

CHAPTER III

LEGAL PROTECTION OF STATE, NATIONAL AND COMMUNITY SYMBOLS IN THE CZECH REPUBLIC



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1. Introduction

It is characteristic for every community that is organized to identify itself in some way, both externally and internally. Its members share common goals, values, and attitudes, and they respect and protect them. It is the symbols that serve as one of the important means which embodies the existence of a particular community externally (in relation to other entities) and at the same time the affiliation of its member to this group. Symbols also reflect a certain solidarity of the members of the community and their internal and emotional ties to it. The symbols express the history and traditions, values, and ideas of the community. All this applies regardless of whether such a community is a state or another important community in its territory, especially a territorial self-governing unit (a municipality or a region), a national minority, or a religious community. In these communities, in particular, symbols play an important role and perform several functions. Therefore, these symbols are subject to the relevant national legislation. As a rule, its content is the definition of these symbols, the basic rules for their use, and the means of their legal protection. From the point of view of various forms of protection, four basic levels can be distinguished: constitutional protection, administrative protection, criminal protection, and protection under private law (especially copyright). The following text will focus on the analysis of the state, national and community symbols in the Czech Republic, especially from the point of view of their legal protection.

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2. State symbols in the Czech Republic

The issue of state symbols, their legal regulation and protection is very important for every state. This is because it is through state symbols that the existence of the state and at the same time the affiliation to this state are embodied and externally symbolized.¹ The constitution of the state as well as its state symbols are what the state presents most outwardly to others. The national emblem and the national flag are of fundamental importance in this respect. After all, their use as state symbols is also envisaged by international law (the Vienna Convention on Diplomatic Relations of 1961 and Vienna Convention on Consular Relations of 1963²). In this regard, these are not only state symbols, but also identification symbols (of the state) in the international environment. They are protected under conditions of non-interchangeability and notification to other countries. They represent signs of a sovereign state power.³

The above also applies without reservation to the Czech Republic. The state symbols of the Czech Republic serve for the external representation of the Czech state: they are an expression of its existence and sovereignty. They symbolize the history and tradition of Czech statehood; they are an abstract symbol of the values of the Czech state. The state idea is also expressed in the state symbols as one of the state-creating elements of the state. The state idea strengthens the state in value, ideology, and emotion.⁴ It is a set of values through which citizens identify with the state and express that they want to live in such a state.⁵

State symbols perform several functions. In addition to their representative function, they have in the Czech Republic's negotiations within the international community, they also have an identification function. They serve to be used by the entities acting on behalf of the state, both internally and externally. They also fulfill the function of integration, when on various occasions they express the belonging of the citizens of the Czech Republic to their own state.⁶

The legal grounding of the state symbols should correspond to the abovementioned meaning and significance. As a rule, they are subject to the constitutional regulation. In the Czech Republic, the state symbols are regulated directly in the Constitution of the Czech Republic (Art. 14). However, the issue of state symbols represents a multidisciplinary issue, where not only constitutional, state law and international law influences accumulate, but also political and historical aspects, as well as aesthetics and heraldry.

1 Filip, 2003, p. 154.

2 Art. 20 of the Vienna Convention on Diplomatic Relations of 1961 and Art. 29 of the Vienna Convention on Consular Relations of 1963.

3 Filip, 2003, p. 155.

4 Pavlíček et al., 2011, p. 399.

5 Pražák, 1900, p. 6. For more details on Czechoslovak and Czech statehood, see Pavlíček et al., 2011, pp. 399–403.

6 Filip et al., 2010, pp. 268–269.

2.1. Historical excursion

The official state symbolism of the Czech Republic is very closely connected with the historical development of the Czech state, which began to be constituted during the ninth century. The state symbols reflect the historical and political events of the state, the development of society and its traditions. According to Adler, “state signs also radiate certain emotional values” and should be a link between the various groups of the state’s population.⁷ The preamble of the current Constitution of the Czech Republic points to the importance of all these values, which are reflected in the state symbols. It states:

We, the citizens of the Czech Republic in Bohemia, Moravia, and Silesia, at the time of the renewal of the independent Czech state, faithful to all good traditions of the ancient statehood of the Czech Crown and Czechoslovak statehood, determined to build, protect, and develop the Czech Republic....⁸

An important milestone in the development of Czech state symbolism is the year 1918, when the independent Czechoslovak Republic was established. Until the beginning of the 20th century and the establishment of the republic, it was mainly the symbolism of the reigning monarch. The first symbols in the Czech lands began to appear in the 12th century.⁹ The oldest known emblem (Přemyslid) was a black “flaming” eagle on a silver field.¹⁰ A significant moment was the accession of King Přemysl Otakar II to the Czech throne in 1253. The silver crowned two-tailed lion, which is the basis of Czech state symbolism to this day, has become the state symbol (the symbol of the Czech king). Another important milestone was the year 1752, when Empress Maria Theresa issued a rescript that introduced a unified state symbolism for the Czech and Austrian lands (Austro–Hungarian monarchy).¹¹

The new era of the state symbolism begins with the aforementioned establishment of an independent Czechoslovak state in 1918. Immediately after the establishment of the Czechoslovak Republic, a provisional constitution was adopted.¹² Pursuant to Section 14 of this constitution, the government issued regulation no. 300/1919 coll., which established the state coat of arms. This very brief by-law (it had only two provisions) established the first (and at that time only) state symbol of the new republic, the state coat of arms, and at the same time defined its graphic form—a silver two-tailed lion in a jump on a red background.

7 Hácha, Hoetzel and Weyr, 2020 [1929–1938], p. 1103.

8 Preamble of the Constitution of the Czech Republic.

9 Sedláček, 2008, p. 3.

10 For details see Gerloch, Hřebejk and Zoubek, 2013, p. 114.

11 The history of state symbolism was elaborated in detail by Sedláček, 2002, pp. 5–150, or by Novák, 1990, pp. 3–166.

12 Act no. 37/1918 coll., On the Provisional Constitution.

In 1920, the Constitutional Charter of the Czechoslovak Republic was adopted (it replaced the provisional constitution), which in Section 5 already explicitly enshrined (some) state symbols. It was stated here that the colors of the republic are white, red, and blue. Furthermore, the Constitutional Charter mentioned the state coat of arms and flags, but left their specific regulation to a special law.¹³ This act became act no. 252/1920 coll., which issued provisions on the national flag, state coat of arms and state seals. From the point of view of heraldry and vexillology, the law precisely described the appearance of the state symbols. Specifically, it was the national flag and the presidential standard. The small, medium, and large state coat of arms and state seal were also regulated. The law also included a graphic design of the state symbols. In addition, the law contained the basic rules for the use of the state symbols.¹⁴ The specific rules were to be laid down by the government in its regulation. Violation of these rules was an administrative offense.¹⁵ Another important legal regulation was act no. 269/1936 coll., On the Use of Flags, state Coats of Arms, and other symbols, as well as uniforms and signs, and on measures against defective markings. This act changed act no. 252/1920 coll. in some respects, but in particular significantly amended it, namely in the issue of the use of the state symbols and in the issue of the regulation and use of non-state symbols (e.g., signs of local self-government and other public corporations, military uniforms, uniforms of public authorities, etc.). These were relatively detailed rules for the use of these signs and symbols, and the sanctions were also set for violating these rules (it was possible to impose a fine or a short-term prison sentence). Again, it was a matter of administrative liability for an administrative offense.

The Constitutional Charter of 1920 was replaced by the Constitution of 1948,¹⁶ which was already a product of the emerging communist regime in the Czechoslovak Republic. President Edvard Beneš refused to sign the Constitution and abdicated. Even so, it was accepted. Although the Constitution formally maintained some institutes of parliamentary democracy, the actual constitutional conditions and practices were quite different. This Constitution also explicitly regulated the issue of state symbols (Section 169), to the same extent as the Constitution of 1920. The state colors (white, red, and blue) were enshrined here, and in relation to state coat of arms and flags, regulation was still left to a special law. However, the new law was not passed at this time. This meant that the previous regulation was still formally in force. Specifically, act no. 252/1920 coll. and act no. 269/1936 coll. In practice, however, this issue was completely subordinated to the ideology of the communist regime and its needs.

