The protection of the reputation of a foreign state and the European Union and the most important international organizations is provided in the same way (CC 2011, Art. 356).

Both these incriminations are almost identical to the incriminations from Art. 151 and Art. 186 of the previous 1997 Criminal Code (CC 1997)⁵¹ with two significant differences. One is that in the Criminal Code 2011, the previous maximum sentence of three years of imprisonment has been reduced to one year. This mitigation is not explained in the Commentary of CC 2011,⁵² edited and written by principal authors of the law, but one might conclude that the *ratio* of this change was mitigation of the respective penal policy aimed to reduce obstacles to freedom of the speech and criticism of the state institutions in offenses that do not have a character of a hate speech. The law was prepared at the time that preceded the Croatian accession to the European Union in 2013 with the focus on modernization of the Croatian penal institutions.⁵³ However, this change seems to downplay the significance of the state’s reputation and the symbols that represent it.

Another indicative change, correlated with the protection of the state symbols, is present (or absent) in the already mentioned Art. 349 of the CC 2011, that omitted the last part of the sentence from the Art. 151 of the CC 1997. The omitted part referred to the protection of the reputation of “the Croatian people or ethnic and national communities or minorities living in the Republic of Croatia” (the text under the brackets was erased). The Commentary of CC 2011 explained this change by reference to the revised criminal offense of the hate speech in Art. 325 (*ex* CC 1997, Art.

49 In one case, the constitutionality of the bylaw that provided for the use of the coat of arms on the car license plates was challenged before the Constitutional Court. The Court ruled out that the regulation was in accordance with the Constitution. Constitutional Court, U-II / 4187/2018. In another case, a well-known Croatian designer that sued the Republic of Croatia before the Commercial Court challenged the use of stylized white-red fields in the government’s referendum campaign on Croatia’s entry into the European Union as a violation of his copyright. However, the Constitutional Court found that both the designer’s works and symbols used in the campaign were derivations of the original Croatian coat of arms, and rejected the constitutional complaint. Constitutional Court, U-III/511/2018.

50 Kazneni zakon (2011), *Narodne novine*, 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021.

51 Kazneni zakon (1997), *Narodne novine*, 110/1997.

52 Turković and Maršavelski, 2013, p. 419.

53 See the Introduction of Ksenija Turković, professor of Criminal Law at the Faculty of Law, University of Zagreb, and the head of the Working Group for Drafting the Criminal Code 2011. *Ibid.*, pp. xxv-xxviii.

174) whose description covers the erased content.⁵⁴ Art. 325 incriminates, among others, the public incitement to violence and hatred “directed against a group of people or a member of a group because of their racial, religious, national or ethnic affiliation, origin, color of the skin, gender, sexual orientation, gender identity, disability or any other characteristics” for which a prison sentence of up to three years is provided. Thus, the new law omitted the explicit protection of the Croatian people and protection of ethnic and national minorities in the Republic of Croatia due to their general protection on the ground of “religious, national or ethnic affiliation.”⁵⁵ According to some interpretations, the motive for this change was to avoid overlap of two criminal offenses.

The jurisprudence of the Supreme Court with accent on suspended prison sentences in such cases follows general trend of penal policy of the Croatian courts.⁵⁶

The name of the state and state symbols are also protected as intellectual property. Thus, the Law on the Seal⁵⁷ stipulates that signs containing the name or abbreviation, coat of arms, emblem, flag or other official symbol of the Republic of Croatia or some part of it as well as their imitation shall not be registered, except with the approval of the competent authority of the Republic of Croatia (Art. 9.1.9). The respective examination of the sign should consider the general appearance of the coat of arms (such as, whether it consists of red and white squares and include historical coats of arms in the crown), and not its detailed match with the legal description (such as the color of the initial field). Also, only the official signs “Republic of Croatia” and “RH” are checked, but verbal and figurative signs containing the

54 Turković and Maršavelski, 2013, p. 419.

55 In addition, note the Anti-discrimination Law (Zakon o suzbijanju diskriminacije, *Narodne novine*, 112/2012) that provides for protection from discrimination because of language, religion, or national affiliation, among others.

56 We will present two of the several decisions of the Supreme Court of the Republic of Croatia related to Art. 349, CC 2011 and Art. 151, CC 1997. The judgment of the Supreme Court from 2011 is grounded upon Art. 151 CC 1997, and refers to the group of young people who removed the flag of the Republic of Croatia from the mast near the monument to the deceased Croatian war veteran, took it and burned in a public place. In another event at the same place, they removed the state flag on the Day of the Croatian statehood. Based on the appeal of both defendants, the Supreme Court slightly reduced the previous sentences and sentenced them to four and to three months in prison, suspended to three years. Supreme Court, I Kž 940 / 10–6. The 2016 judgment of the Supreme Court of Croatia refers to the removal of the flag in Vukovar from a four-meter-high mast. The Supreme Court rejected the appeal of the state Attorney and upheld the first-instance judgment by which, pursuant to Art. 349, CC 2011, a sentence of three months’ imprisonment was imposed, which was replaced by community service for 180 hours. Supreme Court, I Kž 531/16–4. See also other decisions of the Supreme Court: I Kž 703/1998-3; I Kž 641/1999-3; I Kž 115/1997-3; I Kž 564/01-3. These cases and probably most of similar cases happened in regions that were occupied during 1990-1995 rebellion. Considering appearance of such cases in the media one could conclude that their number significantly lowered down as a reflex of general soothing of the respective tensions through the time.

57 Zakon o žigu, *Narodne novine*, 14/2019.

words “Croatia,” the abbreviation “HR” or the domain “.hr” cannot be registered, if they can be related to the state institutions.⁵⁸

Detailed provisions on the use of the coat of arms are also provided in the Law on Stamps and Seals with the Coat of Arms of the Republic of Croatia.⁵⁹ That includes misdemeanor provisions that provide for fines and protective measures that prohibit the performance of the respective activity.⁶⁰

The use of the name of the state and of the state symbols are also regulated by the Law on Institutions⁶¹ and the Law on Associations.⁶² The Law on Institutions stipulates that the name of institution cannot contain the name of the state (“Croatia,” “Republic,” “state”) or its derivatives nor it can contain the coat of arms and the flag of the Republic of Croatia, including their imitations, unless provided by law or with the approval of the Croatian government or authorized state body. The Law on Association is more flexible as it provides that these same symbols as well as the “names and symbols” of other states can be contained in the name and the sign of the association in a way that does not offend their reputation and dignity (Art. 15). The sanction in both cases is refusal of registration in the court register.⁶³

A somewhat narrower scope of protection is provided by the 2002 Law on the Legal Status of Religious Communities.⁶⁴ The law stipulates that the word “Croatia” and its derivatives, coat of arms and flag of the Republic of Croatia can be included in the name and features of a religious community in a way that promotes the reputation and dignity of the Republic of Croatia (Art. 8).

