Chapter IV

Legal Protection of State, National and Community Symbols in Hungary

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1. Introduction: The symbolic function of constitutional historical narrative in Hungary

Symbols and history are closely related. On the one hand, symbols develop through history. The historical origin of the symbols plays a very important, often, a main role in developing their symbolical function. The most well-known symbols, such as coats of arms, flags, or anthems, are all coming with their history that, at least concerning the Hungarian national and state symbols, will be presented in the next chapter. On the other hand, history itself can become a source of symbol. The first approach is the common historical experience of a political community. The nation is one of the most relevant factors for building up the national identity. Similarly, to the language, the religion, the common history, and the common experience of the community (nation) are very important identity determining factors. But as the present chapter proves, history itself can be seen as a symbol. Not because of the history of the symbols, neither thanks to the identity creating role of the historical experience nor by different past events, as they happened, but through the historical narrative, a particular lecture on national history can become a national symbol, which, as it will be demonstrated, is also constitutionally declared.

When looking for symbols in national constitutions, more precisely in the Fundamental Law of Hungary, it is obvious that not only constitutional provisions about traditional national or state symbols can retain one's attention. In the Hungarian constitution, the Fundamental Law of Hungary, it is evident that the presentation

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of some aspects about constitutional and political history of Hungary has a very important role. These historical events have been constitutionally declared, which means that the constitutional historical narrative has a symbolic role. Not historical facts are constitutionally declared, those are well-known and researched by historians, often also interpretating by them with different conclusions. But there are historical references in in the Fundamental Law of Hungary, getting a constitutional importance, and being relevant for establishing a constitutional narrative. This constitutional historical narrative, just like other historically related more obvious symbols also creating narratives such as national holidays, would become symbolic in a more general and abstract way. Those references are numerous in the Fundamental Law of Hungary, and, in our opinion, the narrative they tell through the constitutional text has a symbolic function.

Such an historical narrative is, first and foremost, the symbol of the continuity of the political and institutional community that the Fundamental Law simply identifies as Hungary. This narrative is also the symbol of its legality and legitimacy at the same time. By those historical references, contemporary Hungary is accepted and legally constructed because of historical elements creating its proper nature. The historical narrative not only creates identity but also strengthens the legitimacy of the political community and its institutions. But the historical narrative is most obviously also important as it would reveal some constitutional characteristics of Hungary.

On the one hand, it highlights a special and organic constitutional development, and the historical references in the Fundamental Law clearly emphasize that. On the other hand, the importance of constitutionality throughout Hungarian history is underlined by the historical narrative not only because of historical constitution but also because of its different components mentioned by the constitutional historical narrative. The separation of the monarch from the national sovereignty,[1] for example, especially with the doctrine of the Holy Crown, will have a very important meaning—more than a symbolic one, but a symbolic meaning nonetheless. And the various events chosen from Hungarian history will all add to the description and thus to the constitutional definition of Hungary—again in a very symbolic way.

The fact that the Hungarian Constitution was an unwritten constitution for many centuries will, naturally, give special importance to the lecture on the constitutional historical narrative. Not only in a symbolic approach but also in a more direct way, as the so-called achievements of the historical constitution are constitutionally defined as guidelines for constitutional interpretation.[2] Thus, history is not only a past but also a presence in the Hungarian constitutional reality. But it does not mean that history cannot also appear at a more symbolic level, such as that mentioned above.

1 Rácz, 2016, p. 16.

2 Art. R, para. 3 of the Fundamental Law of Hungary states: "The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historic constitution."

Also, the historical constitution was not a constant constitutional normativity; it has changed and developed over centuries. One of the most passionate debates about constitutional history is always about conservatism and progress in Hungarian constitutional development, and the interpretation of constitutional documents or costumes from this aspect. An organic constitutional development has, of course, its own dynamic, and scholars are analyzing and describing this evolution, but with a very important consequence as the results of their analysis about such a matter can impact the national identity[3] by defining the constitutional narrative.

By definition, every achievement about limitation by legal norms of the exercise of public power becomes very important for a constitutional history. Those achievements can as such also serve as symbolic elements for constitutionalism. They are the real symbols of Hungarian constitutionalism, which is not symbolized or not only symbolized by the Fundamental Law as a positive legal norm. Even the name (Fundamental Law) chosen for the Hungarian constitution, is demonstrating the fact that though, this is the positive source of Hungarian constitutional normativity, Hungarian constitutionalism can have other sources, guidelines. To put it in that way, the constitution's name is also symbolic as it strengthens the special function of constitutional historical narrative. The historical achievements concerning the limitation of the exercise of public power are numerous; they are mentioned in this constitutional historical narrative to serve more as symbols for constitutionalism than as valid and effective constitutional norms for constitutional interpretation. For instance, references to the separation of powers, to the independence of justice, or even to privileges from the 11th century in Hungarian history, are mostly symbolic standing for the early idea of constitutionalism in Hungarian history.

But historical narrative is not only about constitutionalism. It is, in a more general and abstract way, about the national identity. Of course, it is not always easy, solely from an academic perspective, to admit the specialty of this or that historically demonstrated character for a political or institutional community.[4] Every modern nation claims to be unique and special, but defining the different elements making them unique is a more complicated task. As for a historical narrative, this definition, in our opinion, must not be scientifically proved or developed. This is a more political role of the constitution when creating as the Fundamental Law of Hungary states not only the basis of a legal order but also "an alliance among Hungarians of the past, present and future,"[5] to give such a historical narrative once again about constitutional development to highlight the importance of constitutionalism with specific, freely chosen historical events. Those events and achievements give a constitutional interpretation of national history to bring into light some characteristics of nation's/country's political evolution, creating the Hungarian constitutional identity.

3 Eckhart, 1941, p. 3.
4 Bónis, 1942, pp. 1–2.
5 In the National Avowal of the Fundamental Law of Hungary.

Such elements for an identity creating, or in a more general way, symbolic historical constitutional narrative, can be mostly found in the constitutional preamble, the so-called National Avowal of the Fundamental Law of Hungary. First, the beginning of Hungarian constitutionalism is brought back to the foundation of Hungary by the King Saint Stephen: "We are proud that our King Saint Stephen bult the Hungarian state on solid ground." In parallel with the official national holiday of the August 20, the day of Saint Stephen recalls the founding of Hungary—the constitutional historical narrative goes back to this first historical fact. It symbolizes the ancient and continuous existence of Hungary. Also, this symbol would emphasize that the Hungarian state and, in a certain way, Hungarian constitutionalism, do not exist only from the period of modern constitutional states. This is a symbolic declaration of the thousand-year-old Hungarian state in the Hungarian constitutional narrative.

The reference to Saint Stephen also brings into light another special historical element that also has a symbolic, more general importance: as the National Avowal reminds us, he "made our country a part of Christian Europe one thousand years ago." On the one hand, the fact that Hungary as a "country" is integrated for a thousand years into Europe, which obviously should be interpreted more like a civilization than a continent, would highlight a choice of values. On the other hand, those values are not only European but those belonging to Christian Europe. Christianity and its role will be highlighted in another paragraph, also lending an historical perspective, when the National Avowal states that "We recognize the role of Christianity in preserving nationhood.," at the same paragraph, the constitutional text adds that "We value the various religious traditions of our country." So, emphasizing a special role of Christianity not as a religion but as one would, say, a cultural and a political factor in the foundation and the preservation of the state and the nation is a second element of this national constitutional narrative that apports a unique character to it. Those are symbols of a European and Christian value-based construction.

Two other important elements serving as main pillars for the structure of this historical narrative are the fights for independence related to the community's survival, the freedom of its members, and the traumas of the 20th century. The Fundamental Law declares: "We are proud of our forebears who fought for the survival, freedom, and the independence of our country," and "We promise to preserve our nation's intellectual and spiritual unity, torn apart in the storms of the last century." And concerning those storms, the National Avowal also declares: "We do not recognize the suspension of our historic constitution due to foreign occupations. We deny any statute of limitations for the inhuman crimes committed against the Hungarian nation and its citizens under the national socialist and the communist dictatorship. We do not recognize the communist constitution of 1949, since it was the basis for tyrannical rule; we, therefore, proclaim it to be invalid." And even if originally tragic, but from a more positive perspective, the National Avowal continues: "We agree with the Members of the first free National Assembly, which proclaimed as its first decision that our current liberty was born of our 1956 Revolution."

So, first, there is, in the constitutional historical narrative, a reference to the history during modernity of fights for national independence, which were the guarantee of the continuous existence of the political community and the state institutions, but also, as modern constitutionalism demands, of the freedom, the liberty of people. In the Hungarian constitutional historical narrative, the independence of the "country" must be always in connection with the protection of rights. Only an independent, sovereign Hungary can protect its citizens' rights. The symbol of fights for independence is standing for this special element, as well. That is also why even the tragic fights could be considered as successful as they contribute to the future protection of rights when the state became independent (again).

But then, the historical constitutional narrative highlights a very tragic twentieth century. This sad character of this period is repeated at the end of the National Avowal when it concludes, "After the decades of the twentieth century, which led to a state of moral decay, we have an abiding need for spiritual and intellectual renewal." The history of the twentieth century in the Hungarian constitutional historical narrative symbolizes the losses. First, after World War I, the loss of an important part of the nation's territory and Hungarian citizens. Then, during and after World War II, the loss of national sovereignty. Those historical events and facts are without a positive outcome. They explain the need for a new regime that is also important when a new constitutional order is adopted. So, here, there is no symbol of continuity, on the contrary, "the need for renewal," to quote the Fundamental Law, appears.

Finally, from a more technical, constitutional perspective, there are two other elements that must be mentioned about historical constitutional narrative even though they have not only a symbolic but also a direct effect on modern Hungarian constitutionalism. First, in an inversed chronology, to continue with the tragic twentieth century, especially, because of the loss of national sovereignty, a break is declared by the National Avowal, when it states: "We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May 1990. When the first freely elected organ of popular representation was formed." And the emphasis on the renewal the National Avowal adds also "We shall consider this date to be the beginning of our country's new democracy and constitutional order." This break even though important on a more precise constitutional level, as well, remains mainly symbolic. For instance, the acts adopted during this period, remain in force, but a distance is taken from this chapter of Hungarian history. It allows also to highlight the importance of the renewal which would be based, as it was stated, on the spirit of 1956, symbolizing the heroic fight for the national independence and citizens" freedom in the most obvious way.

The last element is the Holy Crown. The National Avowal states that "We honor the achievements of our historic constitution and we honor the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation." The chosen terminology (honoring) shows that there is a special, a lot more than symbolic meaning attributed to the historic constitution, and especially to the Holy Crown. The achievements of the historic constitutions are guidelines for the

interpretation of Hungarian constitutional norms. But, in our opinion, they also symbolize the continuity of Hungarian constitutionalism and course, its existence and its importance,

The Holy Crown is a lot more complicated "object."[6] The interpretation of its constitutional meaning in Hungarian public law created a lot of debates among scholars and politicians.[7] The constitutional preamble states that it embodies the constitutional continuity of statehood and the unity of the nation. As a contemporary symbol, it is with the concept of incorporation that its constitutional function can be and will be presented in the next chapter. According to the declaration in the National Avowal the Holy Crown embodies, so obviously not only symbolizes but also inherently holds, the continuity of statehood and the unity of the nation. Both of those two expressions, continuity of statehood and unity of nation, also give the idea that there is more than a simply symbolic, even if it is also symbolic, meaning behind this declaration. The statehood reflects the institution but in a very general and abstract way, it can be everything in relation with the institutional organization of Hungary, and the unity of the nation gives an even more wide approach for the definition of the political community.