13 Weyr and Neubauer, 1931, p. 36.

14 The issue of state symbols in this historical period is addressed in the publication: Vojtíšek, 1921, pp. 1–95.

15 A fine or a short-term prison sentence could be imposed for the offense.

16 Constitutional act no. 150/1948 coll., Constitution of the Czechoslovak Republic.

The Constitution of 1948 was replaced by the Constitution of 1960. This Constitution represented the definitive transition from parliamentarism to the unity of state power, ended the period of people's democracy and established socialism in the country. The new name of the country was the Czechoslovak Socialist Republic. The Communist Party was officially declared the leading force in the state and society (Article 4 of the 1960 Constitution). This constitution also regulated the state symbols (Section 110). Specifically, it was the state coat of arms and the national flag, including the definition of their appearance. Probably the most significant change concerned the appearance of the state coat of arms of the Czechoslovak Socialist Republic. It was still based on a two-tailed lion in a red shield, but instead of a crown, the lion had a five-pointed star over his head (a symbol of communist ideology). According to the Constitution, details concerning state symbols and their use were to be regulated by law. This act became act no. 163/1960 coll., On the state Coat of Arms and the state Flag (act no. 252/1920 coll. and act no. 269/1936 coll. were repealed. The act no. 163/1960 coll. regulated not only the state coat of arms and the state flag, but also the standards of the president of the Republic, the state seal and their use.

In 1989, significant political changes took place in the Czechoslovak Republic, especially the abolition of the communist regime and the return to a pluralist democracy.¹⁷ The Czechoslovak Republic is once again becoming a democratic state governed by the rule of law, founded on respect for the rights and freedoms of human beings and citizens. The change in the political climate associated with the fall of the totalitarian system of power naturally required a change in the state coat of arms, which was not only to express the renewal of democratic principles, continuity of historical development, but also to capture the federal organization of the Czechoslovak state. After very difficult negotiations, Constitutional act no. 102/1990 coll., On the state Symbols of the Czech and Slovak Federal Republic, was adopted. This constitutional law amended the coat of arms of the Czech and Slovak federal republic, when the national councils of both republics first approved the national coats of arms. Constitutional act no. 102/1990 coll. stipulated that the state symbols of the Czech and Slovak Federal Republic are, in addition to the state coat of arms, also the state flag, the standard of the president of the Republic, the state seal, and the national anthem. In relation to the depiction of the state coat of arms, the five-pointed star (the symbol of communism) was removed and the traditional crown was restored.

Unfortunately, despite the return to democracy and Czechoslovak (especially First Republic) traditions, the federal organization did not last long. The Czechoslovak Federation disintegrated and on January 1, 1993, two independent states were established—the Czech Republic and the Slovak Republic. The newly adopted Constitution of the Czech Republic (which is effective to this day) regulated the issue of state symbols in Article 14. This article stipulates that the state symbols of the

¹⁷ The events are often referred to as the “Velvet Revolution.”

Czech Republic are large and small state coats of arms, state colors, state flag, flag of the president of the Republic, state seal, and state anthem. State symbols and their use are to be regulated more specifically by law. This act became act no. 3/1993 coll., On the state Symbols of the Czech Republic. The independent Czech Republic took over, among other things, both state coats of arms (small and large) of the former Czech Republic (part of the then federal Czechoslovak Republic) by this law, only for the small coat of arms was the Spanish shield changed to Gothic. The last law adopted in this area in the Czech Republic was act no. 352/2001 coll., On the Use of state Symbols of the Czech Republic, in 2001.

It can therefore be summarized that the legal regulation of the state symbols of the Czech Republic has undergone a long and interesting development, while it has significantly reflected historical and especially political changes in the state and society. For a long time, it was associated with the symbolism of today's independent Slovak Republic, because until 1993, both countries formed a common state. The fact that it still strongly refers to the traditions of the statehood of the Czech Crown and the Czechoslovak statehood can be highlighted as a great positive of the current legal regulation of the state symbols. The core of the legal regulation is the Constitution of the Czech Republic and the related act no. 3/1993 coll., On the state Symbols of the Czech Republic and act no. 352/2001 coll., On the Use of state Symbols of the Czech Republic. The following part of the text will be devoted to the analysis of these laws.

2.2. Current state and legal regulations

At present, the basis of the legal regulation of state symbols is the Constitution of the Czech Republic. Article 14 of the Czech Constitution stipulates that the state symbols are large and small state coats of arms, state colors, the state flag, the flag of the president of the Republic, the state seal, and the state anthem.¹⁸ The order of the state symbols reflects their importance.¹⁹ Furthermore, the Constitution merely states that state symbols and their use are regulated by law. It can therefore be concluded that the constitutional regulation of state symbols is very brief, it is limited to stating the existence of the state symbols in the form of their exhaustive list. Regarding their importance and function, it would be more appropriate to define at the constitutional level their form (appearance), or at least the form of the most important (such as the state coat of arms or state colors).²⁰

The constitutional regulation of the state symbols is thus logically followed by statutory regulation. Specifically, there are two acts, namely the act no. 3/1993 coll., On the state Symbols of the Czech Republic and act no. 352/2001 coll., On the Use of

18 See: Appendix, pp. 352-353.

19 Filip et al., 2010, p. 269.

20 See Klíma, 2009, p. 194.

state Symbols of the Czech Republic. The following part of the text will be devoted to the analysis of these laws.

The Act on state symbols is relatively brief, it contains only a list of state symbols and a description of their form (appearance). The appearance of individual state symbols (their graphic representation) forms an appendix to this act.

2.2.1. Large and small state coats of arms of the Czech Republic

The state coat of arms is generally one of the most important state symbols of any state. From a historical (and heraldic) point of view, the oldest Czech (Přemyslid) state coat of arms in our country was a black, flaming eagle (with red flames) in a silver field. However, from the middle of the 13th century, a silver two-tailed lion²¹ in a jump, with a golden crown, in a red shield, became a Czech symbol.²² Other territorial parts of the Czech lands, especially Moravia and Silesia, also have historical symbols. In the case of Moravia, it is a silver-red checkered eagle with a gold crown, in gold armor, in a blue field. The symbol of Silesia is a black eagle with red armor and a crown in a golden shield.

After the establishment of the Czechoslovak Republic in 1918, government decree no. 300/1919 coll., Which establishes the state coat of arms, was adopted based on the provisional constitution. This very brief by-law (it had only two provisions) established as the first and at that time the only (!) state symbol the state coat of arms and at the same time defined its graphic form.²³ The regulation stipulated that until the final legal regulation of the state coat of arms, the state coat of arms of the Czechoslovak Republic would be considered to be the current coat of arms of the Kingdom of Bohemia (silver two-tailed rampant lion, with a gold crown and a red shield). This provisional regulation was replaced in 1920 by the Constitutional Charter of the Czechoslovak Republic and the subsequent act no. 252/1920 coll., which issues provisions on the state flag, state coat of arms and state seals. The constitutional regulation contained only a list of the state symbols (including the state coat of arms), a more detailed regulation contained act no. 252/1920 coll. In contrast to the current regulation (containing only the small and large state coats of arms), small, medium, and large state coats of arms were enshrined. The large state coat of arms had a very complicated and complex form, which tried to include the symbols of all the territories that were then part of the Czechoslovak Republic. Therefore, in addition to the Czech symbol, there was also the symbol of Slovakia, Subcarpathian Russia, Moravia, Silesia, Cieszyn, Opava, and Racibórz. The change came after communism and socialism were established in the Czechoslovak Republic. Only one state

21 The two tails are supposed to symbolize the union of Bohemia and Moravia and also, from the point of view of mysticism, the uniqueness and power of the Czech king (because the two-tailed lion does not exist in nature).