Finally, the Law on the Proclamation of Vukovar as a Place of Special Homeland Piety⁶⁵ should be mentioned. The law stipulates that only the flags of the Republic of Croatia, of Vukovar–Srijem County, and of the City of Vukovar may be displayed in the places provided by this law, and the state anthem shall be performed in accordance with the LCAFA. Exceptionally, the symbols of other countries can be displayed during the visits of foreign delegations or commemorations of deaths of foreign citizens. The aim of this law is to protect the dignity of the places where the most serious war crimes were committed in the war for Croatian independence.

Thus, in Croatia the coat of arms, flag, and anthem are explicitly considered and protected as the state symbols by the special law. The name of the state is

58 “Državni zavod za intelektualno vlasništvo. Priručnik za ispitivanje žigova,” 2015, 4.2.9.

59 Zakon o pečatima i žigovima s grbom Republike Hrvatske, *Narodne novine*, 33/1995.

60 The High Administrative Court rejected in 2013 the complaint of some citizen related to his request for approval of his personal stamp, seals and personal forms provided with the coat of arms of the Republic of Croatia, based on the argument that he is part of the direct power of the people that is above the authorities of the president of Republic, president of government and other high functionaries. Us-8946/2011-4.

61 Zakon o ustanovama, *Narodne novine*, 76/1993, 29/1997, 47/1999, 35/2008, 127/2019.

62 Zakon o udrugama, *Narodne novine*, 74/2014, 70/2017, 98/2019.

63 See also in Zlatović, 2022, Ch. 4.

64 Zakon o pravnom položaju vjerskih zajednica, *Narodne novine*, 83/2002, NN 73/2013.

65 Zakon o proglašenju Vukovara mjestom posebnog domovinskog pijeteta. *Narodne novine*, 25/2020.

also provided by law as the state symbol and enjoys protection comparable to these symbols. The flag and sash of the president of the Republic do not seem to be the state symbols even though they are regulated together with a coat of arms, flag, and anthem by the same “principal” act. Various dimension of the images and the use of the state symbols are regulated by various acts in the fields of constitutional, administrative, criminal, and commercial law in, as it seems, balanced and sufficient way that does not produce serious problems in legal practice. Removal of explicit protection of the reputation of the Croatian nation and ethnic and national minorities in CC 2011 did not provoke any particular reactions among legal practitioners or the public.

5. Constitutional and legal protection of the national symbols

In contrast to the rather developed regulations related to the state symbols, the protection of national symbols seems to be only modestly present in the Croatian legal system, yet is nevertheless burdened with controversies that occasionally provoke wider public interest. Two issues particularly stand out—the question of the Croatian coat of arms with the initial white field, and the protection of the Croatian language—while the Latin script does not provoke such interest. Other Croatian national symbols that we mentioned in previous section are hardly present in the legal regulation, except for the Croatian Parliament that enjoys protection as one of the principal institutions of power and will therefore not be included in this discourse.

We will first point to the problem of standardization and protection of the Croatian language and Latin script. Their status is in principle determined by Art. 12 of the Constitution of the Republic of Croatia. It stipulates that the Croatian language and Latin script are in official use in Croatia, and that under conditions provided by law, other languages and Cyrillic or other script can be introduced in individual local units in addition to the Croatian language and Latin script. The Constitution also guarantees Croatian citizens the right to submit petitions to the European Parliament and to the European ombudsperson in Croatian language, and to address the institutions and advisory bodies of the European Union and receive their answers in Croatian language (Art. 141).

The number of laws regulate mandatory use and the ways of use of the Croatian language and Latin script as the official language and script in representative bodies, executive and administrative bodies, administrative and judicial proceedings, education as well as in other public bodies and proceedings. It is not possible to summarize here this extensive regulation, nor is it necessary due to the “conventional” content of that regulation focused on the rules of the use of the Croatian language and not its substance. Instead, we will briefly present the balanced regulation on the

use of the language in three specific laws. The Law on Institutions stipulates that the name of institution must be written in the Croatian language and in Latin script. The Law on Commercial Companies⁶⁶ provides that the company name be written in the Croatian language and the Latin script, or in the official language of an EU Member state and Latin script, with other components written in Croatian. Both laws allow the name of an institution or company to contain certain foreign words only if they are common in the Croatian language, if there is no corresponding word in the Croatian language, or if it is a dead language. The Law on Associations is more flexible, as it provides for the name of the association to be in the Croatian language and Latin script, yet it allows it to be in the language and script of national minority or in the foreign or dead language, if that is provided by the statute of the association. Apart from that, the name of the association in the Croatian language and Latin script can also contain individual words in a foreign or dead language. The only sanction for violating these rules is the inability to register the respective entity.

These laws are rather rare example of the legal protection of the Croatian language because Croatia, unlike some European countries, does not have a “language code” or the respective legal regulation.⁶⁷ The Minister of Science and Education recommends specific language that is standard for use in schools, out of several that exist, and this recommendation is conventionally accepted in schools⁶⁸—yet one has free choice of the language standard in public and private use. Several prominent Croatian linguists and cultural actors criticize this model as generating confusion and contaminating the language, and continuously advocate the enactment of a language code. However, most linguists oppose this attitude and stand behind existing model as the one that allows spontaneous development of the language, and there are no indications that this policy will change.⁶⁹

The absence of the “substantial” language regulations might be surprising at first, given the symbolic importance of the Croatian language for the Croatian national identity and the high sensitivity of this issue throughout history. In fact, following the formation of the Croatian state and abandonment of previous political

66 Zakon o trgovačkim društvima, *Narodne novine*, 111/1993, 34/1999, 121/1999, 52/2000, 118/2003, 107/2007, 146/2008, 137/2009, 111/2012, 125/2011, 68/2013, 110/2015, 40/2019.

67 Initiators of the Croatian “language code” in 2022 referred to France, Lithuania, Russian Federation, Slovakia, Slovenia Spain and Switzerland as the countries with such law. The practical argumentation they mentioned referred to intense anglicization of the language and part of the reserves to such law they explained with a fear of analogy with the Independent State of Croatia. “*Zakon o jeziku imaju Rusi, Slovaci i Francuzi*,” *Večernji list*, 14 January 2022.

68 Currently in use in schools, based upon the recommendation of the Minister of Science and Education from 2013, is “Croatian Orthography” of the Institute of the Croatian Language and Philology. See at: ihj.hr/uploads/content/Preporuka_pravopis.pdf.