Even though the Holy Crown but also the so-called achievements of the historic constitution play a direct role in the definition of contemporary constitutionalism of Hungary. They are, by their nature, related to history, hence, they also have a symbolic function as it appears clearly in the National Avowal as they are symbolizing the continuity and the unity of the institutional existence of Hungary as a state but also of the political community behind in a constitutionally defined way. As symbols, they are also part of the constitutional historical narrative that is, once again, as itself, a symbol. Four different elements were mentioned to demonstrate and explain the symbolism of this narrative: the reference to the founding king, to the choice of European and Christian value, the fight for independence and freedom and the tragedies of the twentieth century. Even though those are historical events, their declaration in the constitutional preamble has also a symbolic function.

2. National and state symbols in Hungary

After the analysis of the historical narrative as a symbol for Hungarian nation and state, the list of contemporary symbols is to be observed. Switching to the contemporary symbols does not mean that history will not play a very important role in this second chapter. On the contrary, the fact is that history continues to be a particularly important factor in elevating symbols for the Hungarian nation, the

6 Berténi, 1996, p. 26.
7 Eckhart, 1941, p. 4.

Hungarian state, and the Communities in Hungary. It has been stated that the main source for symbols is history, as common historical experience is one of the most relevant factors in shaping identity. It has such a function for the nation as a political community, and for the state as the institutional structure, and for the other communities being part to the Hungarian nation but distinguishing themselves with a particular identity. However, the approach is entirely different as the actual symbols can be listed, described, and presented in detail.

When introducing the Hungarian national, state symbols and the symbols of communities in Hungary, for different reasons which will be pointed out, it is important to ask two fundamental questions. Also, to list the Symbols, it is evident that those questions should be answered, especially when our list of symbols is not only based on the constitutional and legal provisions but also the practical use of those. Thanks to the answers to those questions, it will be possible to have an exhaustive list of symbols, but also it helps to categorize them for their better understanding. The first question about symbols concerns their meaning: what they are standing for, what they are symbolizing.[8] A symbol cannot exist without an object: by its nature, by definition, behind the symbol, an existing social or political reality can be revealed. Regarding the national, state, and community symbols, answering this question is not only about explaining whether the symbol is used for the national, state, and community symbols; it is also about the essential element of those symbolized, which aspect is brought into the light.

The second question that will be the first to be answered is even more complex, as it is about the reason for the existence of those symbols. Why do they exist? What is the purpose of those symbols? It has already been analyzed partially when the Hungarian history of symbols and even more evident when the symbolic role and the whole symbolism of historical narrative, of so-called common historical experience, was presented. First, however, it should be recalled and categorized so that the contemporary symbols can be listed correctly. As much as a symbol does not exist without the object that it symbolizes, it cannot exist and cannot be described and analyzed without knowing its purpose. Those purposes are as many reasons for the existence of the symbols as they are also a component of their symbolic nature. Even though symbols are often considered abstract signs for general social or political reality, they have a very pragmatic goal. The very fundamental existence of those symbols depends on that: those who can achieve that goal are the only ones we can consider as real symbols as much for a nation as for a state or any community.

Most scholars researching national, state, and community symbols agree that two functions are relevant to determining the purpose of the symbols.[9] Those symbols have a so-called external and internal function. The external function of the symbols is representation. Symbols are (and should be) representative of what they are standing for. If a symbol is not representative and does not refer to a clear

8 Halász and Schweitzer, 2010, p. 21.
9 Halász and Schweitzer, 2020.

idea of the object it is standing for, it cannot be considered a symbol. But the external function is to be complemented by the internal one. This internal function is about integration. Symbols are and should be integrative for the components of the general social or political realities that use them as symbols. A symbol, as it could be understood also under the first historical chapter, as vivid and apparent as it could be, which is not capable of bringing together those components, cannot be a real symbol. It will lose its importance and fall in desuetude. The external, representative, and internal integrative functions are the main reasons for the existence of symbols. As stated above, those functions should be fulfilled by them to be considered symbols. Those two functions are somehow obvious and existential for symbols as they reflect the two aspects of the identity of their object: being different from the others and identical for all components sharing the same identity.

Also concerning the answer to the second question about the reasons for the existence of the symbols, in line with the above given solution, more interestingly, it can be revealed that a symbol when representing and helping to integrate, emphasizes not only the existence of its object but more precisely its continuity and stability. Without going further in such a conceptual and theoretical analysis, to define the symbols, it can be relevant to highlight their special characteristic. A symbol should reflect not only the existence but the certainty of the existence of its object. As much for a nation as for a state or the communities, this is a fundamental goal behind the representative function of their symbols. Moreover, regarding the integrative function, the fundamental goal is the acceptance, of the legitimacy of the symbol(s). This aspect of legitimacy appears as much toward the symbol, itself, as the components of the object should accept the symbol that it is standing for, then toward the object of the symbol that the symbol can legitimize. A primarily accepted symbol can help to give legitimacy to its thing as much as a firmly integrated general social or political reality can make the symbol, reflecting it.

To go back to the first thing to decide about a symbol, its object: what the symbol stands for. Entirely in line with the considerations mentioned above and even with the title of the essay, the symbols of the nation, the state, and the communities will be listed and described. However, as those are particularly abstract ideas even though they reflect some social and political realities that are very general, it is interesting to think about the exact object of the symbol and what it is precisely symbolizing. It is possible to distinguish clearly between the symbols regarding their objects. It will be the foundation of the categorization of symbols as they are presented.

First, state symbols—often considered the official national symbols, but the term state symbol will be used to make a clear distinction—should be defined. Those symbols are about the representation and the integration, as understood above, of the constitutional construction of the state concerning its historical origins. state symbols can be especially representative of national sovereignty as the source of public power being the *differentia specifica* of the modern state. Secondly, the symbols of the nation, once again not to be confused with the official national symbols, which is another category, are to be mentioned. Those are about the people, also a

component of the modern state, but in a highly abstracted reality of them, composing members of a most general but precise political community. For other communities, it is the same approach, their existence as a set of their members is to be represented, and the people composing them are to be integrated with their symbols.

Whether they are official national, according to the chosen terminology, state symbols, or the symbols of the nation as a political community, in a more positive approach, they are, and for contemporary symbols this is the general rule, consecrated as such in constitutional provisions. As symbols are about the legal construction of the state and the nation, it is logical that national constitutions decide about them. Once again, that is the case for most states and nations and constitutions. It does not mean there cannot be symbols other than those provided by constitutions. On the contrary, some symbols can exist by costumes or traditions; also, constitutional provision, as the case of Hungary demonstrates, can give free room to use other symbols than those constitutionally consecrated. Finally, some symbols can be elevated and established by other legal sources than the constitution, for example, cardinal laws or any other acts adopted by national parliaments or even by national governments. In the case of Hungary, the symbols are defined as such and protected by the Fundamental Law of Hungary.

A constitution, such as the Fundamental Law of Hungary, plays its role in defining the symbols of the state and the nation. Those symbols consecrated by constitutional provisions will be considered constitutional symbols also often protected by constitutional sanctions. And even without special rules on their protection, it is to be assumed that by the fact that a symbol is defined at the level of a constitution, it can benefit from constitutional protection. So national constitution, in this case, the Fundamental Law of Hungary, has a normative function regarding the definition and the protection of symbols. But as much as symbols can exist without constitutional consecration, the constitution itself can be considered as a symbol more of the state than of the nation.

Such a symbolic character of the national constitutional document can be easily recognized, especially when those documents are considered historical. Following considerations developed in the first chapter, not only because of the timeframe passed after their adoption but also because of their historical importance, events, persons, or in this case, legal documents can become symbols. The example of the Universal Declaration of Human and Citizen Rights or the Constitution of the United States of America can be recalled as older constitutions becoming symbols as documents. But the Fundamental Law of the German Federation after World War II can also be mentioned as a more recent example of becoming a symbol more likely because of its historical function that made it almost unchanged even after the reunification of Germany. Those constitutions are not only containing the definition of symbols and can contain special provisions about their protection, but are, as documents, ignoring their normative content, symbols about the sovereignty of the State, its stability, and its existence as in the case of the United States of America, but also about some changes regards to former regime as in the case of France or Germany.

In line with those introductive remarks, we will define as symbols in Hungary the so-called official national symbols that are the symbols of the state, also according to the Fundamental Law, such as the coat of arms, the flag, the anthem, and the decorations, even though those last ones are not established, for the obvious quantitative reasons by the Fundamental Law. Then two other symbols defined and protected as such by the Fundamental Law are to be described; they are more related to the Hungarian identity or the exercise of the national sovereignty: the Hungarian language and the official currency of Hungary. Two other special Hungarian symbols are presented without constitutional basis: the Holy Crown, very briefly, and the National Assembly's building. Finally, other symbols such as national holidays, sites, and monuments will also be very shortly mentioned because even though they are actual symbols, they are more related to the national historical narrative. With those categories, a complete list of Hungarian symbols can be given, also the symbols of communities will be also shortly mentioned in complement.

2.1. Official national symbols and other state symbols in the Fundamental Law of Hungary

As previously stated, some symbols are defined and protected by the Hungarian constitution, the Fundamental Law of Hungary. As it appeared in our chapter about the history and historical narrative, the constitutional sources of Hungary can be determined at different levels. The written source, the Fundamental Law, is the main source of Hungarian constitutional law. However, according to the special historical development of Hungarian constitutional law, but also because of the reference to it in the Fundamental Law, the so-called historical constitution of Hungary can also be relevant. In general, the historic constitution is a tool of interpretation and not a positive source of constitutional provisions. But, according to the case law of the Constitutional Court of Hungary and Hungarian constitutional doctrine, it can also become relevant when in its interpretation, other sources are brought into light for Hungarian constitutionalism. The Fundamental Law of Hungary can be considered as a symbol; even though, we are hesitant to recognize yet such a nature of the Fundamental Law, we also mentioned that historical constitution could be considered a symbol, even though, for the abovementioned reasons, it is more than a symbol in contemporary Hungarian constitutional law.

Therefore, when looking for constitutional provisions about national, state, or even community symbols in Hungary, we can research as much of the text of the Fundamental Law as we can enlarge our view of the historic constitution. Both of those sources can be considered as symbols, themselves; the historic constitution undoubtedly is one, and the Fundamental Law may become one, but in this chapter, they can be more interpreted as sources of symbols. Especially the text of the Fundamental Law guides the research for the definition of symbols. The historic constitution can be used for such a purpose without repeating what the first chapter has already analyzed. Hence, the definition of national and state symbols in Hungary

should be started by analyzing the constitutional provisions, especially those of the Fundamental Law.