22 Gerloch, Hřebejk and Zoubek, 2013, p. 114.

23 Sládeček et al., 2016, p. 203.

coat of arms was introduced, which represented a two-tailed lion jumping on a red shield. The traditional golden crown was replaced by a five-pointed star, which was a symbol of a communist ideology. After returning to democracy in 1989, there is a return to the traditional image—the Czech lion has a crown over its head again (not a five-pointed star). Until the disintegration of the Czechoslovak Federal Republic, the state coat of arms included both the coat of arms of the Czech Republic, and Slovakia.

On January 1, 1993, an independent Czech Republic was established, which has a large and a small state coat of arms.²⁴ The large state coat of arms consists of a square shield, in the first and fourth red field of which is a silver two-tailed lion in a jump with a gold crown and gold armor (emblem of Bohemia). In the second blue field is a silver-red checkered eagle with a gold crown and gold armor (the emblem of Moravia). In the third golden field is a black eagle with a silver crescent, with a golden crown and red armor (emblem of Silesia). The small state coat of arms consists of a red shield, in which there is a silver two-tailed lion in a jump with a gold crown and gold armor.

2.2.2. State colors

Among the state symbols are the state colors. According to the rules of heraldry, these colors are derived from the state coat of arms so that the first of them corresponds to the color of the coat of arms sign, and the second to the color of the shield.²⁵ In the Czech lands, therefore, since the 13th century, it was white and red.²⁶ When the independent Czechoslovak Republic was established in 1918, it adopted these two traditional colors. However, in practice, problems have begun to emerge (e.g., when marking state borders), as the neighboring countries (Austria and Poland) have the same colors. The Czechoslovak Republic solved this situation by adding a third color to these two colors, namely blue. Together with the traditional couple, it created the so-called Slavic tricolor, which was banned during the First World War. In addition, the same colors were characterized by the flags of the important allies, such as France, Great Britain, and the United States. In addition, the blue contained the provincial emblems of Moravia, Slovakia, and Subcarpathian Russia.²⁷ The Constitutional Charter of the Czechoslovak Republic of 1920 explicitly stated that the colors of the republic are white, red, and blue. These state colors (including their binding order) have been preserved as the colors of the Czech state until today.²⁸ At present, however, the Constitution of the Czech Republic only stipulates that state

24 See: Appendix p. 353.

25 Klíma, 2009, p. 194.

26 White lion on a red shield. However, if the Czech monarch also had the higher title of Roman emperor, they were given priority to the imperial colors (black and yellow).

27 Sedláček, 2008, p. 24.

28 See: Appendix, p. 352.

colors are one of the state symbols. However, the enumeration and order of these colors are regulated *only* by the Act on state Symbols.

2.2.3. State flag

The state flag is generally one of the most important symbols of any state. Even during the Austro-Hungarian Empire, national flags and banners spread in Bohemia in the 19th century, the color form of which was derived from the Czech coat of arms (white lion on a red background).²⁹ These banners and flags³⁰ were formed by the upper white stripe and the lower red stripe. Around the middle of the 19th century, these flags began to be generally accepted as one of the Czech national symbols.³¹ This flag was also raised on October 18, 1918, the day of the founding of the Czechoslovak Republic, at the house of the Prime Minister of the Provisional Foreign Czechoslovak Government, T. G. Masaryk (in the USA). Without the people of the Czech lands knowing about this event in America, they used the same white and red flags in the spontaneous declaration of independence on October 28, 1918. The harmony of the foreign and domestic anti-Austrian resistance was symbolic.³²

After the change (extension) of the state colors, when the color of blue was added to the white and red colors, it was necessary to reflect this change in the appearance of the state flag. Act no. 252/1920 coll. therefore stipulated that the state flag consisted of a lower red stripe and an upper white stripe, between which a blue wedge was inserted.³³ The extent of the parts of the flag was expressed in the law graphically (by depicting the flag).³⁴ In this form, the flag was used in the following decades, including the governance of the Communist Party. After the disintegration of Czechoslovakia into two independent states, the Czech Republic took over this flag as its state flag. Slovakia did not agree with this step and objected to the conflict with the Constitutional act no. 542/18992 coll., On the dissolution of the Czechoslovak Federal Republic.³⁵ However, the independent Czech Republic objected that with the demise of the Czechoslovak Federal Republic, state symbols became free and could therefore be used.³⁶

29 Sedláček, 2008, p. 26.

30 For the differences between the flag and the banner, see Hácha, Hoetzel and Weyr, 2020 [1929–1938], p. 183.

31 Svoboda, 1996, p. 44.

32 Sedláček, 2008, p. 26.

33 See: Appendix, p. 352.

34 It was a length-to-width ratio of 3:2.

35 Art. 3 of this Constitutional act prohibited the successor states (ie the Czech Republic and the Slovak Republic) to use the state symbols of the Czechoslovak Socialist Republic.

36 At the same time, the Czech Republic did not feel bound by the law of the defunct state (the Czechoslovak Federal Republic). See Pavlíček et al., 2011, p. 403; Klíma, 2010, p. 158.

2.2.4. *Flag of the president of the Republic*

This state symbol relates to the establishment of the Czechoslovak Republic in 1918.³⁷ The appearance of the flag was first amended by act no. 252/1920 coll. The basis of the flag was a large state coat of arms, on a white background with a border formed by flames (white, red, and blue colors). Part of the flag was the motto “*Truth wins.*” This motto, which is still part of the flag of the president of the Republic, has deep religious roots. It dates to the Hussite times. Over time, there have been partial changes in the appearance of the flag. The addition of linden branches (linden is the Czech national tree) is notable. The current appearance of the presidential flag is regulated by the Act on state Symbols. The flag of the president of the Republic is white, with a border consisting of flamingos alternating white, red, and blue. In the middle of the white field is a large state coat of arms. Below it is the motto “*Truth wins*” on a red ribbon lined with yellow (gold) linden branches.³⁸

2.2.5. *State seal*

At present, the use of the state seal is limited, but in the Middle Ages it was of fundamental importance, especially from the point of view of the legal validity of the written documents. At that time, the seal of the monarch usually performed the function of the “state” seal. However, in the “no king” periods, an alternative solution had to be found. This situation occurred in the Czech lands in the 15th century, when the victorious Hussites acquired the first state seal in today’s sense in 1432. It depicted a shield with a two-tailed lion, and a Latin inscription referred to it as the seal of the Crown of the Kingdom of Bohemia.³⁹

After the establishment of the republic, the state seal was regulated as one of the state symbols by act no. 252/1920 coll. It was interesting that the small and large state seal was enshrined in this act. Both seals were kept by the prime minister. The small state coat of arms was depicted on the small state seal, and the large state coat of arms on the large state seal. Around the large and small coat of arms was the inscription: Czechoslovak Republic. The president had his own seal with a large state coat of arms and the inscription “president of the Czechoslovak Republic.” However, it was no longer one of the official state symbols. The changes took place in connection with the acceptance of socialism and communism. There was only one state seal and it was kept by the president. It consisted of the state coat of arms, linden branches and the inscription “Czechoslovak Socialist Republic.” The current state seal of the Czech Republic has a similar appearance, only there is—logically—a

37 Previously, the emperor’s flag was used in the Austro-Hungarian monarchy, only in the 19th century. It was used to identify ships, later cars, or places where the emperor was present at the time. In more detail Sedláček, 2008, p. 30.

38 See: Appendix, p. 353.

39 Filip, 2003, p. 159.

different inscription, namely “CZECH REPUBLIC”.⁴⁰ The state seal is kept by the president of the Republic.

2.2.6. State anthem

The last of the exhaustively listed state symbols of the Czech Republic is the state anthem. Medieval spiritual songs, sung on church and secular occasions, can be considered the forerunners of the modern state anthem in the Czech environment. The first of them originated in the 10th century (“Hospodine pomiluj ny”), the most famous of which are the Saint Wenceslas Chorale dating from the 12th century and the Hussite chant “Who are God’s Warriors?”⁴¹ From the end of the 18th century, hymns without religious significance began to prevail. In December 1834, at the premiere of the play *Fidlovačka*, the song “*Kde domov můj*,” composed by František Škroup to the words of Josef Kajetán Tyl, was heard at the Estates Theater in Prague for the first time. It gradually gained popularity and after the fall of the absolutist regime in the 19th century; it definitely established itself as the unofficial Czech national anthem.