69 Proponents of the adoption of the “language code” have so far made two draft-laws that were not accepted either by the respective Ministry or Parliamentary committee. The new initiative on such a code has recently been launched among part of the cultural actors, this time with the announcement that the new bill will not provide for sanctions. The initiative was almost immediately criticized by the Institute for the Croatian Language and Philology. “*Sprema se novi zakon o jeziku*,” Index, 12 February 2022; “*Tko piše zakon o jeziku?*,” *Jutarnji list*, 1 February 2022.

constraints, there was a wave of extensive and rather chaotic use in public of terminological, grammatical, and syntactic solutions that deviated from previous standards and emphasized Croatian language specificities. One could have expected the establishment of a new language norm with the primary role of the state and the state legislation in its promotion. Indeed, some prominent linguists proposed significant changes in the language norm in line with the particular and suppressed variant of the Croatian orthography, as well as the enactment of the language code that would help establish the new norm.⁷⁰ However, all relevant state and cultural institutions declared themselves against radical changes, and all Croatian governments since that time remained opposed to the model of the state-controlled language policy.⁷¹ In the meantime, the aforementioned turbulent language practice, which covered only a very narrow segment of the language anyway, gradually vanished, and the traditionally high public sensitivity over the negation of the Croatian language calmed down.⁷² Occasional fierce discussions on language policy and the language code now take part in principle among linguists and philologists,⁷³ yet a speech of one Serbian deputy in Serbian in the Croatian Parliament still provoked reactions from the public.⁷⁴

It seems that the guarantees of the status of the Croatian language and its free and unrestrained use in the public sphere without risk of an accusation of nationalism resulted in the gradual weakening of the heated tensions. Thus, seemingly paradoxically, the establishment of the independent Croatian nation–state resulted in a weakening of the political tensions related to one of the central national symbols, as well as with the sustained position of the state concerning the regulation of the language issues.⁷⁵

70 Pranjković, 2006, p. 49.

71 Mamić, 2006, p. 69.

72 The Croatian media and public paid rather marginal interest to the news on the 2021 edition of primary school's textbook in Serbia that neglected existence of the Croatian language and stated that Croats are using the Serbian language that they call "the Croatian language." Answering to the protests of the Croatian national minority Serbian ombudsperson proclaimed it as contrary to the European Charter for Regional or Minority Languages and the Serbian Ministry of Education requested the publisher for change of the critical part of the manual. However, the definition in the manual is based on the long-standing definition of the Institute for the Serbian Language of the Serbian Academy of Sciences and Arts accepted by most of the Serbian philologists. Much bitter reactions in Croatia provoked the Serbian Law on the Cultural Heritage of 2021 that in the Art. 23.1.4 proclaimed Dubrovnik's literature production until 1867 to be a part of Serbian and Croatian cultural heritage. In Croatia, that provision was associated with Greater Serbian politics of 1991 and especially with Serbian-Montenegrin aggression on Dubrovnik. "*Sporan udžbenik*" Jutarnji list, 4 October 2021; "*Dobroslavić: Srbijanski zakon o kulturnom nasljedstvu*," Jutarnji list, 17 January, 2022; "*Priznanje Beograda*," Jutarnji list, 21 January 2022.

73 See for example, "*Hrvatski jezik neće izumrijeti*," Jutarnji list, 21 February 2022.

74 "*Panika u Saboru*," Jutarnji list, 6 November 2017.

75 For opposite interpretation of the Croatian language policy as nationalist and purist, see Kordić, 2010, pp. 16ff.

The controversies related to the language have not been characteristic for the Latin script even though it is also a national symbol with distinctive significance concerning the “Serbian” Cyrillic script. Possible reasons for this are probably less in the “abstract” and non-national denomination and features of the Latin script but more in the fact that, unlike the Croatian language, the use of the Latin script has not been seriously challenged through the history.

While the tensions related to the Croatian language have considerably calmed down, the question of the use of the historical Croatian coat of arms with an initial white field has until recently attracted considerable public attention. Public use of such a coat of arms after the proclamation of the Republic of Croatia provoked public debates in the ideologically divided country, but since its use was legitimized by the first-instance misdemeanor courts, the topic gradually lost its public attraction. Due to that, the recent judgment of the High Misdemeanor Court from August 2021 deserves particular attention, as it may have set the final legal stone on this issue.

Judgment was passed in the case of the public display of the “chequered” coat of arms with the initial white field and the inscription “God and Croats” on the beret cap, worn by the defendant at a social party at the fire station in a small town in northern Croatia. The first-instance court sentenced the defendant to 30 days of imprisonment suspended for three years on the ground of the public display of prohibited symbol and of disturbing the public order. The first-instance court pointed out that the accused wore the “chequered” coat of arms with the initial white field, which is a symbol of the Nazi-fascist Independent State of Croatia.” The court further pointed out that in history, the “chequered” coat of arms with the initial red field was established as the official Croatian coat of arms, while the coat of arms with the white field was not merely an old Croatian coat of arms but was permanently marked as an *Ustasha* emblem due to its use in the ISC, and removed from the use after the defeat of ISC.

However, the High Misdemeanor Court altered the decision and acquitted the defendant. The High Court pointed out that the reasoning of the first-instance court could be accepted only if the coat of arms with the initial white field was used exclusively during existence of the ISC, which was not a fact. Apart from that, the court noted that the coat of arms of the ISC also contained the “eared” letter U and wickerwork. The court further considered that the coat of arms with the initial white field was used both before and after the ISC and that the use of such a coat of arms does not evoke memories to it. The court’s reasoning included a historical summary on the use of the coat of arms with the initial white field from the Middle Ages to 1990. All this was the ground for the court’s conclusion that both variants of the coat of arms with the initial white and red field are historical Croatian coats of arms, and that public display of both versions did not constitute a misdemeanor.⁷⁶

It follows that the appeal court grounded its reasoning upon the value-negative definition of the Independent State of Croatia and its specific symbols, and then

76 High Misdemeanor Court, Jž 1553/2019.

concluded, *a contrario*, that other symbols used in the ISC, that were not specific to the ISC, did not express criminal nature of the ISC and should not be banned. The court then found that the coat of arms with the initial white field is one of the two versions of the Croatian coat of arms used publicly before and after the ISC, that the specificity of the ISC's coat of arms is the combination of the historical Croatian coat of arms with white field and several other elements (the "eared" letter U as the symbol of the criminal *Ustasha* movement, and wickerwork), and that therefore the plain "chequered" coat of arms with the white field is not specific to the ISC, so its public use is not illegal.