2.1.1. The name of the state or the country

First, it would be obvious to deny the symbolic function of the name of a country or a state. One would say that as it directly refers to the state or the country in question, there is no symbolic function behind it. It is important to recall that a symbol, by definition, would refer in an abstract and general way to an object symbolizing. Also, as mentioned above, it is to be remembered that for national and state Symbols, the function is often about the acceptance of the national political community and the institutional structure of the state, its stability, continuity, or some of its unique characteristics.

In our opinion, the name of a state or a country may be a symbol because of those particular elements of national and state symbols.[10] For instance, the reference to the Republic in the name of the French Republic, represents more than the simple definition of the form of the state. Republic became a symbol in France after the French Revolution and the execution of the King, as France symbolically let the old regime behind. Even though empires and monarchies followed the Revolution in the 19th century in France, the world republic remained a symbol; it is continuously used even today when referring to the political community, the nation, and the state; it has an external and internal function as any symbols.

In Hungary, in our view, article A) of the Fundamental Law declaring that "The name of our country shall be Hungary," also has a symbolic function. Not only because all the other constitutional provisions will be defined by it, as it is the first created structure. Hence, also national and state symbols will refer to it, as they are, by constitutional definition, symbols of Hungary, but also because it is not only a direct reflection of the existence of a constitutional reality, it is symbolic; the name "Hungary," even constitutionally, should be considered a symbol. It is not referring to the political community of the nation, nor the state and its special structure, nor the form of government, as is often the case with official names. Instead, it defines the country—the homeland, the motherland—as Hungary. It is more than a constitutional definition of a state; it is the fundamental and symbolic determination of the political community, the geographical countryside, and the supreme national power—simultaneously.

Some criticisms expressed at the time of adopting the Fundamental Law were about the lack of reference to the form of state or even to the form of government in this constitutional provision. Those criticisms forgot that the form of state and government has not changed. Hungary remained a parliamentary republic. And the lack of reference to those special issues in this first constitutional provision about the state could rather be explained by its symbolic role. Contrary to the abovementioned

10 Takács, 2015, p. 50.

French case, in Hungary, it is not a special character that is to be symbolized by the name of the country, but its continued existence in the Basin of Carpathia with a stable political community and a solid constitutional structure. In Hungarian constitutional history, only short episodes of the republican form appeared: even though Hungary was a kingdom without a king for a short period from April of 1849, and for a longer one between the two world wars, as a republic, it only existed for a couple of months after World War I, and for a couple of years after World War II; it would stabilize that form of government only after the regime change of 1990. Moreover, the term "republic" has never gained a symbolic function.

With its simplicity, defined as the name of the country, of the motherland, the political community, and the state at the same time, the name, Hungary may be a national and state symbol, the first that the Fundamental Law mentions. It is not only referring directly to the existence of the Hungarian nation and the Hungarian state. It is also symbolizing the continuity of social, geographical, and political reality, not emphasizing a special character of the state that could become a symbol of it, but simply representing its object in a more general and a more abstract approach not despite of but maybe, especially because of its common and simple denomination. Hence, according to the Fundamental Law of Hungary, we state that the first national and state symbol is the name of the homeland, Hungary.

2.1.2. The coat of arms

Hungary's first and most sophisticated official national symbol is the coat of arms.[11] It is defined as such by article I) of the Fundamental Law, in its first paragraph as the first national symbol, article I is about official national symbols. The Fundamental Law defines Hungary's coat of arms as follows:

> The coat of arms of Hungary shall be a vertically divided shield with a pointed basis. The left field shall contain right horizontal bars of red and silver. The right field shall have a red background and depict a base of three green hills with a golden crown on the top of the higher central hill from which a silver patriarchal cross rises. The Holy Crown shall rest on the top of the shield.

With the flag and the national anthem, the coat of arms is often the state's most well-known official national symbol. That is also the case in Hungary. In Hungary, the coat of arms has a long history, its use is very well determined in law and costumes. Its symbolism cannot be denied. It symbolizes Hungary, once again, its continued existence as a political community, even before the rise of the modern term of nation, and its constitutional and institutional structure, even before modern constitutionalism. Its different components, consecrated as such over its long history,

11 Rácz, 2002, p. 493.

especially its medieval period,[12] also symbolize some characteristics of the Hungarian nation and state.

The patriarchal cross is the first component of the coat of arms that appeared and became of use by Hungarian kings. Its first use can be discovered on coins of money issued by the King Béla III in the 1190s. It was a sign to declare national independence against the Byzantine Empire becoming a closer risk for the Hungarian independence in this medieval period. For King Béla III, who achieved the central part of its education in the Byzantine court during his childhood, it was important to show that Hungary is an independent, sovereign country with modern terms, even though the influence of the Byzantine Empire became very present during his reign. Therefore, Béla III's court chose as a symbol of independence the patriarchal cross from that historical period, and it became the first component of Hungarian national characters and a continuous part of its coat of arms.

The second component is the background with red and silver bars. It appeared for the first time on the official hanging seal of King Imre in 1204 that its court used for an official diploma issued in the name of the King. Red and silver are the official colors of the royal family, the House of Árpád. As such, they are also used on the so-called Árpád-flag, or Árpád bared flag, one of the most ancient historical flags of Hungary. As much as the patriarchal cross reflects the independence of Hungary, the red and silver bars are symbolizing the identity of its first, historical royal family. Even though, those colors were first used for seals; they became very popular as symbol of the royal house for the last period of its reign.

Third, the hills appeared in the period of Anjou kings, in the 13th and 14th centuries. The explanation is straightforward, and the symbol is easy to understand. After the decline of the first Hungarian Royal House, the Árpáds, whose extinction was due to the lack of male inheritance, the Anjou took the Hungarian throne. As they are not representing the first royal family anymore, they are only related to it by marriage, the representation of the country became more relevant. The hill symbolized the country, and very soon, it became tripled. According to scholars, they represent the three main mountains of the Hungarian countryside. At the same time, the number of red and silver bars was eight consistently. Once again, according to most scholars, the four silver bars represent the four main rivers of the Basin of Carpathia. That is how the symbol of the first royal family became a symbol of the country after its extinction in the use of Anjou kings. The three hills for the three main mountains, and four silver bars for the four main rivers as the coat of arms should not symbolize the royal family any longer, but a country ruled by a new family of monarchs.

The fourth component is the crown. The crown or more exactly the crowns as there are two of them integrated to the coat of arms, are very interesting symbols, one would say, they are more than symbolic especially with regard to Hungarian constitutional heritage about the Holy Crown, discussed in the first section. The first

12 Feiszt, 1986, p. 7.

golden crown on the top of the higher central hill symbolizing the king, of course. Nothing very particular can be found for this symbol. The king became represented by the crown at the beginning of the 15th century all over Europe, for instance, international treaties started to be concluded not only in the name of the kings, but also in the name of the crown to give more constancy to their normative content, not only engaging the king but also his heirs. The emplacement of the crown shows that he rules the country, and the patriarchal crown in the middle of the hill, growing up from the crown, represents the fact that the king rules by the grace of God, who remains the highest source of authority.

But the fact that the second crown, the Holy Crown, is placed on top of the whole shield is a very symbolic and obvious representation of the doctrine of the Holy Crown. So, when across Europe, the use of the crown became a common symbol to make a distinction between the person of the king and its ruling authority. In Hungary, two crowns were used. It is important to remember, as a first manifestation of the concept, that during the captivity of the King Sigismund I, in the name of the Crown, the Hungarian aristocrats were already ruling—sealing their correspondence and the diploma they issued, with the image of the crown.

Also, it is to be mentioned that the so-called small coat of arms was also in use, it is the same coat of arms only without the Holy Crown on the top of it. The coat of arms with all its components was developed by the end of the medieval period. Also, its use was less codified than it is today. The last component, the crown, or for the complete coat of arms, the two crowns, are the signs of the last change or evolution of symbols. First, the independence of the ruling royal family, then its identity appeared. After the extinction of the Royal House, the symbols of the land were added to the coat of arms. Finally, the representation of the ruling authority reappeared in a very particular way, in a historical trouble period, with two crowns, the first symbolizing the monarch, the second, in a very abstract and constitutional nuanced content, the nation—considered, in that period, as the community of aristocrats.

Even though the Holy Crown has its special meaning, it is the small coat of arms that was in use during the periods without a king. First, it became on official national symbol of Hungary in April 1849, which is - why it is also called as the Kossuth coat of arms (on April 14, 1849, the Hungarian National Assembly dethroned the Habsburg family following the proposal of Lajos Kossuth who became governor of Hungary, and the Holy Crown was lost from the coat of arms). Second, during the People's Republic after World War I, the official coat of arms became the one without the Holy Crown. Only during Socialism, a complete change of symbols was introduced with a whole new coat of arms only composed of socialist symbols. When the regime changed, it was a matter of discussion whether the small coat of arms or the complete one should be reintroduced, finally, the first democratically elected National Assembly opted, for historical reasons, for the second option. The historical coat of arms became the official national symbol again. And of course, the Fundamental Law also opted for this coat of arms enriched with many symbolic components during the long medieval history of Hungary, serving as a symbol of the

continuous existence of Hungary and reflecting some essential characteristics also for modern times.

2.1.3. The flag

The flags are the most common and modern official national symbols.[13] Those are in common use not only to decorate public places or buildings, but also to support national teams during sports events. Nowadays, national flags are, for the most of them colored in vertical or sometimes in horizontal bands with some symbolic colors. The Hungarian flag is no exception. The second paragraph of the same article I) about official national symbols states: "The flag of Hungary shall feature three horizontal bands of equal width colored red, white, and green from top to bottom as the symbols of strength, loyalty and hope, respectively."

The Hungarian flag is a lot more recent than the coat of arms, and by its nature, it has a less developed symbolic content. The official national flag of Hungary is resulted from the 19th century. According to scholars, the three colors were used in a symbolic way for the first time in the first year of the century, in 1801, by Palatine Joseph in an official ceremony.[14] The flag became a symbol especially during the revolution and the war of independence in 1848 and 1849. Therefore, as a symbol, the flag is not only modern in a way that it reflects, without special, more sophisticated or developed content or the nuanced components added to it over the centuries, the identity of a community, but also because this is already a modern, national community that is represented by the flag. This was especially true during the 19th century when Hungary's national identity developed in a modern way, in parallel with the flag.

For most scholars, the three colors are taken from the coat of arms: the red and the white are the red and the silver of the House of Árpád as the founder and first ruling authority of Hungary, and the green represents the land, as the green of the hills on the national coat of arms: the hills became green in the coat of arms already in the 16th century. However, the colors became symbolic already during the 19th century, and that is this symbolism that the Fundamental Law repeats: the red is the color of the strength, the white stands for loyalty, and the green is symbolizing hope. The double symbolism, an already mentioned characteristic of any official national symbols, is quite evident with the flag: it is a symbol of the nation and, of course, also of the state, at the same time, it is also symbolizing by its components some special characters of it: a strong, loyal, and hopeful nation.