In Czechoslovakia, the issue of the anthem was first dealt with by the Ministry of National Defense, which ordered military bands to play alongside the Czech anthem, always the Slovak “*Nad Tatrou sa blýska*.” For the avoidance of doubt as to whether it is one or two anthems, the Czechoslovak government issued a resolution that it is an integral national anthem. Even before the Second World War, there were suggestions about the possibility of replacing the song “*Kde domov můj*” with another song, but it was out of the question for the general public.⁴² However, the state anthem was first explicitly mentioned as a state symbol in the Constitutional act no. 102/1990 coll. After the disintegration of the federation, the first verse of the song “*Kde domov můj*” remained the Czech national anthem. The text and music notation of the national anthem are annexed to the Act on state Symbols.

3. Use and legal protection of state symbols

State symbols represent the existence of every sovereign state. They reflect the values and traditions of the state, its history, and its present. The state presents itself externally through state symbols in the international environment. However, state symbols have an equally significant effect inside the state. They unite the citizens of the state, support their belonging and ties to the state, and recall the basic ideas

40 See: Appendix, p. 353.

41 Pavlíček et al., 2011, p. 399.

42 Sedláček, 2008, p. 39.

and values on which the state is built. The meaning and uniqueness of state symbols is also reflected in the need to protect the state symbols by various legal means. Therefore, the legal order of the Czech Republic not only explicitly enshrines the state symbols, but also lays down rules for their use, as well as the adverse consequences if the statutory rules concerning state symbols and their use are violated. In principle, we can distinguish four levels of legal protection of the state symbols: constitutional protection, administrative protection, criminal protection, and protection under private law.

3.1. Constitutional protection

As mentioned above, the basic legal regulation of the state symbols of the Czech Republic is contained directly in the Constitution of the Czech Republic, i.e., in a legal regulation of the highest legal force. After all, this has been the case since the very establishment of the Czechoslovak Republic in 1918. Art. 14 of the Constitution, which contains their exhaustive list, is devoted to the state symbols. Furthermore, it only states that the state symbols and their use are regulated by law. The constitutional regulation of Czech state symbols is therefore very, very brief and does not say much about the state symbols. Criticism can be made especially of the fact that the constitution does not define the specific form (description) of these symbols, or even the most important⁴³ (such as the state coat of arms, state flag, or state colors⁴⁴). *De lege ferenda*, it would be appropriate to consider extending the constitutional regulation in this regard. The constitution does not even provide a closer look at the meaning of the state symbolism.⁴⁵

On the other hand, it is possible to outline some basic elements of the protection of state symbols from this minimalist constitutional regulation. The very fact that the existence of the state symbols is enshrined directly in the Constitution of the Czech Republic, which takes the form of a constitutional law, is very important. This fact increases the strength of the anchoring of state symbols in the Czech legal system, as any change in the constitutional regulation is a difficult procedure. Stricter conditions are prescribed for amending or repealing a constitutional law than in relation to ordinary law. Constitutional laws must always be adopted by a qualified majority, i.e., three-fifths of the votes of all deputies and three-fifths of the votes of the senators present. The president of the Republic cannot veto their adoption. The enshrinement of the state symbols directly in the constitution thus emphasizes their importance for the Czech state and society, as well as increases the stability and immutability of their regulation. The state symbols of the Czech Republic are defined

43 Sládeček et al., 2016, p. 204; Klíma, 2009, p. 194.

44 With their artistic solution, these symbols embody the existence of the state, its history, territorial development, state establishment, and other important facts, therefore it would be appropriate to enshrine their form directly in the Constitution.

45 We must therefore derive it from the preamble of the Constitution of the Czech Republic.

in the constitution in the form of an exhaustive list. This means that it is a final and closed list, which cannot be further expanded (either by statutory regulation or by another legal act). It is thus clearly stated which symbols have the status of a state symbol with all the legal consequences and which do not. The legal rules governing their use, as well as the norms punishing their misuse or unauthorized use, apply only to such formally defined state symbols.

Art. 14 of the Constitution of the Czech Republic provides that the state symbols and their use will be regulated in more detail by law. The constitutional regulation of the state symbols is thus logically followed by statutory legislation. Specifically, these are the Act on state Symbols of the Czech Republic and the Act on the Use of state Symbols of the Czech Republic. These laws are very closely connected with the Constitution of the Czech Republic and, based on an “order of the Constituent Assembly,” develops the constitutional regulation of state symbols and regulates their use in practice.

The Act on state Symbols is a relatively brief legal regulation, the only content of which is a detailed description of the form (appearance) of the state symbols. This act also includes an appendix, which contains a graphic representation of the state symbols, and a text and music notation for the state anthem. The uniqueness and meaning of state symbols are such that only in such a form can state symbols be depicted and used. It is a manifestation of the so-called official harmonization.⁴⁶ The Act on state Symbols thus has, in relation to Art. 14 of the Constitution of the Czech Republic, a legally constitutive character. and a character that is bindingly depicting and determining.⁴⁷

One of the most important ways of protecting the state symbols of the Czech Republic is the fact that the legislator precisely and clearly defines who can use state symbols and in what way. This regulation is a key element in the protection of the state symbols and prevents their misuse or inappropriate use. Art. 14 of the Constitution of the Czech Republic directly provides for the statutory regulation of the use of the state symbols. Its fulfilment is ensured by the Act on the Use of state Symbols of the Czech Republic, both by setting the rules for their use and by regulating the administrative liability for offenses in the event of their violation. In this respect, we consider it an administrative regulation.

It can be summarized that Art. 14 of the Constitution of the Czech Republic in conjunction with the Act on state Symbols of the Czech Republic and the Act on the Use of state Symbols of the Czech Republic represent a close and logical connection between the constitutional and administrative level of protection of the Czech state symbolism.

46 Filip, 2003, p. 156.

47 Klíma, 2010, p. 214.

3.2. Administrative protection

The essence of the administrative level of protection are the statutory rules for the use of the state symbols and the related administrative liability for offenses if these statutory rules are violated. It should be noted at the outset that this is not an achievement of the current legislation. Since the establishment of the Czechoslovak Republic in 1918, the issue of the use of the state symbols has been regulated by law, as have penalties for violating these legal norms.

The basic and general requirements that apply to the use of all Czech state symbols are the requirement of suitability and a dignified way of using the state symbol. The Act on the Use of state Symbols stipulates that they may be used only in an appropriate and dignified manner. This means that it is not enough for a person or authority to be legally entitled to use a state symbol. At the same time, the entitled subject must use the relevant state symbol appropriately and with dignity (and always regarding the given situation or occasion in which the state symbol is used).⁴⁸ These conditions must be carefully weighed in each case and consider the specific circumstances of the situation.

The law further defines the category of so-called entitled persons. These are institutions, authorities or other entities and persons who may use the state symbols by law. This is a relatively extensive list, which is also exhaustive. These are primarily public authorities, such as the parliament, the president of the Republic, the government, ministries, and other administrative authorities, courts, the Supreme Audit Office, or the Czech National Bank. Furthermore, territorial self-governing units (i.e., municipalities and regions) are also entitled entities. Authorized persons are also the armed forces (army) and security forces (e.g., police officers, customs officers, and others). Another group of eligible entities is represented by schools, state cultural and scientific institutions, state funds, but also athletes representing the Czech Republic, the ambulance service or volunteer firefighters. In the case of public entities, it is often the obligation to identify oneself through these (state) symbols, both internally and externally in relation to other states and groupings.⁴⁹ From the point of view of private entities, it is usually possible to use them on appropriate occasions. The obligation or the possibility of using the state symbols in the manner prescribed by law and for purposes permitted by law also implies the prohibition of their use in another way or for other purposes.

It should be emphasized that the Act on the Use of state Symbols of the Czech Republic regulates in detail which of these authorized persons may use individual state symbols. It is therefore not a “general” power to use all state symbols by all authorized entities. The legislator carefully weighs who and on what occasions can use

⁴⁸ Judgment of the Supreme Court of the Czech Republic of 1712.2019, no. 23 Cdo 184/2019, where the court stated that state symbols and their imitations can also be used for business purposes, but this must be done appropriately and with dignity.