It should be mentioned that due to ambiguities related to the use and legal regulation of various symbols from the Croatian past, the Croatian government appointed in 2015 a "Council for Dealing with the Consequences of the Rule of Non-Democratic Regimes" with a plural composition of members from among the scientists. The council adopted recommendations aimed to serve as an orientation to legislation, government, judiciary, and administration in dealing with the respective forms of hate speech, yet it seems they have not reached the expected outcomes.⁷⁷

Apart from these controversies, we shall also mention a sort of legal lacuna in Croatian civil law related to the protection of national and religious symbols. Unlike Art. 2:54 of the Hungarian Civil Code,⁷⁸ Croatian Civil Law does not provide for any regulation that particularly refers to personality rights related to a person's affiliation to the Croatian nation or other national, ethnic, racial, or religious group. There also seems to be no relevant case law.⁷⁹

Nevertheless, we will present the judgment of the Supreme Court from 2000, which indicates the possibility of civil protection of national and religious symbols within the existing normative framework. It was the case of revision proceeding before the Supreme Court against the judgment of the second-instance court that confirmed the first-instance revocation of the decision of the disciplinary tribunal of a certain company to terminate the employment of the plaintiff. The committed injury consisted in tearing down of a calendar sheet with a picture of the Catholic

77 The conclusions of the council allowed an explicit ban on all *prima facie* disputed features of hatred, including a several features and slogans of *Ustasha*, Nazi, fascist and Serbian–Chetnik provenance. However, the document remained rather ambiguous in the most controversial issue (the slogan "For the Home—Ready") that essentially limited its reach. At the time of writing of this article, negotiations were under way between the Croatian government and representatives of Jewish national minority as well as other national minorities on clearer incriminations and stricter sanctions particularly motivated by the use of this slogan in hate-speech. See "Vijeće za suočavanje s posljedicama vladavine nedemokratskih režima. Dokument dijaloga," 2018, pp. 27–29.; Omejec, 2019, pp. 15ff; "Kraus opet ponovio," Jutarnji list, 21 June 2021; "Jutarnji doznaje," Jutarnji list, 23 April 2022.

78 Act V of 2013 on the Civil Code.

79 According to oral information of several experts in Croatian Civil Law Art. 1047 of the Croatian Law on Obligations (Zakon o obveznim odnosima, *Narodne novine*, 155/2002, 47/2020, 80/2020, 93/2011) that regulate the claim to remove the source of potential damage has not yet been applied in the cases related to the national or religious symbols.

church in Serbian part of Srijem and the coat of arms of the Community of Refugees and Exiles from Vojvodina.⁸⁰ The disciplinary tribunal assessed the tearing of the calendar as rude and indecent behavior toward another employee and the basis for termination of employment, but the first-instance court did not accept this argument. The Supreme Court found that the rude offense to the national feelings of the employees constituted a serious violation of duty but did not find it in this case since the injured employee explicitly stated that the plaintiff's conduct did not violate his national feelings.⁸¹ Thus, the violation of somebody's feeling of the national and religious affiliation through the violation of the national coat of arms and symbols of the Catholic faith were accepted as relevant, but not identified in this particular case.

Finally, let us mention the protection of "cultural goods of the greatest national importance for the Republic of Croatia" provided by the Law on Protection and Preservation of Cultural Goods⁸² as well as by the Criminal Code of 2011 in complementary arts. 319–321. These laws protect material and immaterial cultural heritage ("cultural goods") and provide for a systemic infrastructure and regulation of the respective issues. The denomination "national" in this case refers to the Republic of Croatia as the community of all citizens and to the protection of the respective heritage regardless of its ethnocultural or religious provenance. Of course, that also includes the "Croatian national symbols," that make far the largest part of the protected symbols, yet the law does not distinguish "the Croatian national symbols" in ethnocultural meaning as we defined them.⁸³

Overall, it seems that the establishment of the Croatian nation–state has not resulted with the advanced legal protection of the principal national symbols, as could have been expected, but on the contrary, in a kind of "sustainability" in regulation of certain sensible issues of such provenance. Thus, the discourse on the regulation of the Croatian national symbols is primarily the discourse on the lack of the regulation. Some of the interrelated reasons for that might be a "sedating" effect of the formation of the Croatian state as "the protector" of national values in general, "respective" conformity of the government that avoids regulating the issues that could endanger fragile political coalitions, and even the fear of accusations for

80 Vojvodina is the province of Serbia with the multiethnic population, including the Croatian national minority.

81 Supreme Court, Rev 1217/1999–2.

82 Zakon o zaštiti i očuvanju kulturnih dobara, *Narodne novine*, 69/1999, 151/2003, 157/2003, 100/2004, 87/2009, 88/2010, 61/2011, 25/2012, 136/2012, 157/2013, 152/2014, 98/2015, 102/2015, 44/2017, 90/2018, 32/2020, 62/2020, 117/2021, 117/2021.

83 The list of cultural goods of the greatest national importance for the Republic of Croatia, that is still in the process of formation, includes the goods regardless of their ethnocultural and religious provenance. The list was not yet visible at the internet at the time when this paper was written but was obtained directly from the Ministry of Culture. The goods not yet included in that list are protected by other laws regardless of their ethnocultural or religious provenance. It is worth to stress the difference with the already mentioned Serbian law that explicitly provides for protection of the editions of the Dubrovnik's literature tradition till 1867 as the Serbian cultural heritage (in ethnocultural meaning). See fn. 72 above.

“nationalism,” the allegedly inherited Croatian “original sin.” However, this is more a random list and not the complete answer on the question that anyway cannot be answered in this paper.

6. Constitutional and legal protection of symbols of national minorities and religious communities

Even though members of the national minorities in Croatia make up only 7.67% of the total population,⁸⁴ Croatia is one of the most multicultural countries in Europe according to the number of recognized national minorities⁸⁵ with a highly developed minority regulation. Such breadth has its origin in the influence of the international community as well as in the awareness in Croatia itself about the importance of the guarantees of minority rights for social peace. Broad guarantees of the rights of national minorities with special emphasis on the Serb minority were established during the process of Croatia’s international recognition in late 1991 and 1992.⁸⁶ The rather definite ground of this regulation was set in 2002, at the beginning of the process of Croatia’s accession to the European Union with the implementation of the guarantees of these rights being in the focus of the accession process. This institutional infrastructure was further amended and tested before the Constitutional Court, and today its principles are not questioned either by the national minorities or by the majority.⁸⁷

The protection of the rights of members of national minorities, including the protection of symbols of these communities, is based on the standards of the United Nations and European Union and documents of the OSCE Office of the High Commissioner⁸⁸ as well as on the relevant bilateral agreements concluded by the Re-

84 According to the 2011 census. The respective results of the 2021 census were not yet published at the time when this article was completed.

85 Mesić, 2003, p. 165. The preamble of the Croatian Constitution encounters twenty-two national minorities: Serbs, Czech, Slovak, Italian, Hungarian, Jewish, German, Austrian, Ukrainian, Ruthenian, Bosniak, Slovene, Montenegrin, Macedonian, Russian, Bulgarian, Polish, Roma, Romanian, Turk, Vlach, and Albanian.