The use of the flag with the abovementioned three colors became official in 1848, according to Act XXI. After the failed war of independence, it became forbidden, but its use was introduced again after the so-called Compromise in 1868. Since then, the red-white-green colored flag has been the official national symbol of Hungary. The

13 Horváth, 2005, p. 200.
14 Halász and Schweitzer, 2020.

only question that raised about the flag, was whether it should be used with the coat of arms. The different coat of arms succeeded in the middle of the flag. Moreover, in 1956, demonstrating the importance of the use of the flag as a symbol of national identity and protestation, the flag with a hole punched in the middle became famous. The socialist coat of arms was unanimously removed by the people in October of 1956. After the failed revolution, surprisingly, the communists did not reintroduce the flag with the socialist coat of arms.

As contemporary official national symbols, the flag is used just as described by the Fundamental Law of Hungary without any coats of arms in the middle. Interestingly, the constitutional provision about the flag emphasizes the symbolic meaning of the color. One would doubt the normative content of such a constitutional provision. It is pretty exceptional that in a national constitution, the symbolic meaning of an official national symbol such as a flag is mentioned. This is most likely a declarative provision, also its phrasing strengthens such an interpretation. However, the constitutional explanation of the second symbolic function about special characters reflected by the symbol is more than simply symbolic. It would emphasize that even such a simple symbol could have an important meaning.

Finally, it is also to be mentioned about the coat of arms and the flag as official national symbols that the Fundamental Law contains a very interesting provision. According to the fourth paragraph of the same Article I:

> The coat of arms and the flag may also be used in other historically developed forms. The detailed rules for the use of the coat of arms and the flag, as well as state decoration shall be laid down in a cardinal act.

As much as coat of arms and flag are important as official national symbols, and their importance is underlined by the fact that their use should be fixed by a cardinal act which is the Act CCII of the year 2011; the Fundamental Law, in accordance with the special role that it reserves for history and historical constitution also about symbols, expressly permits the use of other historic forms.[15] The act mentioned above provides with special form of coat of arms for the president and the prime minister of Hungary. Also, historical flags are used for national ceremonies or in the National Assembly.

2.1.4. The national anthem

The third and the last official national symbol defined by the same article I of the Fundamental Law of Hungary is the national anthem. Its third article reads as following: “The national anthem of Hungary shall be the poem Himnusz by Kölcsey Ferenc set to music by Erkel Ferenc.” As much as the coat of arms and the flag, national anthem is one of the most important national symbols of a nation and a state.

15 Iványi, 1989, p. 150.

The use of national anthems became common at the same time as the national flag. In the case of Hungary, also in the 19th century with nationalism and a somewhat more romantic approach in the foreground, it wass decided that a national anthem should be written and set to music. It is a symbol of national identity, less historical, but with a strong meaning that one can deduct from the text and music.[16]

For public ceremonies singing together was always important. In Hungary, despite the religious diversity, this function was filled with religious songs before the national anthem. Although, as by the Catholic Hungarians, the so-called Our Holy Mother was often used, while Protestants sang the Ninetieth Psalm. It was not only a religious act; it was also about manifesting the common identity of the people for official ceremonies. Maybe that is one of the reasons why it is the famous poem of Kölcsey written in the form of a prayer that became the Hungarian national anthem with, of course, patriotic content (Oh, my God, the Magyar bless / With Thy plenty and good cheer! / With Thine aid his just cause press, / Where his foes to fight appear. / Fate, who for so long did'st frown, / Bring him happy times and ways; / Atoning sorrow hath weighed down / Sins of past and future days). Singing together the national anthem remained an important part of national and other official ceremonies contrary to other countries where national anthems are more listened than sang.

Ferenc Kölcsey finished the writing of the poem exactly on January 22, 1823. This date also became Hungarian Culture Day. In establishing this, even the date of the writing of national anthem got a symbolic function in Hungary. The national and the cultural identities are, as it demonstrates, strongly related. More than twenty years later, because the poem was chosen to become a national anthem, music should have been composed for it. In the framework of a national competition, which was very popular by that time, the proposal submitted by Erkel Ferenc won the jury's price; from 1844, it was used as music by Erkel for official ceremonies. The national anthem became so popular that it was out of the question to change it, even though for different reasons, especially during socialism, its use was restricted and even completed or substituted with the singing of other ideologically chosen songs.

Despite of its popularity from the beginning, a parallel use of the so-called Appeal, in Hungarian, "Szózat" of Vörösmarty Mihály remained constant. Vörömarty wrote the poem in 1836. With very rhythmic phrasing and a strong patriotic content (Oh, Magyar, keep immovably / your native country's trust, / for it has borne you, and at death / will consecrate your dust! / No other spot in all the world / can touch your heart as home—/ let fortune bless or fortune curse, / from hence you shall not roam!), it became very fast popular, and the music composed by Egressy Béni in 1840 allowed Hungarians to sing it before the anthem. Because of its popularity and as it became a very symbolic text and music, the tradition remained, and even today, it is used, without constitutional consecration, as a "second" national anthem: the

16 Kállay, 1989, p. 594.

official anthem is sung at the beginning and this other poem as set to music at the end of ceremonies.

According to article I) of the Fundamental Law of Hungary, the national official symbols are the coat of arms, the flag, and the national anthem. Those constitutionally established symbols are to be completed by the national decorations, as, for the already mentioned obvious qualitative reasons, they are not expressly listed by the constitutional provisions giving only reference to it when prescribing the obligation to rule about them in cardinal law, by national decorations. Those symbols are defined by constitution, except for decorative purposes; however, history played an important role in their evolution and influenced their meaning, so a flexibility in their use is permitted exactly because of history. As for their symbolic role, it is to be mentioned that they are symbols as much as they are holding symbols with their different components in a more historical way such as the coat of arms or even in the constitutionally defined form as the flag, or because of their textual and musical content concerning the national anthem.

2.1.5. The national holidays

After defining official national symbols, the Fundamental Law declares the national holidays in article J). Hence, they are constitutionally regulated just after the national symbols. They are naturally and closely linked to symbols and have symbolic meanings. The first section explained how national memorials with a particular narrative about national history have a symbolic role. This narrative is rhythmed and strengthened by memorial dates. In addition, those national holidays have the function of creating a strong national identity. As it will be demonstrated, they are linked, as much as any other symbols, to the continuity of the nation and the state, and reveal, highlight some of their special characteristics. As much as they are important for national identity, they are also about celebrating the nation and the state by their symbolic function. Moreover, they bring into light some historical events giving them special importance in the historical narrative.

Article J) defines in its first paragraph national holidays as follows:

> The national holidays of Hungary shall be: a) the 15th day of March in memory of the 1848–49 Revolution and War of Independence, b) the 20th of August in memory of the foundation of the state and of King Saint Stephen the state Founder, c) the 23rd day of October in memory of the 1956 Revolution and War of Independence.

The same article's second paragraph adds: "The official state holiday shall be the 20th of August." Thus, Hungary has three national holidays; August 20 is the official holiday of the state. As discussed before, it is enough to summarize the symbolism of those dates about the existence and the continuity of Hungary as a political community and a state or about its independence which is an essential component of national identity.

The official state holiday is about celebrating the state and its existence through history. It is about the very beginning, the foundation of the Hungarian Kingdom, as the above-quoted provision of the Fundamental Law explains. The two other national holidays are also about the importance of independent Hungary but remembering some historical events when this independence was at risk and lost by Hungary. The Fundamental Law also explains the symbolism behind those dates. It can be seen as a specialty, just as we saw concerning the flag's colors, without real, normative content. However, as their symbolic nature gives those dates their definition as national holidays, those explanations can be interesting, also because, as has been already mentioned, different interpretations could be developed in another historical period about the same historical events.

The importance of the historical narrative with its symbolism is also underlined by the fact that in different forms, we can find other commemorative dates as well, as parliamentary regulations or even governmental decrees introduced different commemorative dates. Those dates are not national holidays, of course, but are also symbolic, contribute to creating national identity and give special character to it. The January 22, Hungarian Culture Day, has already been mentioned. February 25 is the commemorative day for the victims of communism, the April 16 for the Hungarian victims of the Holocaust. October 6 and November 4 are national morning day, remembering the execution of the leaders of the 1848–49 war of independence and the loss in the war for independence of 1956. Also linked to 1956, June 16 is consecrated to the memory of the reburial of Imre Nagy and his fellow martyrs. June 4 is the day of the unity of the nation—torn apart after World War I with the peace treaty signed on that day.

Common historical experiences and historical memories create a common identity. This already symbolic function is undeniable for national holidays and other commemorative dates. They are, with the memory of those events, symbolic for composing elements of such a national identity. The continuous and secular existence of a state is a very fundamental element. But also, the frequent fights for its independence could become one. The tragic character of the Hungarian historical narrative, also highlighted by the national anthem, strengthened by memorials about victims and lost, is also a very particular component of the national identity. As components of Hungarian identity, they are also strongly related to the nation and the state which are celebrated with those special elements, components. The national holidays and the commemorative dates have undoubtedly, as already explained above, a doubled symbolic meaning as much as the official national symbols.[17]

2.1.6. The Hungarian language and Hungarian Sign Language

As a new symbol under constitutional protection, the Fundamental Law contains provisions, in article H) just before the constitutional definition of the national

17 Schweitzer, 2018, p. 70.

symbols, about the Hungarian language and Hungarian Sign Language. According to most scholars, the fact that Hungarian language and Hungarian Sign Language are benefitting, after the adoption of the Fundamental Law of Hungary, from a constitutional protection, is a demonstrative sign of their symbolic function. By their nature, those are symbols at a very different level than the official national symbols or even the national holidays. However, as much as common historical experience is creating national identity, the common language is undoubtedly also having this function. And as a contributing element to national identity, it can be considered also as a symbol. Just like the name of the country, it is not the language as such with its semantic elements that is a symbol. The symbolism of the language and of sign language is due, once again, to its identity-creating function, and to its special character.

The National Avowal, as a constitutional preamble to the Fundamental Law, reinforces such an interpretation about the symbolic function of the Hungarian language and of the Hungarian Sign Language. One of its paragraphs states that "We commit ourselves to promoting and safeguarding our heritage, our unique language and the languages and cultures of national minorities living in Hungary." Linked to the cultural heritage with an underlined unique character, the Hungarian language as much as Hungarian Sign Language can be considered also as national symbols. It is also essential to highlight the inclusive approach of those constitutional provisions, on one hand, not only the Hungarian language but also Hungarian Sign Language is defined as protected heritage and can be considered as symbols. On the other hand, the languages of national and ethnic minorities also benefit from the same role and protection, so they can also be regarded as constitutionally protected community symbols for the communities of those minorities using the same language.

The constitutional protection founding the symbolic function of the Hungarian language and Hungarian Sign Language is established in article H) of the Fundamental Law. As it has already been mentioned this article is placed just before the article I) about official national symbols. The emplacement of the article is not due to a special importance, it can be simply explained that with the fundamental definitions, the first paragraph of this article H) about the definition of the official language. It is quite logical that the provision declaring that "The official language shall be Hungarian" would be followed by other paragraphs about the language. The second paragraph states that "Hungary shall protect the Hungarian language." The third paragraph adds that "Hungary shall protect the Hungarian Sing Language as a part of Hungarian culture."