⁴⁹ Filip, 2003, p. 155.

a particular type of a state symbol, and in what way. For example, in relation to the small and large state coat of arms, it is specified exactly on which buildings, documents, service uniforms, insignia or other objects (banknotes, ID cards, etc.) these symbols can be depicted. In cases where the law imposes or allows the use of a large state coat of arms, the entitled person may also use a one-color imitation of metal, stone, glass, ceramics, or other material. All official stamps can then contain only a small state coat of arms. The imprint of the official stamp is always of one color.⁵⁰

Rules are also laid down for the use of the national flag.⁵¹ Some eligible entities (especially public authorities) may have a national flag displayed permanently on the buildings in which they are located. In addition, all entitled persons fly the national flag on public holidays or other occasions of national importance (e.g., a day of state mourning⁵²). Other persons and authorities may use the national flag in an appropriate and dignified manner at any time.⁵³ The law also sets out very precise “technical” rules on how the national flag must be flown. The situation where the national flag is flown together with the flags of other states is also solved by law (the national flag must always occupy the most honored place).

Compared to the national flag, the use of the flag of the president of the Republic is relatively limited. This flag may only be used to indicate the president’s seat⁵⁴ during his presence in the Czech Republic, or to indicate the means of transport used by the president. The flag of the president of the Republic may also be used in connection with the exercise of his powers.

Another state symbol is the state seal. The use of the state seal is no longer as common as it used to be. It is currently used to seal international treaties and instruments of ratification, credentials of diplomatic agents, or in other cases where an international treaty or law so provides.

50 Most court decisions are devoted to the issue of “incorrect” use of the stamp on public documents. There is a consensus that partial deficiencies in the color design of the coat of arms on the stamp or in the parameters (dimensions) of the stamp do not cause nullity or illegality of the decision. This is only a formal defect. See the judgment of the Supreme Administrative Court of the Czech Republic of September 1, 2004, no. 7 Afs 35 / 2003-67, or the decision of the Constitutional Court of the Czech Republic of 24 January 2006, no. II. ÚS 277/05. As the Constitutional Court stated, “The argument of the alleged invalid coloring of a small state coat of arms in the imprint of a state authority stamp is a typical example of legal formalism and lacks any attributes of a reasonable and meaningful interpretation of the law” (the decision of the Constitutional Court of September 22, 2004, no. I. ÚS 33/03). The Supreme Court of the Czech Republic expressed a similar opinion, for example in the decisions of 27 January 2005, no. 20 Cdo 1725/2003, or of May 27, 2005, no. 20 Cdo 1280/2003.

51 Exner, Fojtík and Svoboda, 2004, pp. 5–9.

52 Decision of the Supreme Administrative Court of the Czechoslovak Republic of October 1, 1929, no. 17592/29 in the matter of punishment for not flying the national flag on a public holiday.

53 “The offense of unauthorized use of the national flag is not committed by the owner of the car, who lends his car to another person, who then provides the car with the national flag without the owner’s cooperation.” Judgment of the Supreme Administrative Court of the Czechoslovak Republic no. 4699/31.

54 Prague Castle or Lány Chateau (the president’s summer residence).

The use of the state anthem is regulated in briefest and most general terms. The law only stipulates that the national anthem can be played and sung on public holidays and other occasions, if usual.

It is remarkable that the use of the state colors is not regulated by law at all.

If the legal rules governing the state symbols and their use are violated, the relevant person is liable for the administrative offense. Section 13 of the Act on the Use of state Symbols defines the factual nature of the offenses. If we generalize them, two groups of infringements can be distinguished. The first group represents abuse, gross insult, destruction, damage, or theft of the state symbol of the Czech Republic. The second group includes infringements consisting in the use of a state symbol in violation of the rules laid down by law (e.g., the symbol is used by an unauthorized person, or the symbol is depicted on a document or object on which the law does not allow it).

Both natural and legal persons may commit these offenses. The state, municipality, or region also bears responsibility if it commits an infringement. Thus, even a public entity can be punished for such an offense (e.g., if a state body uses the state symbol illegally, the state can also be fined for the offense). If the perpetrator of the offense is a natural person, fault must always be examined, as this is a subjective responsibility. However, negligence is sufficient to cause fault. In the case of a legal person, on the other hand, no fault is assumed, this is an objective liability. However, the reasons for liberation are set. Indeed, a person can be released from the liability if they prove that they have made all the efforts that could have been required to prevent the offense.

Administrative authorities decide on guilt and punishment for offenses. The offenses in the protection of the state symbols are dealt with by municipal authorities of municipalities with extended powers. Infringement proceedings are always initiated *ex officio*. Classical criminal law principles are applied in the proceedings, such as the principles: *nullum crimen sine lege*, *nulla poena sine lege*, the presumption of innocence, *ne bis in idem*, *in dubio pro reo*, and others.

A typical administrative penalty that can be imposed for these offenses is a fine. Depending on the specific type of the offense, a fine of up to CZK 10,000 or to CZK 30,000 can be imposed. Instead of a fine, a sanction of a moral nature can also be imposed—essentially a reprimand. However, a fine and a reprimand cannot be imposed at the same time.

3.3. Criminal law protection

The protection of the state symbols under the criminal law is rather complementary and not very extensive. The protection under the Criminal Code⁵⁵ is provided only to certain state symbols. It is necessary to mention in particular the criminal offense of the Illegal Production and Possession of state Seal and Official

55 Act no. 40/2009 coll., Criminal Code.

Stamp (Section 349 of the Criminal Code). Anyone who manufactures without authorization, provides or keeps a state seal or stamp of a public authority with the depiction of a state coat of arms or a stamp, the imprint of which is a mandatory part of public documents, or an object capable of fulfilling their function, is criminally liable. The state seal, which is kept by the president of the Republic, is thus protected here.⁵⁶ Furthermore, the small state coat of arms, which is part of the official stamp, is indirectly protected. This stamp is affixed to several important public documents⁵⁷ (e.g., a court judgment). Thus, the good faith of persons in the authenticity and truthfulness of these documents is also protected. Legal and natural persons can commit this crime. It is an intentional crime and can be punishable by up to one year's imprisonment or a ban on an activity.⁵⁸

It is also possible to draw attention to the criminal offenses of Abuse of Internationally Recognized and state Symbols and Abuse of Flags and Armistice (Section 416 and Section 416 of the Criminal Code). The first of these crimes affects, among other things, conduct where the flag or symbol of a neutral state or a state that is not a party to the conflict is misused during the war.⁵⁹ The second offense, on the other hand, concerns the misuse of the flag or coat of arms of a state which is a party of an armed conflict.⁶⁰ In both cases, therefore, these are war crimes that protect against the misuse of state symbols during a war.

In practice, too many offenses or crimes associated with state symbols do not occur. Probably the best-known case in this area is the case of “hanging red shorts at Prague Castle” (the seat of the president of the Republic). In September 2015, several members of the art group Ztohoven exchanged the presidential flag at Prague Castle for huge red shorts. It was a protest against Czech President Miloš Zeman. The police of the Czech Republic and the Public Prosecutor's Office accused the members of the group of the criminal offenses of theft, rioting, and damage to another's property. The court first acquitted the accused in the proceedings, based its conclusions on the exercise of political rights, which are guaranteed by the Charter of Fundamental Rights and Freedoms. Specifically, there was to be the freedom of expression (Art. 17 of the Charter). The court called the act a recession and handed over the case as a administrative offense. However, an appeal was lodged against this court decision. The Court of Appeal overturned the verdict, stating that the right to freely express opinions could not take precedence over the protection of property (the roof was damaged and the presidential flag was taken away when the flag was changed). The

56 The state seal expresses the consent and the confirmation of some important legal acts (eg international treaties).

57 See the judgment of the Supreme Court of the Czech Republic of October 23, 2001, no. 7 Tz 252/2001, according to which the conduct of an offender who has the notary's stamps made illegally must be qualified as a criminal offense of illegal production and possession of a state seal and an official stamp.