86 Bandov, 2011, pp. 190–191.

87 The provisions on the fixed numbers of national minority representatives in the Parliament was challenged before the Constitutional Court in 2010 and respectively revised after its decision in 2011. Currently, Serbian national minority have three granted seats in the Croatian Parliament, Hungarian and Italian minority have one representative each, Czech and Slovak minorities together vote for one representative, and all other minorities are divided into two groups, each of which elects one common representative. See Toplak and Gardašević, 2017, pp. 265–275. This issue is still latently politically disputable, yet it is so by far as a part of a disputable Croatian electoral system in general.

88 Art. 1 of the Constitutional Law on the Rights of National Minorities directly refers to the extensive list of acts of international law and international documents.

public of Croatia.⁸⁹ Of particular importance are the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, ratified in 1997.⁹⁰

The basic constitutional preconditions for the protection of symbols of national minorities are provided in the Constitution of the Republic of Croatia, which guarantees equality of members of all minorities with other citizens. It stipulates that equality and protection of the rights of national minorities shall be regulated by the special "constitutional law" passed by the procedure for passing organic laws. In addition, the Constitution guarantees members of all national minorities the freedom of expression, freedom to use their language and script, and cultural autonomy (Art. 15), which can be reduced only by law in the case of particularly serious reasons explicitly stated in the Constitution, and under the condition of proportionality in every single case (Art. 16). As already mentioned, the Constitution explicitly provides that in addition to the Croatian language and the Latin script, another language and the Cyrillic or some other script can be provided for the official use in individual local units (Art. 12).

In addition to these constitutional provisions, the basis for the regulation of the respective rights is the already mentioned Constitutional Law on the Rights of National Minorities (CLRNM), which incorporated the highest standards of protection at the time of its adoption in 2002.⁹¹ In spite of its name, it is an organic law that has no constitutional force, but was passed by the two-thirds majority of all members of the Croatian Parliament and provides the basis for other laws that further regulate the rights guaranteed by the CLRNM. This law is complemented by the Law on the Use of Languages and Scripts of National Minorities (LULSNM),⁹² passed in 2000 by a qualified majority of the Parliament members.

The CLRNM guarantees members of national minorities the right to use their language and script in private and public spaces, the right to education in their own language, the use of their signs and symbols, cultural autonomy and the preservation and protection of cultural goods and traditions, the right to publicly manifest their faith, the right to access the media, and to perform these activities in their own language and script (CLRNM, Art. 7). This includes the right to use surnames and first names in their own language, the right to the public use of one's own language and script on signs, inscriptions, and other information, in accordance with the law (CLRNM, Art. 9–10). In addition, members of national minorities have the right to education in their own language and script, including the right to education in pre-school and educational institutions that can be established for a smaller number of students than provided for the teaching in Croatian language and Latin script. Apart

89 The Republic of Croatia has concluded such bilateral agreements with Italy, Hungary, Macedonia, Serbia, Montenegro, the Czech Republic, and Austria.

90 Tatalović and Lacović, 2011, p. 381.

91 Ibid., p. 383.

92 Zakon o uporabi jezika i pisma nacionalnih manjina u Republici Hrvatskoj, *Narodne novine*, 51/2000, 56/2000, 155/2002.

from the general part, the program of education in the language and script of a national minority must also contain content related to the specificities of the national minority, including language, history, and culture (CLRNМ, Art. 11). Several measures are envisaged to facilitate the promotion of minority content in the media and facilitate the accessibility of that media to minorities, as well as the establishment of media in their own language and script. The use of these rights is “balanced” by the instructive provision of Art. 8 of CLRNМ, which points to the interpretation and application of this and other relevant laws in a way that will provide for the respect of members of national minorities and of the Croatian people and develop understanding, solidarity, tolerance, and dialogue between them.

The basic framework for the equal official use of a minority language and script is a unit of local self-government (municipality or city) in which such use is mandatory when members of a national minority make up at least one-third of the population according to the last census. In addition, equal official use of language and script is also provided when it is set by international agreements that form part of the internal Croatian legal order as well as when it is provided by the municipality, city, or county statute (CLRNМ, Art. 12). The latter means that equal official use of the minority language and script can be introduced by the local governments even when the condition of a share of one-third of the minority population is not met.

The CLRNМ establishes the framework, and the LULSNМ provides for the conditions and methods of official use of minority languages and scripts in representative and executive bodies of municipalities, cities, and counties, and in proceedings before state administration and judicial bodies. Thus, equal use of the minority language and script may be provided by the county, for the county organs, in whose territory the language of the national minority is in equal official use in individual municipalities or cities (LULSNМ, Art. 4). Equal official use of languages and scripts in the municipality, city, and county is provided, as a rule, in representative and executive bodies, in proceedings before administrative bodies of local self-government and state administration (LULSNМ, Art. 5). The equal use of language and script is introduced, as a rule, for the whole unit, and exceptionally for a part of it and in a reduced scope (LULSNМ, Art. 6). The law specifies the way of equal use of language and script in bilingual or bi-scriptural form (such as the same font size of seals and stamps, signboards of executive and administrative bodies of local units and state administration, official materials of representative bodies, etc.) as well as bilingual and bi-scriptural forms of public documents and official forms (LULSNМ, Art. 8–9). In municipalities or cities where the language and script of a national minority are in equal official use, written traffic signs and other signs, names of streets, squares, settlements, and geographical locations are printed bilingually or multilingually (LULSNМ, Art. 10). The law also provides for the equal use of language and script before state bodies of the first-instance and legal persons with public authority and describes in detail the procedure in these cases, with bilingualism or bi-scripturalism as a rule. The Croatian language and the Latin script are used as a principle in second-instance procedures unless the parties who used the language and script

of the national minority in the first instance directly participate in that procedure (LULSNM, Art. 12–29).