As it appears from the above-quoted constitutional provisions, Hungarian language and Hungarian Sign Language became symbols under constitutional protection because of their strong connection with national culture—for Hungarian Sign Language, the constitutional paragraph expressly underlines this connection—hence, they are also linked to and are creating national identity. The protection of languages as part of national cultures benefit, today, from different legal tools, as part of cultural diversity, especially in the context of globalization, their protection

is aimed by international legal instruments. Also, in the framework of the European integration, the protection of languages became very important. It is interesting to recall that the Court of Justice, usually very restrictive with the application of such a legal protection, ensured the protection of national constitutional identity for the protection of national languages as part of national culture and identity in more than one case.

Finally, it is to be mentioned that the Hungarian language and Hungarian Sign Language could also become constitutional symbols because of their unique nature. Of course, that is not a legal but a linguistic question, however, the fact that a Finno-Ugrian language could survive despite of the cultural influence coming from the neighboring regions, in the Basin of Carpathia, is also a symbol of independence, cultural difference and give a special nuance to the Hungarian national identity. It could be also behind the constitutional protection of Hungarian language and Hungarian Sign Language as symbols.

2.1.7. The official currency

The symbolic function of the official currency of a contemporary state is a very complex subject. Even the fact that Fundamental Law is paying interest to the official currency, shows its symbolic role. After the official symbols in article I, and the national holidays in article J), in article K), it is declared that "*The official currency of Hungary shall be the forint.*" And this constitutional provision is not only about a monetary question, with those articles, the Fundamental Law is defining in a concrete but also in a symbolic way what it calls Hungary, so Hungarian nation and Hungarian state. This particular provision is a part of this definition—also in a symbolic approach. Of course, the official currency cannot be a symbol at a same level than the official symbols or even national holidays. It is not related to the culture or identity as historical experience, cultural heritage, official language, or sign language. However, the constitutional definition of the official currency already lets one think it has a symbolic role.

The symbolic function of the official currency is related to its strongly interconnected nature with national sovereignty.[18] It is important to remember that in the medieval kingdoms, the coins were representing the monarch's figure. This fact inherited from ancient Rome, reflects the king's monopoly to mint money, but it has also a symbolic meaning, one could remember Jesus Christ's famous answer to give the emperor what belongs to him. After the rising of modern nation–states, the official currency also became a sing of sovereignty, a symbol of national independence. The Hungarian constitutional provision brings into light this symbolic character of the official currency, a sign, and as such a symbol of national independence and national sovereignty.

18 Smuk, 2015, p. 398.

Of course, for a Member state of the European Union that engaged itself to introduce the common European currency, the euro at the time of its accession, this constitutional provision will be an obstacle. But, the revision of the constitution is very common for Member states of the European Union, especially because of their membership. The most probably when euro will be introduced in Hungary as an official currency, this constitutional provision could be changed. And very naturally, it will also be a sign, to say so, a symbol of the loss of another constitutional prerogative closely related to national sovereignty. This very old symbol of national independence and national sovereignty can also have a special meaning in the context of globalized financial markets, where and when, the money became more like a product, however, this context is only strengthening the symbolic function of the official currency as the Fundamental Law recognizes it.

2.2. Other symbols related to national sovereignty and to national identity

After the presentation and the explanation of national symbols that are established by the Fundamental Law, reflecting different level of symbolism, but always related to the national political community or institutional structure, some other symbols may also be mentioned. Those are not expressly declared by the Fundamental Law; however, their symbolic role can be identified, and they can also be protected even in a constitutional approach. The symbolic function of those can be very abstract and especially important, to have such a function, those are very general symbols with a very precise, concrete meaning. The list of those symbols could be very long, however, for obvious quantitative reasons, in this essay, we would like to concentrate only on national decorations, and two special symbolic objects: the Holy Crown which importance as it is more than a symbol, was already explained, and the National Assembly.

2.2.1. State decorations

State decorations are listed among the official national symbols, and they should be presented as such. Not only because of the reference to them in article I) of the Fundamental Law of Hungary, but also because of their obvious symbolic function. Signs of the recognition of merits by the national community, those decorations are, by their nature, symbols that bring together their owners and the abovementioned community in a very symbolic way. It is also to be mentioned that the use of the decorations benefits from the same constitutional protection than the use of other national symbols. The only reason of their absence from the text of the Fundamental Law is quantitative, as they are numerous, it is not possible to enumerate and explain their symbolism in the constitutional provisions.

State decorations, also because of their symbolic function, are subject of long historical evolution. Their development as sings of recognition of merits, can only be understood parallelly to national history. Of course, their historical origin can add

some profound meaning to their symbolic value. Even though such a symbolic value, as already mentioned, is inherent to their nature: they are close and direct symbols. In line with the historical evolution of the national community and the state, it is also because of their very direct symbolic function that the regime of state decoration was always reformed when the state has changed its regime. In the case of Hungary, the last reforms were done at the time the Fundamental Law was adopted, so the symbolic change in the regime of decoration needs no further explanation, the former reform introduced after the change of regime in 1990, based on the regime established in 1946 after World War II, was nuanced and more historical decorations were reintroduced.

So, the contemporary regime of state decoration was established after 2010, and the reform was inspired by historical roots. As most important state decorations in Hungary, the Hungarian Saint Stephen Order, the Corvin-Chain, the Hungarian Order of Honor, but also the Hungarian Order of Merit and the Cross of Merit are to be mentioned without forgetting the Kossuth and Széchenyi Prizes.

The Hungarian Saint Stephen Order is the highest and the most prestigious state decoration in Hungary. It was first established by Mary Theresa in 1764 and re-introduced to the Hungarian regime of state decorations in 2011. It can be offered for the most excellent merits and life achievements. Only three of them are given per year.

The Corvin Chain is a state decoration that creates a permanent society of its owners. Only 15 persons can have the Corvin Chain at the same time. They are, themselves, deciding for the replacement of those whose death liberates a membership. Corvin Chain was originally established by the governor Miklós Horthy and was re-introduced in 2001. The members of the Corvin Chain Society are selected for their outstanding merits in the field of sciences, arts, education, and culture.

Those two highest levels of Hungarian state decorations have strong historical roots. The Saint Stephen Order is named in memory to the founder king whose symbolic role was already mentioned in the section about historical narrative; it is logical that the most prestigious Hungarian state decoration should be named after him. The Corvin Chain was named after Mathias Corvinus, a Hungarian king during the Renaissance whose name is linked to a flourishing cultural life. It is also interesting that the founders of the decorations did not give their own names to the state decoration, but there is also symbolism behind the chosen person and the head of state establishing the decoration.

The Hungarian Order of Merits can be offered to 30 persons per year, it is also one of the most prestigious recognition of merits. Then the Hungarian Order of Merits and the Cross of Merits should be also mentioned. Those are divided to several categories: classes and levels, with special rules about their offering. They were first established after World War II and re-introduced after the change of regime in 1990. Also, Kossuth and Széchenyi Prizes are listed among the highest state decorations. The first ones are given to artists, the second ones to scientists for their achievements.

As stated before, state decorations as such are very direct symbols, even though their symbolism can be explained at different levels, they are to be considered as fundamental national symbols and even though they are regulated by cardinal law, their protection can be considered as constitutional.

2.2.2. The Holy Crown

The very special nature of the Holy Crown has already been mentioned several times. The Holy Crown, also from a more general perspective, but especially in a constitutional approach, is obviously more than a symbol in Hungary. For some, the Holy Crown incorporates the national sovereignty, it is materially holding in it and not only symbolizing in the most general and abstract way even the existence of Hungary. For others, it is a more indirect, however also more than symbolic reflection of the national sovereignty that could be found in the Holy Crown. Even without going further in the study of the so-called Holy Crown doctrine and all the different constitutional debates that took place around the concept and the theory concerning the Holy Crown, it is obvious that this object is to be also listed among the national symbols, even though its meaning is above the symbolism of an object.

Incorporating, holding, or simply reflecting the national sovereignty, the Holy Crown is one of the most sacred and well-known (yet often debated) and very special concept and doctrine, but also, even if considered more than that, it is an obvious symbol in Hungary. Its symbolic function can be simply demonstrated by the role that is constitutionally and legally attributed to the Holy Crown, but also by its emplacement in the hall of the National Assembly, another symbol itself. Independently of its constitutional function or the concept and the doctrine about it, the Holy Crown also symbolizes the continuity and the independence of Hungary. It is enough to recall how it became the source of national sovereignty, replacing the person of the monarch in the medieval history of Hungary, and how the leading aristocracy assimilated itself with the Holy Crown, being the incorporation of a national community even before the rise of nationalism and the Hungarian concept of nation.

As a symbolic object, the Holy Crown benefits from constitutional protection. Even more, for some scholars, it is the source of national constitutionalism in Hungary. Special legal provisions regulate its emplacement, and a guard has been established for its physical protection, also with symbolic roles and functions. The Holy Crown is as much as, once again only from a perspective of symbolism, the object which symbolizes the Hungarian political community but also as strongly linked to or even considered as the source of national sovereignty. It is the symbol of the institutional construction, the constitutional state, and finally, with those two aspects, in a more general and abstract way, it symbolizes Hungary in all different aspects. The Holy Crown is obviously more than a symbol, as discussed in the first chapter as well. However, it is also a constitutionally protected symbol.

2.2.3. The National Assembly

Finally, among symbols, after the Holy Crown, with very different meanings and under a very different aspects, the National Assembly and its building should also be mentioned. Formally, it is according to a parliamentary resolution that it gained a symbolic function, but as it is usual for symbols, it could be considered one of the national symbols, even before it has been legally recognized as such. As a building and more abstractly as the space where the nation is represented, and according to the concept of representation, the national sovereignty is exercised, the National Assembly has always had a symbolic meaning.

The costumery, unwritten Hungarian constitution, often underlined the special role of the national parliament. However, the symbolism behind the National Assembly became more explicit in the second half of the 19th century when Hungarian parliamentarism was reinforced. Similar to British parliamentarism, it also originated in an unwritten constitutional context; it became the most important institution that considered itself sovereign. The construction of the symbolic building of the National Assembly was achieved almost by the end of this period, beginning the 20th century as a symbol of its characteristics and function.

The National Assembly is where, in line with the concept of national sovereignty and the theory of representation, the general will of the Hungarian nation is expressed. The building of the National Assembly is the symbolic space where the nation, in its representation, is present. This idea of representation gives a special symbolic function to a building which also symbolizing in its different parts some characteristics of the Hungarian nation and the constitutional framework of Hungary. Not only are statues or stylistic ornaments symbolic but also the emplacement of the building or its structure with two houses with a great hall between them demonstrating the unity of the nation. Finally, the disposition of the Holy Crown in this hall gives even more symbolic importance to the building.