58 Šámal, 2012, pp. 3262–3265.

59 Implementation of Arts. 38, 39 of the Additional Protocol to the Geneva Conventions—Protocol I.

60 This offense is based on Article 8 of the Rome Statute of the International Criminal Court.

case was re-discussed and the members of the group were sentenced to suspended sentences (six months' suspended sentence of one year). At the same time, they had to pay over CZK 60,000 in damages (for the stolen flag and for the damage to the roof).

We can therefore point out that, in this case, the usual kinds of the crimes were basically used (without any connection to the state symbols and their protection). However, even this state and the concept of criminal law protection of state symbols can be considered sufficient.

3.4. Private law protection

Within the framework of private law protection, it is possible to consider the protection of the state symbols from the point of view of copyright. This is regulated in the Czech Republic mainly by the Copyright Act.⁶¹ The state symbols could fulfill the characteristics of a “copyright work” in the sense of the Copyright Act with all the resulting legal consequences. In this respect, however, Section 3 of the Copyright Act, which regulates exceptions to the protection under copyright, is essential. This provision provides for exhaustive exclusions from the substantive scope of the Copyright Act for certain objects for which there is a public interest in their free distribution and public access to them. These are therefore exceptions justified by public interest. The legal and political reason for these exclusions is to ensure public interest in the free use of certain “objects,” which could possibly meet the conceptual features of works under the Copyright Act, which could defeat the purpose of their free use (public interest in it). As this is a restriction of copyright, the interpretation of these exclusions must always be rather restrictive.⁶²

The Copyright Act does not define the concept of “public interest.” It is an indefinite legal concept, a phenomenon typical and relatively numerous occurring in the Czech legal system. Both case law and doctrine have tried and are trying to interpret this concept. For example, the Constitutional Court of the Czech Republic stated that not every collective interest can be described as a public interest of society.⁶³ According to the First Republic Supreme Administrative Court, “there is a public interest if a work is done in order to meet the needs of a wider entity (state, territorial, or social entity, etc.).”⁶⁴ The current Supreme Administrative Court noted

61 Act no. 121/2000 coll., Copyright Act.

62 Telec and Tůma, 2019, p. 71.

63 Judgment of the Constitutional Court of the Czech Republic of March 28, 1996, no. I. ÚS 198/95.

64 Judgment of the Supreme Administrative Court of the Czechoslovak Republic no. Boh. A. 14.224.

that it is a concept that by its nature, outlines the possibility of generalization.^{65,66} If we look at the administrative doctrine, then, for example, Vopálka defined the public interest as “the general interest of the community, based on a common will to solve certain issues.”⁶⁷

The provisions of Section 3 of the Copyright Act specifically stipulate that protection under copyright does not apply to so-called “official works.” The legislator demonstratively calculates what these official works belong to, and the list also includes the state symbols.⁶⁸ This means that all state symbols of the Czech Republic are subject to this exclusion. The consequence of this exclusion is the fact that the use of these works (including the state symbols) does not require the permission of the author, nor is it necessary to provide a reward.⁶⁹

Unfortunately, the Copyright Act does not address in practice the frequent situation where a work is not created by the author as an official work (i.e., primarily for the public interest) and becomes an “official work” only later (at a time when the author’s copyright to the work already exists). This is a consequence of the fact that the creation of a work (and the creation of a subjective copyright) on the one hand and the acquisition of the official nature of that work on the other do not fall at the same time. This leads to a conflict of public interest and private copyright protection, at a time when the author’s subjective copyright to such a work already exists and persists. The moment an “ordinary” work becomes “an official work,” the existing copyright protection ceases *ex nunc*, and the work thus becomes copyright free.⁷⁰

It must be concluded that such an interference with subjective copyright may in principle take place with the consent of the author (or another copyright owner).

Within the meaning of Article 11 of the Charter, this can only happen if the competent entity (i.e., in the case of state symbols the state) has acquired the right to dispose of the work in this way (i.e., to officialize it). This may happen primarily based on the express or implied consent of the copyright owner, or in connection with the special regime of certain works, such as staff works, collective works, tailor-made works, or works intended for competition. If the “officialization” of the work took place without the consent of the copyright owner, from a constitutional point of view, it would in principle be an interference with the constitutionally guaranteed right to own property, resp. an expropriation of private property, and this could only happen based on law and for compensation (Article 11 of the Charter).

65 Judgment of the Supreme Administrative Court of the Czech Republic of 8 February 2011, no. 1 Ao 7 / 2010-92.

66 The European Court of Human Rights ruled on this notion, for example, in its judgment of February 21, 1986 in the Case of James and Others v. The United Kingdom, stating that “the Court will respect the legislator in his idea of what the public interest is, unless his judgment clearly lacks a reasonable basis.”

67 Vopálka, 2011, p. 385.

68 There are also, for example, legislation, decisions, measures of a general nature and others.

69 Telec and Tůma, 2019, pp. 71–73.

70 Ibid.

However, it should be added to the above that the exclusion does not affect the copyright to certain ways of depicting or creative processing the state symbols. For example, in a situation where it is an artistic representation of a large state coat of arms in the form of a sculpture, the copyright of the artist will be preserved. As for the national anthem, the subject of copyright and protection is not its text and music notation. However, this again does not mean that there are no copyrights of, for example, the performers of the Czech national anthem.⁷¹

4. National symbols (identity symbols) of the Czech Republic and their protection

In addition to the abovementioned “official” state symbols of the Czech Republic, there are other artifacts that embody the Czech state and the Czech nation, both externally and internally in the state itself. These symbols express the distinctive existence of the Czech Republic and its nation, recall its history, and reflect the generally held values and ideas of the state and society. It can therefore be said that they perform similar functions as the state symbols of the Czech Republic. There are several such symbols, but there is no legal catalogue of them and the degree of society’s agreement on which should be respected as national symbols and which no longer may differ. In any case, however, these “unofficial” national symbols must be distinguished from the state symbols of the Czech Republic, which are enshrined (exhaustively) in the Constitution of the Czech Republic. Even national symbols, or some of them, are enshrined in the legal system and are legally protected. In addition, other normative systems provide protection, such as a system of moral norms or customary norms.

The list of “unofficial symbols of the Czech Republic” is not enshrined anywhere. However, it can be generally agreed that these “other” national symbols in the Czech Republic include national holidays, state honors, the name of the state “Czech Republic,” the capital city of Prague, the motto “Truth Wins,” the coronation jewels, the national tree (a lime), and the Czech language.⁷² It can be said that the state symbols of the Czech Republic (symbols *stricto sensu*) and these “unofficial” symbols form the Czech state symbols *largo sensu*.⁷³

Although public holidays are not enshrined in the Constitution of the Czech Republic as one of the state symbols, they can undoubtedly be considered the unofficial

71 <https://www.mvcr.cz/clanek/statni-symboly-ceske-republiky.aspx>.

72 This list can in no way be considered exhaustive. For example, in one of its decisions, the Supreme Administrative Court also identified the president of the Republic as a symbol of the state (judgment of the Supreme Administrative Court of the Czech Republic of June 28, 2006, no. vol. 19/2006).

73 Filip, 2003, p. 160.

state symbols, one of the most important. The days we celebrate as public holidays point to the roots of the legitimacy of state power. When the values on which a state is built change, so do public holidays.⁷⁴ Through the public holidays, the state demonstrates its distinctive existence both toward its citizens and the international community. Public holidays strengthen the bond between citizens and the state, but also the connection of the nation as such. If citizens stop realizing the meaning of the state's existence, the reasons for the creation and duration of their state, they usually stop celebrating public holidays and commemorating important days and events for the nation and the state.⁷⁵ Then, unfortunately, citizens and their state sometimes find themselves in an identity crisis.⁷⁶ All current state holidays, other holidays, and important days of the Czech Republic express the sources of national identity and democratic value orientation of the Czech state. At the same time, the Czech Republic is subscribing to the idea of a common Czechoslovak statehood.⁷⁷

Public holidays are expressly regulated by law (Act No. 245/2000 coll., On Public Holidays, Other holidays, Significant days, and non-working days). However, this is a brief act, which consists of an exhaustive list of days, which are included public holidays, other holidays, and important days. Of course, public holidays are the most important. These are the following events and days: January 1—Day of the Restoration of the Independent Czech state; May 8—Victory Day; July 5—Day of the Slavic Prophets Cyril and Methodius; July 6—Day of the Burning of Master Jan Hus; September 28—Day of the Czech statehood; October 28—Day of the establishment of an independent Czechoslovak state; and November 17—Day of the struggle for freedom and democracy and International Student Day. By its nature, these are the key events significant from the point of view of historical development and the current democratic form of the Czech state. In addition, the law regulates the so-called other holidays, these are traditional holidays that are, by their nature, recognized and celebrated not only in the Czech Republic but also in other countries. The other holidays are January 1—New Year; Good Friday; Easter Monday; May 1—Labor Day; December 24–26—Christmas holidays.