According to the report of the government of the Republic of Croatia on the implementation of the CLRN for 2020, the legal assumption of a share of at least one-third of the members of a national minority was met in 27 local units that mainly provided for the harmonization of their statutes with the provisions of the CLRN.⁹³ Apart from that, the official use of minority languages and script was also provided in 26 individual units that have not met the assumption of one-third of the minority population.⁹⁴ The right to preserve traditional names, labels, names and events of importance for the history and culture of national minorities was used altogether by 32 municipalities, cities, and counties, and the right to regulate the use of flags and symbols and celebrations of national minorities by 55 local units and counties.⁹⁵

Problems in exercising certain rights from the LULSNM appeared in several units, while the right to use minority language and script in proceedings before administrative and judicial bodies was mostly ignored by the members of national minorities.⁹⁶ The situation regarding the implementation of the right to education in the language and script of national minorities was assessed as very successful.⁹⁷ However, the Committee of Ministers of the Council of Europe warned of the insufficient presence of the Cyrillic script in municipalities and on signs indicating the names of individual settlements. It also warned of the need for additional efforts to teach the minority languages and promote their use in education, public administration, and media.⁹⁸ The Bulletin of the Serbian National Council for 2021 stressed the problem of Cyrillic script in the city of Vukovar, which will be presented later, and warned about the potential lack of teachers educated in the Serbian language and culture, and on the case of destruction of the Serbian national flag in one city in the northern Croatia.⁹⁹

As a rule, the protection of the languages and scripts of national minorities in Croatia seems to be successfully implemented in regulation and in practice. However, the challenges remain regarding specific minority policy related to the

93 In 21 municipalities and two cities there were more than one-third of members of the Serbian national minority, and in one municipality more than one-third of members of the Czech, Hungarian, Slovak and Italian national minorities. Vlada Republike Hrvatske, 2021, p. 5.

94 It was the case with Italian language (the county of Istria, seven Istrian towns, and twelve municipalities in Istria), Czech language (one city and one municipality), Hungarian language (three municipalities), and Serbian language (one municipality) (Ibid., p. 6).

95 Ibid., pp. 8–9.

96 The report stresses the problems in the implementation of bilingualism or multilingualism regarding the titles of various documents, materials for sessions of municipal and city councils or county assembly, of issuing public documents, as well as problems related to the same size letters in traffic signs and written signs in traffic, names of streets and squares, names of settlements and geographical localities. Ibid., p. 6–7.

97 Ibid., p. 29.

98 Dabić, Horvat and Đaković, 2021, pp. 374, 388.

99 Ponoš and Vukobratović, 2022, pp. 46, 52–53, 59.

Roma minority¹⁰⁰ and particular problems associated with the use of the Serbian language and the Cyrillic script, mostly related to the burdens of the past. The most pronounced problem of the kind has been equal official use of the Serbian language and Cyrillic script in Vukovar that erupted in 2013. The Vukovar case indicates the importance of legal protection of symbols, but also demonstrates the limits of the regulation confronted with strong tensions related to symbols. Part of the local community in Vukovar identified the restoration of equal use of Cyrillic script as a symbolic revival of their wartime sufferings, and the Serbian community saw the denial of equal use of the Cyrillic script as a negation of their legally guaranteed rights to their own identity.

The problem erupted in the protests against the installation of bi-scriptural plaques on the state office buildings in Vukovar in early 2013, in accordance with Art. 12 of the CLRN, which provides for the official use of minority languages and scripts, as well as with the city's 2009 statutory provisions.¹⁰¹ The protesters prevented the installation of the respective plaques, demanding the delay of installation, and the new attempt resulted in open conflict between the police and the demonstrators. The new city council then passed a statutory decision exempting the entire city from enforcement of Art. 12 of the CLRN, with reference to Art. 8 of the LULSNM, which provides for the balanced application of the law. At the same time, the citizens' initiative for a referendum was launched, demanding a 50% share of the particular minority's population as a condition for the equal official use of minority language and script. The Croatian government challenged the constitutionality of the decision of the City Council statutory decision (suspension of Art. 12 of CLRN) before the Constitutional Court, and the Croatian Parliament challenged the constitutionality of the referendum question. The Constitutional Court decided on both issues in the same session on August 12, 2014. In its first decision, the court repealed the respective provisions of the city council.¹⁰² In its second decision, the court declared the referendum question as not being in accordance with the constitution, calling it irrational and as against the very identity of the Croatian constitutional

100 Cf. Vlada Republike Hrvatske, 2021, pp. 29–33.

101 According to the 2001 census, the share of the Serbian population in Vukovar was 32.88%, and according to the 2011 census, it was 34.87%, which matched the condition provided by the CLRN for equal official use of the Serbian language and script. A complementary statutory provision from 2009 was passed by the Vukovar City Council with coalition majority made by the Croatian Democratic Union (HDZ) and the Serbian Democratic Party. The main reason for the 2013 protests seems to be the dissatisfaction with the slow processing of Serbian war crimes in the Vukovar area during the mandate of the left-liberal Croatian government. However, the resistance continued during the mandates of the government of the HDZ supported by the Serbian Democratic Party. "Vukovar neće nikada biti Bykobap," Jutarnji list, January 19, 2013. "Foto: Milanoviću ne testiraj i ne izazivaj," Jutarnji list, 2 February 2013; "Sprječeno postavljanje ploča s ćirilicom," Jutarnji list, September 2, 2013; "Novi incidenti," Jutarnji list, October 8, 2013.

102 Constitutional Court, U-II/6110/2013.

state.¹⁰³ Apart from that, the court obliged the government of the Republic of Croatia to amend the CLRNM within a year in order to provide for the respective government's competence in cases when local governments fail to implement the law or obstruct their respective obligations.¹⁰⁴ In both these decisions the Constitutional Court obliged the Vukovar City Council to provide, within one year, for the regulation of the rights of members of national minorities "to the extent that does not jeopardize the very essence of these rights, but at the same time respects the needs of the majority stemming from the still living consequences of the Greater Serbia aggression in the early 1990s, and the need for proper and fair treatment of the Serbian national minority in the City of Vukovar." By this decision, the Constitutional Court in fact provided for the gradual introduction of the rights guaranteed by the LULSNM.

Following the Constitutional Court's decision, the Vukovar City Council passed in 2015 a statutory decision according to which the City Council evaluates every year conditions related to the extension of the rights of the Serbian minority, and every second year at the latest, adopts an amendment recognizing these rights. The City Council also passed a second statutory decision, according to which city councilors from the Serbian minority have the right to receive written materials in Serbian language and Cyrillic script upon their written request, and to the extent allowed by the city budget. This decision also provided for the right of Serbian minority members to the documents in Serbian language and Cyrillic script, yet only upon their demand approving their legal interest. However, the printing of the bilingual seals and stamps could be provided only after conditions for the extension of the Serbian minority rights are met. The Ministry of Administration soon suspended the second decision (conditioned right to the documents in the minority language and script), and the Croatian Parliament submitted to the Constitutional Court a request for the review of constitutionality and legality of both decisions. The Constitutional Court rejected to accept the proposal to review the constitutionality and legality of the first statutory decision (periodical evaluation of the conditions for the extension of the minority rights), referring to the historical-political conditions, yet repealed the second statutory decision (conditioned right to documents). The court also expressed concern that the rights of the Serbian minority have not been extended despite the court's decision in 2014. The court particularly emphasized that the provision on the gradual extension of these rights must not be abused and postponed indefinitely. Therefore, the Constitutional Court ordered the city council to inform the court of the respective decision of that year, warning that the court could initiate the constitutional proceeding by its own initiative. The Constitutional Court also warned the Croatian government of the obligation to adopt legal measures imposed on it in

103 The Court considered the referendum question as not being allowed by the Constitution since it challenged the basic Constitutional values. Constitutional Court, U-VIIR/4640/2014.