In contrast to the Holy Crown, however, the National Assembly is only symbolic. And as a symbol, it is not only the reflection of the idea of national sovereignty. It symbolizes, especially today, the importance of a parliamentary regime regarding the modern, democratic form of public authority, but also standing as a symbol for the concept of representation, so of a certain institutional component of the Hungarian constitutional structure. Finally, at a third level, it reflects some particularities of Hungarian history, culture, and arts. By those, the National Assembly has some symbolic components whose importance can also be considered special because of its more general and symbolic function.

2.3. Community symbols

Numerous and various symbols can be identified as community symbols in Hungary. To categorize them, three different types of communities symbolized by those symbols can be listed. First, municipalities and other territorial authorities

like, for instance, counties and regions can be mentioned. Those benefitting from the constitutionally protected prerogative for self-government also got the right to define their own symbols. Their historical role and existence, as was demonstrated concerning national symbols, are also a source of those symbols. In Hungary, the historical role of counties is typical, and their symbols became more important at the same time as the symbols of important aristocratic families.

Secondly, the religious communities can also have their symbols. Those symbols are as historical as national symbols, sometimes, as was also mentioned, they are the most ancient, and national symbols are also using them. Also, as it was mentioned before, some of their symbols were used even before the use of national symbols, to symbolize the national community, as well. Religious communities are even today considered important and constitutionally protected institutions in Hungary according to the Fundamental Law, their symbols are also protected.

Thirdly, the communities of national minorities have also to be mentioned. Those communities are also constitutionally recognized and protected; their symbols are also important. For Hungarian nation and nationalism during the whole 19th century, it was an important, not only theoretical, but also practical question to integrate national and ethnic minorities to the concept of nation. Finally, by the end of the historically tragic 20th century, the constitutional protection of those communities was declared, at the same time, the concept of their inherent nature to Hungarian nation, developed in the second half of 19th century was also maintained.

It would be impossible to study all the different symbols of local and regional self-government, religious communities, and communities of national or ethnic minorities. They generally use the same holder of symbols as the nation or the state, such as coats of arms, flags, etc. Their symbolism can be as old and somehow also as important as the symbolic function that represents the symbols of the nation or the state. However, the most obvious rule about those symbols is that they should be defined in a way that they can be clearly distinguished from national official, constitutional, or state symbols. The protection of state symbols cannot be ensured only if the symbols of other communities or institutions differ. Also, harmony should be guaranteed among those symbols; that is why at a national level, some professional and academic organs were established to control and advise, especially municipalities when those would like to create their own symbols. The symbols of municipalities, religious communities, and communities of national and ethnic minorities are also constitutionally protected similarly to national and state symbols.

3. Rules on the use and protection of national symbols in Hungary

In the Hungarian legal system, there are five sources of law for the use and protection of national symbols, but there is no comprehensive regulation.[19] The Fundamental Law of Hungary enshrines state symbols of sovereignty, like the coat of arms, the flag, and the national anthem.[20] The use and protection of these symbols are regulated in detail in various legal sources, as follows: (i) Act CCII of 2011 on the Use of the Coat of Arms and Flag of Hungary and state Decorations, (ii) Section 334 of the Hungarian Criminal Code on the Defamation of national symbols, (iii) Government Decree No 132/2000 (VII. 14.) on certain aspects of flag hoisting of public buildings, (iv) Decree 37/2012 (VIII. 22.) KIM on the authorization required for the grant of protection of trademarks and designs containing the coat of arms or the flag and finally (v) Act I of 2000 on the Commemoration of the Foundation of the state of Saint Stephen and the Holy Crown which is more a solemn commemoration than a law laying down precise legal rules for the protection of national symbols. In the following, the most important provisions of these legal sources will be used to present the most important rules on the protection of national and state symbols in the Hungarian legal system.

3.1. Act CCII of 2011 on the Use of the Coat of Arms and Flag of Hungary and state Decorations

According to the reasoning behind the proposal of the act, national symbols are symbols that express the innermost feelings of the nation and embody its unity and the permanence of which is in the national interest, and this requires stability not only in the way they are shaped and described but also in the way they are used. Article I) of the Fundamental Law defines national symbols in a form unchanged from the previous Constitution, so there was no compelling constitutional reason for a fundamental change in the regulation of the use of national symbols at the time of the adoption of the act. Still, the reasoning states that, in the light of the experience of 16 years since the former act on the use of national symbols had been adopted, the time was ripe for an update of the regulation content. Accordingly, the proposal maintained the essential difference in the functions of the coat of arms and the flag and set the rules and limits of use: the coat of arms has been regulated as a symbol of statehood, while the flag has been regulated as a symbol of nationalism, a traditional symbol of national feeling, which could be used more freely and with fewer restrictions. Under the act, the use of the coat of arms by the speaker of the National

19 The text of these sources of law is available in Hungarian only. The official Hungarian law searching system operated by the Ministry of Justice is available via the link www.njt.hu.

20 Art. I of the Fundamental Law.

Assembly, the president of the Republic, the prime minister, the president of the Constitutional Court, the president of the Curia, state bodies, and public institutions are still guaranteed by the act. In contrast, in the case of other budgetary bodies, ministerial decrees determine the rules for the use of the coat of arms based on the act's authorization.

According to the preamble of the act CCII of 2011, it is created by the National Assembly to implement the rules of Fundamental Law.[21] The aim of the act is the recognition of the constitutional significance of national symbols and their place in the national consciousness and the recognition of the customs of using symbols that have become traditional, and in recognition of outstanding achievements.

The coat of arms of Hungary of the Parliament, members of Parliament, the president of the Republic, the Constitutional Court, members of the Constitutional Court, the commissioner for Fundamental Rights and his deputy, the state Audit Office, the National Bank of Hungary, the member of the government, the central state administration bodies, the Hungarian Defense Forces, the Court of Justice, the National Office of the Courts, the Public Prosecutor's Office and bodies performing administrative functions and their offices, local government, national minority self-government, public bodies, and persons entitled to represent those mentioned above may use and place them in their buildings and premises without permission in the performance of their official duties.[22] The president of the Republic shall be entitled to use the coat of arms with two angels as shield holders, and the prime minister shall be entitled to use the coat of arms encircled with turkey oak and olive branches.[23]

The coat of arms of local and national minority self-government must be distinguishable from the coat of arms of Hungary. To promote the professional creation of the coats of arms of local governments and national minority self-governments under the heraldic tradition, the government shall establish a National Coat of Arms Commission. The local government and the national minority government shall seek the opinion of this commission before creating or amending its coat of arms.[24]

A natural person may not use the coat of arms in the exercise of his or her profession or vocation, nor may a legal person or an organization without legal personality—other than the bodies and persons referred to above—use the coat of arms in the course of its activities, as an organizational symbol or as part of its activities. A law may provide otherwise for a person or a specific group of persons.

On national holidays, the flag of Hungary shall be hoisted in a solemn ceremony with military honors in front of the Parliament.[25] Based on the article J) of the Fundamental Law, the national holidays of Hungary shall be the 15th day of March, in memory of the 1848–49 Revolution and War of Independence; the 20th day of

21 Cf. Art. I (4) of the Fundamental Law.
22 Act CCII of 2011, Art. 1, para. 1.
23 Act CCII of 2011, Art. 1, para. 2.
24 Act CCII of 2011, Art. 4.
25 Act CCII of 2011, Art. 6.

August, in memory of the foundation of the state and King Saint Stephen the state founder (the official state holiday) and the 23rd day of October, in memory of the 1956 Revolution and War of Independence.

At international fairs (in particular, exhibitions and trade fairs) and international cultural or social events, the Minister responsible for the coordination of government action may authorize the occasional use of the coat of arms by the holder of the right to organize or participate in such events. However, this can only be achieved if the holder has received public funding for organizing or participating in the event and the importance of the international fair, event and the activity of the organizer or the holder of the right to participate justifies the use of the coat of arms.[26]

A private person may use the coat of arms, and the flag for national identification, subject to the restrictions set out in Act CCII of 2011. In addition, the occasional use of the coat of arms and the flag is permitted on national holidays, during related and other social events (in particular political, economic, scientific), other commemorations of a national character, and military honors. Using the flag together with the coat of arms is also permitted on these occasions; however, when using the coat of arms and the flag, everyone must respect their authority and dignity.[27]

The National Assembly of Hungary, in accordance with the sovereignty of the state, has established four types of state decorations to honor and recognize outstanding achievements. These are the (i) Order of St. Stephen of Hungary; (ii) the Hungarian Corvin Chain; (iii) the Hungarian Order of Honour; and (iv) the Hungarian Order of Merit and Hungarian Cross of Merit.[28]

The Order of St. Stephen of Hungary—a renewal of the Order of St. Stephen founded by Queen Maria Theresa on May 5, 1764—is intended to recognize the most outstanding special merits, outstanding life's work, and significant international achievements in the service of Hungary.[29] The Hungarian Corvin Chain is awarded in recognition of outstanding achievements in the fields of science and art, as well as in the promotion of education and culture. (The recipients of the Corvin Chain are the Hungarian Corvin Chain Board members.).[30] The Order of Hungarian Honor is awarded in recognition of outstanding service or heroism in the interests of Hungary and the nation.[31] The Hungarian Order of Merit and the Hungarian Cross of Merit are awarded in recognition of outstanding and exemplary activities in the service of the nation, in promoting the country's development, advancing the country's interests, and enriching universal human values.[32]

26 Act CCII of 2011, Art. 9.
27 Act CCII of 2011, Art.12.
28 Act CCII of 2011, Art.13.
29 Act CCII of 2011, Art.14.
30 Act CCII of 2011, Art.15.
31 Act CCII of 2011, Art.16.
32 Act CCII of 2011, Art.17.

The detailed rules of flag hoisting of public buildings are stated in Government Decree no. 132/2000. (VII. 14.) on certain aspects of flag hoisting of public buildings, which lays down mainly technical rules, such as rules on the size and cleaning of the flag.

3.2. Section 334 of the Hungarian Criminal Code

Section 334 of the Hungarian Criminal Code contains the rules of the "Defamation of national symbols" according to which:

> person who verbally insults or humiliates or otherwise dishonors the national anthem, flag, or coat of arms of Hungary or the Holy Crown in front of a large audience is guilty of a misdemeanor and shall be punished by imprisonment for up to one year unless a criminal offense of greater gravity is established.[33]

As we have already indicated, the major national symbols of Hungary (primarily state symbols), such as the national anthem, the flag, and the Hungary coat of arms, are defined in article I) of the Fundamental Law. These are the ones that are primarily protected by criminal law. However, it is interesting to note that, in view of its special role in Hungarian history and the development of the constitution, the Hungarian Criminal Code also protects the Hungarian Holy Crown. The offense is committed through the use by the person committing the offense of insulting or degrading expressions or other forms of desecration of national symbols protected by law. However, the offense can only be established if committed in public and only if a more serious offense is not committed. The offense may be committed by any person but may only be committed intentionally.