The fact that a certain day is declared a state or other holiday by law is reflected in labor law. These days are, by law, non-working days. At the same time, the celebration of these holidays is very closely connected with the use of the official state symbols by the Czech public authorities and the citizens themselves. For example, the national flag is always flown on public holidays, just as the Czech anthem is played and sung these days.

In addition to these holidays, the law also regulates so-called significant days. These are again days or events that are mostly closely related to the Czechoslovak statehood, the recent history and present of the Czech Republic. Important days

74 See Pulec, 1980, p. 184.

75 Gerloch, Hřebejk and Zoubek, 2013, p. 121.

76 Jellinek, 1906, p. 478

77 On the development of holiday law in the Czech Republic, see Suchánek, 1999, pp. 103–114.

of the Czech Republic are, for example: January 27—Holocaust Remembrance Day and Prevention of Crimes against Humanity, March 8—International Women’s Day, March 12—Czech Republic Accession Day to the North Atlantic Treaty (NATO), June 10—Remembrance Day of the victims of the extermination of the village of Lidice, June 27—Memorial Day of the victims of the communist regime, November 11—War Veterans Day and more. Significant days are working days.

State honors are also closely connected with the existence of the Czech state. State honors symbolize the values that are recognized by the state and appreciate the deeds that have fulfilled them.⁷⁸ This issue is also regulated by law in the Czech Republic. This is act no. 157/1994 coll., On state honors in the Czech Republic. In general, by bestowing or awarding state honors to individuals, the state recognizes their outstanding civic merits in building a free democratic society, the results of their work, efforts to defend the homeland, heroic and other exceptional deeds. The right to bestow and award state honors belongs to the president of the Republic. The state honors are bestowed and awarded only on January 1 and October 28.

State honors are divided into orders and medals. Orders are a higher form of honors, medals are a lower form. The Order of the White Lion⁷⁹ is awarded as the highest honor to those persons who have made a particularly excellent contribution to the Czech Republic. The Order of Tomáš Garrigue Masaryk⁸⁰ is an award for people who have made an outstanding contribution to the development of democracy, humanity, and human rights. We also distinguish between two types of medals: the Medal for Heroism and the Medal of Merit.

The importance of state honors and the emphasis on the moral qualities of their holders are reflected in the Criminal Code. One of the punishments that can be imposed according to the Criminal Code is the penalty of loss of honorary titles or state honors. The court may impose this sentence if it convicts the offender of an intentional crime committed with a particularly reprehensible motive for unconditional imprisonment for at least two years. The legal system thus protects the values and symbolism of state awards. The current regulation no longer knows the constitutional sanction, which consisted in the possibility of the president withdrawing the award from a person who has become unworthy of wearing them. The reason was a negative experience from the past, when the communist regime abused this right in relation to its opponents.

The name of the state, the Czech Republic, is also one of its symbols. Although the name of the state is not included among the state symbols regulated in the Constitution of the Czech Republic, the Constitution works with it.⁸¹ Already the Preamble of the Constitution begins with the exclamation “We citizens of the Czech

78 Filip, 2003, p. 161.

79 The white lion is a basic attribute of the Czech state coat of arms.

80 T.G. Masaryk was the first Czechoslovak president, he significantly contributed to the establishment of an independent Czechoslovak Republic in 1918.

81 Even at the time of the establishment of an independent Czechoslovakia after the end of the First World War, the name of the state was not regulated in the legal system.

Republic in Bohemia, Moravia, and Silesia....” The constitution then declares that the Czech Republic is a sovereign, unified, and democratic state governed by the rule of law based on the respect for the rights and freedoms of a man and citizen. The name “Czech Republic” is the official name of the state by which it presents itself internally and externally, and at the same time it implies a form of state establishment (the republic).⁸² The name “Czech Republic” is also found on the state seal, which is one of the state symbols of the Czech Republic.

Undoubtedly, the Czech coronation jewels are also a symbol of the Czech state for every citizen. The Czech coronation jewels are a set of items from the collection of St. Vitus’s treasure and served as badges (insignia) of the government and power of Czech kings. They were awarded at the coronation. The jewels include the St. Wenceslas crown; the royal scepter; the royal apple; the leather cases for the crown, the scepter, and the apple; and the pillow under the crown and the coronation cloak. One of the most important kings of the Czech lands, Charles IV, had the St. Wenceslas crown made in the 14th century for his coronation as the Czech king. He dedicated the crown to the first patron of the country, St. Wenceslas. This crown is the fourth oldest in Europe. Other items became part of the jewels later.⁸³

The protection of the coronation jewels is ensured primarily by the norms of administrative law. The crown jewels have been declared a national cultural monument by a government decree. This was done as early as 1962 (they became the second national cultural monument after Prague Castle, the seat of the president). The national cultural monuments are the most strictly protected form of cultural heritage in the Czech Republic. This issue is regulated in more detail by the Act on state Monument Care. This act contains a set of legal tools that are to ensure a sufficient care for the monument, prevent its damage, destruction, or other threats. Another protection lies in the safekeeping of these jewels and the regulation of the possibility of access to them. They are stored in the St. Vitus Cathedral in Prague, from where they are brought out only on special occasions. At the same time, in 1993 the Czech government issued Resolution No. 19, which regulated the distribution of keys to the Czech coronation jewels. The entrance door to the chamber is equipped with seven locks. Based on this resolution, the keys to this door are held by the president of the Republic, the prime minister, the archbishop of Prague, the speaker of the Chamber of Deputies, the president of the Senate, the Dean of the Metropolitan Chapter at St. Vitus and the mayor of the capital city of Prague.

The national tree—the linden—is another important national symbol of the Czech Republic. It became so in 1848, when representatives of the Slavic nations met at the All-Slavic Congress. Linden trees, or lime trees of freedom, are woody

82 Gerloch, Hřebejk and Zoubek, 2013, p. 124.

83 There is also a legend associated with the crown jewels, which says that those who put the crown on their head unjustifiably will die within a year. This legend is associated with the Reich’s Protector, Reinhard Heydrich. He had himself photographed on November 19, 1941 with the royal crown on his head (as a proof of his power). On May 27, 1942, shortly after this event, the protector was assassinated, and he died.

plants that were planted in the honor of the establishment of the Czechoslovak Republic (1918), but also the independent Czech Republic (1993). They are generally called “trees of the Republic.” At the same time, they are trees that resemble Czech national freedom and democracy. The largest plantings of these trees took place in October 1919 on the first anniversary of the Republic, the 10th anniversary of the Czechoslovak Republic in 1928 and the 50th anniversary of the Czechoslovak Republic in 1968. These memorial trees celebrate the establishment of the Czech state and support national pride.

The protection is provided to these trees again most in the regime of administrative law, respectively environmental law. The linden trees of the republic are classified as important trees for their message, many of which have been declared a so-called memorial tree, based on Act no. 114/1992 coll., On Nature and Landscape Protection. The legal protection of these trees is associated with this status.⁸⁴ At the same time, it should be emphasized that the linden and linden branches are also a part of the depiction of some state symbols of the Czech Republic. Specifically, we find them on the presidential flag and state seals. This aspect also emphasizes the importance of this tree for the Czech nation. In addition, the linden symbol is depicted on other important objects such as banknotes or military uniforms.