104 The government adopted the respective draft-law in 2015 but further procedure has been on hold since then, probably due to the estimation of the government's inability to provide for the qualified majority of all deputies. "Republika Hrvatska. Ministarstvo uprave. Prijedlog zakona," 2015.

2014, warning that it would inform the Croatian Parliament about the possible non-fulfilment of this obligation.¹⁰⁵ However, nothing happened after these warnings. In the meantime, a new census was conducted in 2021, the results of which might have a decisive legal impact on this case.¹⁰⁶

Attention in the media was also paid to the judgment of the European Court of Human Rights in the case of dismissal of Serbian ethnic origin teacher for failing to use the standard Croatian language in class, being considered unable to adapt due to his pre-retirement age. The European Court ruled that the dismissal constituted an interference into the applicant's private life that was disproportionate to the aim pursued, considering the specific postwar circumstances in Eastern Slavonia. This judgment indicates the problems as well as efficiency of international legal protection.¹⁰⁷

It is evident that the CLRN paid the greatest attention to language and script. Still, it also provided for the freedom to use (other) signs and symbols of national minorities, if they stand out along with signs and symbols of the Republic of Croatia and the minority anthem being performed after the anthem of the Republic of Croatia (CLRN, Art. 14). The competence to provide for the signs and symbols of individual national minorities belongs to the Coordination of National Minority Councils of each minority that should encompass more than half of the local councils of the respective minority. The decisions of these coordinative bodies on the symbols of their own minorities should then provide a consent of the Council for the National Minorities that consists of national minorities' deputies in the Parliament and of members of the national minorities appointed by the government upon the proposal from the organizations of the national minorities (CLRN, Art. 35–36). However, it seems that the provided procedure has not been respected in each case.¹⁰⁸ The Council for the National Minorities gave a consent to the decision of the Serbian National Council¹⁰⁹ on the flag of the Serbian national minority in 2006 and the statute of the Serbian National Council provides for description of the image of the flag of the Serbian minority (the historical blue-white-red tricolor, yet without the coat of arms) and the anthem.¹¹⁰ That flag differs from the flag of the Republic of Serbia but

105 Constitutional Court, U-II/1818/2016. Three judges attached separate opinions, and the decision provoked public debates.

106 The respective results of the 2021 census were not known at the time when this article was finished. Decline of the share of the Serbian minority in Vukovar below one-third of total population can probably "solve" the legal side of the problem but not its substance.

107 European Court, 73544/14. "ESLJP: Učitelj srpske nacionalnosti," Jutarnji list, December 17, 2020.

108 "Bez propisa," iPress, October 2, 2013.

109 CLRN, Art. 33 explicitly acknowledged status of the Coordination of the National Minority Councils to the Serbian National Council.

110 Statutarna odluka o jeziku, znamenju, simbolima i praznicima srpske nacionalne manjine u Republici Hrvatskoj, <https://snv.hr/o-vijecu/dokumenti/> (15 April 2022), Arts. 5–7.

the anthem is identical.¹¹¹ Apart from that, the unofficial coat of arms is occasionally used in practice.¹¹² Council for the National Minorities also gave a consent to the decisions on the flag, coat of arms and anthem of the Czech national minority in 2007,¹¹³ and the Ruthenian national minority in 2009,¹¹⁴ and on the flag and coat of arms of the Bosniak national minority in 2018.¹¹⁵ Hungarian, Italian, and Roma national minorities have not instituted their national coordinative bodies and therefore have not utilized their right on the officially acknowledged symbols. However, the historical Italian flag, that is also the flag of the Italian Republic, has been waved in public in the places with considerable presence of the Italian minority since the foundation of the Republic of Croatia¹¹⁶ and Roma use blue-green flag with the red wheel and anthem introduced at the First World Romani Congress in London in 1971.¹¹⁷ The Hungarian national flag is also flown in public in the places with Hungarian national minority. Art. 26 of the Law on Misdemeanors against Public Order and Peace¹¹⁸ provides for fines in case of unauthorized public display of the flag of a foreign state.

The basis for criminal law protection of the use of languages and symbols of national minorities is the Criminal Code of 2011. It provides for imprisonment of up to one year for denying a member of a national minority the right to freedom of expression or cultural autonomy, and for unauthorized denial or restriction of the right to use its own language and script (CC 2011, Art. 126). Respective protection is also realized within the already mentioned Art. 325 of the CC 2011 (hate speech),

111 The flag of the Serbian national minority does not include coat of arms that makes part of the flag of the Republic of Serbia, and has different proportions and tonality of colors (*"Bez propisa,"* iPress, 2 October 2013; Heimer 2007).

112 In practice, the coat of arms of the Serbian minority established in 1997 is used on the respective occasions, and the flag and other symbols of the Serbian Orthodox Church are used at the church ceremonies (Sekulić, 2021).

113 Flag of the Czech national minority is equal to the flag of the Czech Republic, coat of arms consists of the red-white-blue basis with the lion from the Czech national coat of arms in the middle, stylized Croatian "chequered" fields at the bottom, and inscription "Czechs in the Republic of Croatia" (Heimer, 2007).

114 Ruthenians use the Croatian state tricolor with Ruthenian coat of arms instead of the Croatian coat of arms. *"Ured za ljudska prava i prava nacionalnih manjina. O svjetskom danu Roma"; "Rusini u Hrvatskoj."*

115 Bosniak minority instituted as their symbols the variant of historical Bosnian coat of arms as well as white flag with the described coat of arms in the middle, which both essentially differs from the coat of arms and flag of Bosnia and Herzegovina. *"Hrvatska: usvojeni grb i zastava,"* PreporodINFO, 30 January 2018.

116 Italian "nationality" in the former Yugoslavia used as its symbol the Italian national flag with a red star in the middle. After proclamation of the Republic of Croatia red star was removed and the Italian national flag remained in the factual use as the symbol of Italian national minority. Art. 6 of the Statute of the Italian Union in Rijeka (Statuto dell'Unione Italiana, <http://www.unione-italiana.eu/index.php/it/documenti-fondamentali>, 15 April 2022) provides for its flag and anthem defined as Italian "national flag" and "national anthem" that are in fact the flag and anthem of the Italian Republic. *"Bez propisa,"* iPress, 2 October 2013; Heimer 2007.

117 "Romi.hr."

118 Zakon o prekršajima protiv javnog reda i mira, *Narodne novine*, 47/1990, 55/1991, 29/1994.

when unlawful acts are committed concerning racial, religious, national, or ethnic affiliation or language and other characteristics of the person.