3.3. *Act I of 2000 on the commemoration of the foundation of the state of Saint Stephen and the Holy Crown*

Act I of 2000 the so-called "Millennium Law," is a commemorative law, a kind of tribute to the state's founding, concerning the custody and protection of the Hungarian Holy Crown. Its solemn preamble states:[34]

> The generation that has been allowed to step from one millennium to the next, looking both to the past to take stock of the nation's past thousand years and to the future to prepare for the next millennium. A thousand years ago, with the coronation of our first king, Saint Stephen, the Hungarian people were united with the peoples of Europe in the Christian faith. Since then, Hungary has been an integral

33 Act C of 2012 on the Criminal Code, is available in English: https://njt.hu/translation/J2012T0100P_20220401_FIN.pdf.

34 The text of the law is not available in English. The translation is the author's own.

> part of Christian Europe. This has ensured the survival of the Hungarian nation and its dominant role for centuries. Today, Hungary is still founded on the work of Saint Stephen. The work of King Stephen led to the establishment of a prosperous state in the Carpathian Basin. Over the centuries, the Hungarian state has contributed to the development of the Christian world by holding off the attacks of the West. Over the past thousand years, we have developed our own unmistakably individual culture, which is also an inseparable part of the diverse community of European nations. The Hungarian state and the Hungarian nation became suitable for the historical role he fulfilled for a thousand years because of the visionary personality of Saint Stephen, his sense of mission, and his iron will, trusting in divine providence. It was the adoption of the Christian faith and the building of the Christian state that enabled the Hungarian nation to repel the attacks on its existence, to maintain its moral fibre not only in times of triumph but also in times of conquest, occupation, dismemberment, and dictatorship, and to survive conquering empires that are believed to be eternal. The Holy Crown is a relic of the continuity and independence of the Hungarian state, living in the nation's consciousness and the tradition of the Hungarian public law. On the occasion of the thousandth anniversary of the founding of the state, Hungary will raise the Holy Crown to its rightful place and place it under the protection of the National Assembly, which represents the nation, from the nation's museum.

By Act I of 2000, the National Assembly established the Holy Crown Council to protect and preserve the Holy Crown and its insignia. The members of the Council shall be the president of the Republic, the prime minister, the Speaker of the National Assembly, the president of the Constitutional Court, the president of the Curia,[35] the president of the Hungarian Academy of Sciences, and the president of the Hungarian Academy of Arts. The president of the Republic is the chair of the Council. If the president of the Council is prevented from attending to his/her duties, the vice chair of the Council shall act as chair. The Council meets as necessary, but at least once a year. The chair shall convene meetings of the Council. A quorum shall exist when at least three members of the Council are present. The Council shall take its decisions by a simple majority, and the decisions of the Council, taken within the scope of its functions, are binding on the body which holds the fiduciary functions of the Holy Crown and its insignia.[36]

35 The Supreme Court of Hungary.
36 Cf. Arts.1–5.

4. The protection of national symbols in the case law of the Hungarian Constitutional Court

The Hungarian Constitutional Court has dealt with the protection of national symbols in several decisions,[37] among which the protection of national symbols under criminal law stands out. Below we present in detail the most important decisions and findings of the Constitutional Court, which determine the (criminal) protection of national symbols in Hungary.

Perhaps the most important decision of the Constitutional Court concerning the protection of national symbols is Decision 13/2000. (V. 12.) CC. In the case, the Constitutional Court examined the provisions of the former Hungarian Criminal Code, Act IV of 1978, concerning the desecration of national symbols. Two petitions were received, merged by the Constitutional Court and examined in a single procedure. According to the petitioners" position, Section 269/A[38] of the former Criminal Code violated the freedom of expression as a fundamental right under article 61 (1)[39] of the former Hungarian Constitution.

According to one of the petitioners, the provisions of the Criminal Code diminished too much value and used the wrong instrument to ensure respect for national symbols through legal means. According to the other petitioner, insulting national symbols was a specific aspect of expressing an unusual opinion in Hungary.[40] According to the same petition, it is discriminative that the Criminal Code protects only the national symbols of Hungary. The Constitutional Court rejected the petitions. As previously explained, state symbols enshrined in the Fundamental Law are still protected by criminal law in Hungary.

In the case, the Constitutional Court reviewed the constitutional and criminal law of certain European countries in relation to national symbols, the relevant international conventions, and the case law of the European Court of Human Rights. In the comparative analysis, the Constitutional Court examined the nature of the constitutional regulation of national symbols in the practice of European countries. In this context, the Constitutional Court has noted that most European constitutions

37 The most important of these are: CC decision no. 48/1991. (IX. 26.); CC decision no. 31/1994. (VI. 2.); CC decision no. 535/B/1996; CC decision no. 1464/B/2007; CC decision no. 13/2000. (V. 12.); CC decision no. 14/2000. (V. 12.); CC decision no. 18/2004. (V. 25.); CC decision no. 4/2013. (II. 21.); CC decision no. 16/2013. (VI. 20.).

38 Art. 269/A—Violation of National Symbol: "The person who—before great publicity—uses an expression outraging or humiliating the national anthem, the flag or the coat of arms of the Republic of Hungary, or commits any other similar act, unless a graver crime is realized, shall be punishable for a misdemeanor with imprisonment of up to one year, labour in the public interest, or fine."

39 There is no substantive difference between Hungary's current Fundamental Law and the relevant provisions of the former Constitution. The Art. IX of the Fundamental Law contains the provisions to freedom of expression. The Fundamental Law of Hungary is available in English: https://njt.hu/translation/TheFundamentalLawofHungary_20220525_FIN.PDF.

40 There are no significant differences between the previous and current rules in this aspect.

contain rules on specific national symbols, which are generally placed at the beginning of the constitutions, in the context of sovereignty, among the fundamental provisions. According to the Constitutional Court, in the west, north, and south, the European constitutions most often specify the national colors; some include the national anthem, the capital, the official language, the oath, and the use of slogans or mottos as national symbols. Central and Eastern European constitutions are coat of arms oriented. Almost without exception, the flag, the anthem, and the capital are included in all constitutions alongside the coat of arms. In addition, the official language and the state seal are common.

According to the Constitutional Court, there are two types of constitutional regulation of the national symbols: constitutions that describe the content of the national symbols, such as the elements of the coat of arms. In contrast, other constitutions leave the regulation of the national symbols to the legislature. Constitutions usually provide exclusive legislative competence—often by a qualified majority, for the use and protection of national symbols. The decision stated that some constitutions also contain that national symbols are respected and enjoy special legal protection. (It should be noted that in an earlier decision, the Constitutional Court stated that fundamental Constitutional rights could only be those explicitly enumerated in the constitution. Among these, the constitution does not grant any person a subjective right to use national symbols.[41])

Based on comparative analysis, the Constitutional Court also found that the violation of national (state) symbols is punishable by criminal law in several European countries. Such provisions are contained, for example, in the Austrian, German, Swiss, Italian, Spanish, Portuguese, and Polish criminal codes. Moreover, the criminal codes of these countries define the offense in partly different, partly similar, or identical terms: national colors, other national and state symbols, and national emblems—including, in the case of federal states, the symbols, flags, coats of arms of the Member states, provinces, cantons, etc.—are protected by criminal law.

The German, Italian, Portuguese, and Polish criminal laws give the same protection to national symbols of foreign countries as to national symbols at home. The criminal codes of each state have structurally placed this offense among the offenses against the state. The criminal laws of the listed states contained similar punishments to the (former) Hungarian Criminal Code. Based on all the above, the Constitutional Court concluded that the protection of national (state) symbols under criminal law could not be considered a Hungarian specificity.

A comparative study by the Constitutional Court has shown that many European countries have criminal law rules restricting freedom of expression in relation to state symbols. In these democratic countries, it is therefore considered necessary to prevent the expression of opinions that are offensive to the symbols of the state; to

41 Cf. CC decision no. 31/1994. (VI. 2.).

prevent the expression of opinions that are offensive to those who profess a sense of belonging to that state.

According to the Hungarian Constitutional Court, the freedom of expression has generally been extended in European constitutional democracies. At the same time, the scope of the legal objects protected by criminal law has been narrowed. In democratic societies, notwithstanding national historical traditions, these protected legal objects include national symbols, inter alia because of constitutional provisions. Consequently, parliaments have a wide discretion to include national symbols among the objects protected by criminal law.

In its decision, the Constitutional Court pointed out that the symbols are part of the history of humanity and human communities. On the one hand, symbols have expressed the affiliation of the individuals using the symbol to a particular community. On the other hand, they have also represented the community. Although there are now symbols for the whole of humanity and large regions, the symbols of national communities that the state has organized are of particular importance. According to the Constitutional Court, the notion of a nation as a community has historical significance and is temporal and territorially relative. The nation has been inextricably linked to state power in the historical process of nation–state formation. National symbols reflect this historical process and have thus become symbols of statehood. National symbols have also had the power to preserve and maintain the idea of sovereignty in times of loss or limitation of statehood.

National symbols, therefore, have a dual meaning, the Constitutional Court pointed out. On the one hand, they can be regarded as external forms of display of statehood and state sovereignty. On the other hand, they are also a means of expressing belonging to the nation as a community. Under the conditions laid down by law, these symbols may be widely used by community members, both natural and legal, to express their conviction of belonging to the Hungarian nation or state.[42] It should be noted that the Constitutional Court has pointed out that the national symbols regulated in the former Constitution (identical to the national symbols regulated in the current Fundamental Law) are closely linked to the constitutional regime change of 1989–1990 and the establishment of constitutional democracy.

In its decision, the Constitutional Court pointed out that the significance of the national symbols included in the text of the former Hungarian Constitution has increased during the change of regime because of the country's recent history—the transition from a totalitarian state to a democratic society—which is also underlined by the criminal law protection of certain conduct that violates these symbols. According to the Constitutional Court, the fact that, from 1948 until the constitutional

42 The law on the use of national symbols in force at the time of the Constitutional Court's decision explicitly recognized the possibility of expressing national sentiment through national smybols and, while preserving the prestige of the symbols, allowed individuals to use them to express national belonging and, on an ad hoc basis, on various national holidays and social events. As we have seen in the previous chapters, the current rules in force does not differ in substance from the rules in force at the time of the Constitutional Court's decision.

change of regime, state independence and national symbols were closely linked is an essential element in assessing the specificity of history. Belonging to an independent Hungarian state, the national feeling took a back seat to internationalism, the coat of arms was changed, arrests were regularly made on national holidays, and the use of the national symbol aroused political suspicion. The Constitutional Court pointed out that the constitutional importance of national symbols and the increased and special protection of these constitutional values is supported and made clear by the provision of Art. 76(3) of the former Hungarian Constitution, which required a two-thirds majority of the members of National Assembly to adopt the law on the coat of arms, the flag, and their use. It should be noted that Hungary's Fundamental Law, which entered into force in 2012, did not change this criterion and still requires a two-thirds vote of the Members of the National Assembly to amend the existing law or adopt a new law on national symbols.

In its decision, the Constitutional Court pointed out that pluralism of opinion is only one of the essential criteria of democracies. Democracies are characterized by the existence of institutions and symbols representing the unity of the country, which, while not uncritical, are in some respects outside the pluralism of opinions that should be constitutionally protected. According to the Constitutional Court, this principle is reflected in the case of the president of the Republic, who expresses the unity of the nation, whose person is inviolable under the Constitution, and whose criminal protection is guaranteed by a special law. According to the Constitutional Court, the statement that the president of the Republic expresses the unity of the nation expresses, in the present context, the impartiality of the function of the president of the Republic rather than the fact that an attack on the president is considered an attack on a national symbol (flag, coat of arms, anthem). In the specific regulation of the protection of honor, the legislator may choose to impose more severe sanctions or to allow greater freedom of criticism of the conduct of public office and office holders.[43]

According to the Constitutional Court, the national symbols enshrined in the Constitution (Fundamental Law) are even more constitutional symbols of the external and internal integrity of the country than the president of the state bound to a term of office, and there are therefore constitutional arguments in favor of their protection under criminal law. Increased public and criminal law protection of institutions expressing and representing national sovereignty is constitutionally accepted in European legal cultures and is a justified limitation of freedom of expression. The Constitutional Court has ruled that negative opinions on national symbols, the expression of scientific opinions, artistic expressions or criticisms of the history, value or public significance of symbols, or proposals to change or abolish them, cannot be subject to criminal sanctions but are part of the constitutional freedom of expression.

43 Cf. CC decision no. 48/1991 (IX. 26.).

In the Constitutional Court's view, the petitioner's claim that the rule of the Criminal Code had been discriminatory was not well-founded. The provision of the Criminal Code in question only grants criminal protection to national symbols defined and protected by the Constitution (Fundamental Law). It is within the legislature's discretion whether, in addition to the national symbols defined in the Constitution (Fundamental Law), it should also give criminal protection to the national symbols of foreign states. Given the above, the Constitutional Court rejected the petitions.

The Hungarian Constitutional Court made much shorter but more significant findings in *Decision 535/B/1996 CC*, where the petitioners sought a declaration of the unconstitutionality of article 3 (1) of act LXXXIII of 1995 on the Use of the National Symbols of the Republic of Hungary and the Name of the Republic of Hungary because it generally prohibited the use of the coat of arms and the distinguishable elements of it by social organizations. In its decision, the Constitutional Court held that the constitutional provisions on national and state symbols are linked to such paramount values as the sovereignty of the people and of the state, national identity, and the integrity and inviolability of the state's territory.

It is worth noting that the concept of national identity appears in the 1996 decision of the Hungarian Constitutional Court. The well-known "identity clause" of the European Union in Art. 4(2) of the Treaty on the European Union[44] was introduced into the European Union's legal order by the Maastricht Treaty in 1992. The protection of the national identity of Member states was introduced as a requirement in the EU legal order by the Maastricht Treaty. In contrast, the equality of Member states before the Treaties (first turn) and respect for the fundamental functions of the state were only introduced by the Lisbon Treaty. The first version of the currently known text of the TEU was drafted when the Constitutional Treaty was drafted and originally used the term "essential Member state functions," which was understood as part of national identity but was later included in the Lisbon Treaty in its current form to protect the sovereignty of Member states. [45]

The Hungarian Constitutional Court has referred to the notion of constitutional and national identity in the past ten years in several decisions[46]. However, the practice of the body concerning national symbols shows that the role of national identity in Hungarian constitutional culture goes back much deeper than the primacy of EU law. Rather, its roots go back to the regime change and the decades preceding it

44 "The Union shall respect the equality of Member states before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential state functions, including ensuring the territorial integrity of the state, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member state."

45 Cf. Blanke and Mangiameli, 2013, pp. 187–188.

46 Cf. CC decision no. 22/2016. (XII. 5.); CC decision no. 2/2019. (III. 5.); CC decision no. 32/2021. (XII. 20.).

when the country was under foreign occupation and temporarily deprived not only of its sovereignty but also of its national identity.[47]

The Hungarian Constitutional Court pointed out in its Decision 32/2021. (XII. 20.) CC at the end of 2021,[48] that the man, as the most elementary constituent of all social communities, especially the state, is born into a given social environment, which can be defined as man's traditional social environment, especially through its ethnic, linguistic, cultural and religious determinants. These circumstances create natural ties, determined by birth, which shape the identity of community members. These natural ties or qualities, determined by birth, are considered circumstances that influence a person's self-determination, which, on the one hand, are created by birth and, on the other hand, are qualities that are difficult to change. Therefore, protection under constitutional law should not be abstract, static protection of the individual removed from his or her historical and social reality: It must consider the dynamic changes in contemporary life.[49]

It is this link that connects national identity and national symbols at the level of the individual. For the individual, national identity is, in many cases, realized through national symbols. (This is due to the symbolic nature of national symbols since the purpose of all symbols is to convey or simplify content.[50])

As regards the concrete decision of the Constitutional Court about the national symbols, it stated in its decision that article 3(1) of the act prohibits the use of the coat of arms of a private person, legal entity, or unincorporated organization only as a rule and that a law may provide for an exception to the prohibition, such derogations are laid down by the act itself. According to the Constitutional Court, the constitutional definition of national and state symbols with new content is an indispensable result of the historical change like the state and the sovereignty of the people due to the change of regime. Consequently, legislation abolishing the rights of use deriving from licences granted under previous political regimes[51] is not unconstitutional, and the petition was therefore dismissed.

Indeed, it is indirectly related to national symbols, but we must also mention *Decision 4/2013. (II. 21.) CC*[52] of the Hungarian Constitutional Court since the Constitutional Court expressed its views on using symbols and freedom of expression in this case. The petitioner requested the annulment of the clause "five-pointed red star" in Section 269/B (1) of act IV of 1978 on the (former) Hungarian Criminal Code as part of an ex-post norm control since, in his view, it infringes freedom of expression.

47 Cf. Bíró–Nagy, 2016.

48 The summary of the decision is available in English: https://hunconcourt.hu/announcement/decision-of-the-constitutional-court-on-the-interpretation-of-the-provisions-of-the-fundamental-law-allowing-the-joint-exercise-of-powers.

49 CC decision no. 32/2021. (XII. 20.), [33]–[35].

50 Cf. Halász and Schweitzer, 2020.

51 In the petition, the petitioner invoked an entitlement from before the regime change.

52 Codices summary is available: http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-2013-1-003.

The petitioner explained that the impugned legal provision, the criminal statutory provision of the use of symbols of despotism, criminalised the dissemination, use, and display in front of a large public gathering of symbols that had been symbols of political dictatorships that violated fundamental human rights.[53]

In its decision, the Hungarian Constitutional Court stated that the institutional protection obligation of the state to protect fundamental rights might justify state intervention in a proportionate, that is, constitutionally justified, way. To protect human dignity and the constitutional order and values, the Constitutional Court considered it a legitimate aim for the legislator to prohibit conduct contrary to this criminal law. However—according to the Constitutional Court—the legislator must ensure the functioning of a legal institution with a precise definition and safeguards against the arbitrary application of the law if the legal institution involves a restriction of a fundamental right.[54] According to the Constitutional Court, The public formulation, dissemination of views expressing identification with dictatorial regimes or criminalisation of similar purported conduct may be constitutionally acceptable if the criminal law is sufficiently precise, specific, and definite to ensure that it does not constitute a disproportionate interference with freedom of expression or that the statutory definition is related to scope as narrow as possible to achieve the aim pursued.

The Constitutional Court also found freedom of expression in its Decision 16/2013. (VI. 20.) CC. In this decision, the board, referring to its previous practice, held that a restriction of a fundamental right is permissible in a given case, even though the denigration of national symbols does not in itself entail a violation of a fundamental right of the individual. Therefore, the Constitutional Court considered that the protection of the honor of symbols that ultimately express statehood and all national values took precedence over the individual's constitutional right to freedom of expression.[55]

5. Summary

In Hungary we can distinguish between national symbols: the national symbols enshrined in the Fundamental Law, which can be understood as state symbols, and the category of national symbols not enshrined in the Fundamental Law. The former is narrower in scope and based on a taxative list in the Fundamental Law. These state symbols can also be considered symbols of sovereignty, and, as such, their use and protection are based on legal provisions.

53 CC decision no. 4/2013. (II. 21.), [2].
54 CC decision no. 4/2013. (II. 21.), [61].
55 CC decision no. 16/2013. (VI. 20.), [44].

This protection is implemented through a two-way system: on the one hand, the violation or desecration of the state symbols provided for in the Fundamental Law is protected by criminal law, which is embodied in the offense of Defamation of national symbols provided for in article 334 of the Hungarian Criminal Code, according to which:

> a person who verbally insults or humiliates or otherwise dishonors the national anthem, flag, or coat of arms of Hungary or the Holy Crown in front of a large audience is guilty of a misdemeanor and shall be punished by imprisonment for up to one year unless a criminal offense of greater gravity is established.

On the other hand, the use of these symbols is governed by a specific cardinal act under the Fundamental Law, which is currently the Act CCII of 2011 on the Use of the Coat of Arms and Flag of Hungary and state Decorations. Furthermore, the provisions of the law on the use of the flag and the coat of arms are supplemented by two decrees. These lay down the rules on the flag hoisting of public buildings and the rules on the authorization required for the protection of trademarks and designs bearing the coat of arms or the flag.

In addition to these rules, the practice of the Constitutional Court is of particular importance in the Hungarian legal system, which has developed an extensive practice in the past thirty years in the context of the protection of national symbols, especially about the criminal law protection. The Constitutional Court contrasted the protection of national symbols with the freedom of expression. It held that the criminal law protection of national symbols is not contrary to the Fundamental Law given their function. Still, the criminal law regulation must be interpreted restrictively.

Although the Fundamental Law does not list the Hungarian Holy Crown as a state symbol, the Criminal Code protects it, which embodies Hungary's historical constitution and constitutional order and the history of the Hungarian nation. Furthermore, the Hungarian Holy Crown expresses the unity of the Hungarian nation, which, given the events of the twentieth century, found itself in a special situation due to the Treaty of Trianon: the political nation was separated from the cultural nation. The situation brought about by the Treaty of Trianon and the country's dismemberment caused a rupture in Hungarian national identity that still defines historical memory and national consciousness today. Therefore, the Hungarian Holy Crown[56] is the link that embodies the unity of the Hungarian nation with its homeland for those torn apart by the border.

56 Cf. László, 2003, pp. 421–510.

Another group of national symbols is those not constitutionally protected,[57] i.e., their use and protection are not regulated by law. These symbols (in many cases a historical event, a building, or a place), like symbols regulated by the state, express national identity, reinforce or even serve as a means of expressing a sense of national identity and belonging to the nation. The role of these symbols, however, can only complement the former category, and their violation can at most raise moral concerns but no legal consequences.[58]

57 For instance the national memorial sites, which are sites of decisive importance in the history of the nation, which are of outstanding significance in the self-image of the Hungarian nation, the Hungarian nation and the nationalities living in the territory of the country, and which can be the site of nationally significant state commemorations. The declaration of a national memorial site falls within the competence of the National Assembly. Cf. Halász and Schweitzer, 2020.

58 It is worth noting that many of these symbols are a consequence of the Treaty of Trianon, such as the symbol of Greater Hungary.

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