Unlike such extensive regulation of national minority rights, particularly language and script, the regulation of the use and protection of symbols of religious communities and religious symbols in Croatian legislation is hardly present at all.¹¹⁹

The Constitution of the Republic of Croatia guarantees equality for its citizens regardless of religion (Art. 14) and provides for freedom of conscience and religion, and freedom to demonstrate faith or other belief publicly (Art. 40). According to the Constitution, all religious communities are equal before the law and separated from the state. They are free, in compliance with the law, to publicly conduct religious services, open schools, colleges, or other institutions, welfare and charitable organizations that enjoy the protection and assistance of the state in their activities (Art. 41). These are also general preconditions for the protection of religious symbols.

However, not much more than this can be said. The 2002 Law on the Legal Status of Religious Communities, which is of fundamental importance in regulating the position of religious communities, primarily protects the symbols of the Republic of Croatia (and not symbols of religious communities) when they are used as part of religious community symbols.¹²⁰ It allows a religious community that is legally part of a religious community based outside the Republic of Croatia to include the name of that community in its own name. It also provides for the administrative fairness in the use of symbols of religious communities as it prohibits the name and features of a religious community from being identical to the name and features of an already registered religious community.

The symbols are not mentioned in the agreements that the Republic of Croatia or the Croatian government signed with individual religious communities.¹²¹ They are not mentioned even in the agreements with the Holy See, including the one that stressed the historical and substantive role of the Catholic Church in the Croatian society.¹²²

However, this situation has not provoked wider public reactions or serious problems in practice even though complaints of particular groups are registered and dissatisfaction of parts of society manifested. Thus, certain atheist groups continuously complain about the presence of the Roman Catholic symbols in courtrooms, prisons, and hospitals, considering such a practice unconstitutional given the

119 On legal regulation of religious symbols in Croatia see Savić, 2021, pp. 25ff.

120 In Chapter 4, we already mentioned Art. 8 of this law which provides that the word Croatia and its derivatives, the coat of arms and the flag of the Republic of Croatia can be included in the name and features of a religious community in a way that emphasizes the reputation and dignity of the Republic of Croatia. The precondition of “emphasizing” the reputation of the state differs from the “passive” requirement of “not offending” it, which is conventionally provided in similar regulations. However, it is likely that this conceptual difference is just accidental.

121 Agreements concluded between the Republic of Croatia and individual religious communities see in: Petrak and Staničić, 2020, pp. 246–324.

122 See footnote 40.

principle of separation of church and state. The ombudsperson confirmed low scale of complaints on religious discrimination in her practice, most of them being related to the public display of religious symbols in public institutions.¹²³ On the other side, some theatre performances provoked bitter and sustained reactions from the Catholic Church and some conservative groups in 2017 and 2018 due to the insulting symbolic content of these performances, but these reactions did not receive a court epilogue.¹²⁴ All these and similar reactions obviously indicate a systemic problem but they have passed as rather isolated incidents without triggering wider reactions.

The common denominator of these objections coming from opposite political sides is a lack of regulation on the respective matters that seems to be part of a broader problem of insufficient or inadequate regulation related to issues with a pronounced religious dimension, such as the right to abortion.¹²⁵ The main reason for such situations seems to be the backlash of all Croatian governments and political parties from heated public controversies, given the potential of such debates to jeopardize fragile political balance or even endanger social peace. However, rather surprisingly, the public reactions to such challenges do not seem to correspond to their social significance—the debate on the public use of religious symbols reached only moderate level in Croatia, the mass protests and counter-protests about the right to abortion lasted rather short time and the heated debate on that issue rather quickly disappeared from the public space with only occasional re-appearances. That might be an indicator that in the Croatian society the commitment to maintain social peace and relative political stability prevails over the need for a complete regulation of these issues¹²⁶ that opens deeper questions on the regulatory politics.

123 “2020 Report on Religious Freedoms: Croatia.”

124 “*Marulićevi dani*,” Jutarnji list, 24 April 2017; “*Nadbiskup Želimir Puljić*,” Večernji list, 26 January 2018.

125 The Constitutional Court ruled in 2017 that the 1978 law governing abortion in Croatia and still in force was not unconstitutional, but called on the Croatian Parliament to pass a new law within two years that would include preventive and educational measures to make abortion exceptional. Nothing has been done in the meantime except that in May 2022 the leading conservative party (HDZ) declared that the coalition in power could not reach agreement on this issue that prevents the bill regulating abortion be sent to the Parliament. U-I-60/1991. “*Bačić: dok ne bude dogovora vladajućih*,” Jutarnji list, May 13, 2022.

126 Here we should briefly mention the research of Zrinščak and Staničić that points to a significant gap between “church religiosity” and “personal religiosity” in the Croatian society. Croatian believers of various religions are distanced from the churches of their respective faiths and critically evaluate their activities. These results provoke for more elaborate discussions (Zrinščak and Staničić, 2022, pp. 13–16).

7. Conclusion

Croatian symbols of power and principal national symbols emerged through the nineteenth century in the framework of the autonomous Kingdom of Croatia and Slavonia. From then until today, these symbols have been more-or-less continuously in use as symbols of the Croatian constitutional identity and identity of the Croatian nation as ethnocultural entity with the “constituent” meaning regarding the Republic of Croatia.

Current regulation of these and other examined symbols is characterized by developed regulation of the state symbols, rather developed yet partly sustained regulation of the national symbols, extensive regulation of symbols of the national minorities, particularly concerning language and script, and insufficient regulation of religious symbols. This situation reflects the complex internal legal, political, and social dynamics in building of the new Croatian constitutional and legal order, influences from the international environment as well as the impact of the challenges from the past.

The developed regulation of the state symbols is based upon conventional matrix and it complies to the need of symbolic confirmation of the new state. What is surprising is rather sustained or almost absent regulation related to national and religious symbols as well as rather sustained interest of public for these issues that were hard to expect concerning the frustrations from the past. Both can probably be attributed to the sense of security of the largest part of society concerning formation of the national state that provides for the principal guarantees of free use and protection of national symbols, contrary to the previous historical experiences. This sense of security seems to instigate the social conformity and reluctance to challenge existing political constellations with a of risk political and social disturbances, at the expense of resolution of the controversies of fundamental importance.

Comparison of the obviously insufficient regulation of religious symbols with the extensive regulation of the highly sensitive national minority issues, indicated the focused involvement of the international community to the national minority regulation as probably the main reason for such essentially different outcomes. That raises several questions related to the readiness of the Croatian society to face controversial yet fundamental issues in sensitive spheres of regulation. That story is by no means more complex than it appears at first sight, yet primary responsibility of the government and political elites, which by their nature have the leading role in articulation of the rational and responsible politics, can hardly be challenged.

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