The Czech language is undoubtedly also a symbol of the Czech nation and state. It is an important expression of national identity and Czech statehood. The Constitutional Charter of 1920 stipulated that the principles of language law would be regulated by a special law, which would be considered part of the Constitutional Charter. This special law became act no. 122/1920 coll., which immediately stated in the introduction that the Czechoslovak language is the state, official language of the Czechoslovak Republic.⁸⁵

Unfortunately, the current Constitution of the Czech Republic does not mention the existence of the Czech language as a state language. However, there have been attempts to change this. Probably the most important attempt was the proposal to amend the Constitution of the Czech Republic (the inclusion of a new Art. 14a), which was to regulate the Czech language and enshrine it at the constitutional level. This new article was to stipulate that the national language of the Czech Republic and the official language of all public authorities is the Czech language. It was also stated that the state takes care of the protection of the Czech language as an integral part of the state and national identity. The draft amendment to the Constitution was not adopted. Despite the fact that the Czech language does not directly enjoy constitutional protection, it can be considered that its meaning and use are sufficiently regulated by statutory regulation. Examples are the Act on the Collection of Laws and International Treaties, the Act on the Rules of Procedure of the Chamber

84 There are about 2000 memorable linden trees in the Czech Republic.

85 On the application of this act in practice and in relation to the languages of national minorities, see Decision of the Supreme Administrative Court of the Czechoslovak Republic no. 2607/23 of February 14, 1923 (Boh. A no. 1968/1923).

of Deputies, the Act on the Rules of Procedure of the Senate, the Education Act, the Administrative Procedure Code, the Tax Code, and others.

The slogan “Truth Wins” is on the flag of the president of the Republic. It was already displayed on the presidential flag of the first Czechoslovak Republic and was very popular among the Czech nation. However, the motto “Truth Wins” has been used since Hussite times (“Truth of the Lord Wins”).⁸⁶ Constitutional act no. 102/1990 coll.—due to political neutrality—replaced the inscription on the president’s flag with the Latin translation “*Veritas vincit.*”⁸⁷ The current version has returned to the traditional motto in the Czech language.

Its capital city, Prague, can also be considered a national symbol of the Czech Republic. Art. 13 of the Constitution stipulates that the capital of the Czech Republic is Prague. The following Art. 14 of the Constitution then regulates the state symbols of the Czech Republic. Thus, there is a clear connection between the two provisions and the importance of Prague as one of the symbols of the Czech land, both for its citizens and externally in relation to the international community and foreign states. The capital is usually the seat of the head of state, the most important public authorities, as well as the seat of diplomatic missions of foreign states, thus expressing the recognition of the sovereignty of the host state. The capital city of Prague also meets these parameters. At the same time, it is a city that has become the center of its political, economic, and cultural life in the historical development of the Czech state. Prague is very closely connected with the history of the Czech nation and state, from the very beginning of the Czech state, through the Middle Ages to the present. It has been the natural center of the Czech state for over a thousand years.⁸⁸ Following the constitutional arrangement, the position of the capital city of Prague is regulated in detail by a separate law, namely act no. 131/2000 coll., On the capital city of Prague. This act regulates in detail the position and competence of the capital,⁸⁹ its bodies and their powers, legislation, and several other issues. Again, therefore, the regulation and legal protection are, in essence, of an administrative nature.

5. Community symbols in the Czech Republic and their protection

The different communities that exist in each state are important, play certain roles and contribute to the development and formation of values, the fulfilment of

⁸⁶ Sedláček, 2008, p. 33.

⁸⁷ It was a period when our state was a federation of two republics, and therefore it was not appropriate for the inscription to be only in Czech, not in the Slovak language, so a Latin inscription was chosen.

⁸⁸ Pavlíček et al., 2011, p. 409.

⁸⁹ Prague has the status of both a municipality and a region (a higher territorial self-governing unit).

rights and freedoms or the achievement of other goals in a society. These communities and their members always share certain common goals, values, and attitudes. They then identify the community both inside and strengthen its internal structure, and at the same time characterize and define this community externally. The position and mission of these communities also reflect the symbols that these communities use. Territorial self-governing units (municipalities and regions), national minorities, and religious communities can currently be included among the most important communities in the above sense. Therefore, the symbols of these communities will be given closer attention.

5.1. Symbols of territorial self-governing units as territorial communities of citizens of the Czech Republic and their protection

One of the most important communities in the Czech Republic are the territorial self-governing units. They can be characterized as a territorial community of citizens who have the right to self-government. Self-government must be seen as a democratic form of care for the citizens' own affairs, independent and under state supervision.⁹⁰ The idea of self-government is compatible only with democracy, based on a plurality of social and political interests, and as such rests on a partnership between the state and public corporations as self-government entities. The right to territorial self-government is a constitutionally guaranteed right, as the Constitution of the Czech Republic in Art. 8 stipulates that the self-government of territorial self-governing units is guaranteed.⁹¹ The basic territorial self-governing units are municipalities and the higher territorial self-governing units are regions. The basic mission of these units is to take comprehensive care of the development of their territory and the needs of their citizens. Thus, they are always relatively independent communities of citizens, which primarily pursue the interests of this community and its members, their fulfilment and development, within a certain territorial district. Municipalities and regions are corporations built on the membership principle. It is always an association of people in a certain territory, which manages its affairs relatively independently. Of course, this does not preclude cooperation with other municipalities, regions, or other entities, including the state.

These distinctive communities of citizens are characterized, like the state, by certain elements, regarding attributes that define the relevant territorial self-governing unit both internally (in relation to its members) and externally (in relation to other units and other entities). These attributes undoubtedly include the symbols of territorial self-governing units. These symbols strengthen the citizens' relationship with their municipality or region and express their affiliation with the territorial

90 Decision of the Constitutional Court of the Czech Republic of September 19, 1994, no. Pl. ÚS 5/93.

91 Furthermore, the entire Chapter 7 in the Constitution of the Czech Republic is devoted to territorial self-government. The Constitution is supplemented by three basic acts: the Act on Municipalities, the Act on Regions and the Act on the Capital City of Prague.

self-governing unit, its members, and its interests. We can therefore say that, similarly to the state symbols, the symbols of territorial self-governing units also fulfill the role of identification, representation, and integration.

The basic symbols of the territorial self-governing units (municipalities and regions⁹²) are the coat of arms and the flag. The issue of the coat of arms and the flag is regulated by the Act on Municipalities, the Act on Regions and the Act on the Capital City of Prague. The Constitution of the Czech Republic does not deal with them. The Act on Municipalities stipulates that municipalities may have the coat of arms and flag of the municipality (Section 34a). The coat of arms and the flag are awarded at the request of a municipality. It is important to emphasize that this is a right of the municipality, not an obligation, to have a coat of arms and a flag. It therefore depends on the consideration of the territorial self-governing unit whether it wants to have its own coat of arms, flag, or both of these symbols. This construction should be considered appropriate, as the issue of the symbols of the municipality falls exclusively within its self-governing competence, and it would not be appropriate for the state to make it an obligation. In this respect, it is a difference compared to the regulation of the state symbols of the Czech Republic (in relation to the state, there is no free consideration of whether and which state symbols it will have or will not have). Both symbols are granted at the request of the municipality by the speaker of the Chamber of Deputies (i.e., the speaker of one of the chambers of the Parliament of the Czech Republic). This is therefore an important power of the legislature in relation to territorial self-government. The legal regulation in relation to the coat of arms and the flag of the regions and the capital city of Prague is constructed the same way.

Regarding the form and appearance of the flag and the coat of arms of the municipality (or the region), the legislation does not lay down any rules in this regard. However, one of the committees of the Chamber of Deputies—the Committee on Science, Education, Culture, Youth and Sports—oversees compliance with the rules of heraldry and vexillology during the process of approving the flag and the coat of arms. This committee (which also includes the Subcommittee on Heraldry and Vexillology) gives its recommendation to the Speaker of the Chamber of Deputies to award the symbol. As part of this process, the committee also assesses the compliance with the basic rules of both fields. Applications, granted coats of arms and flags are kept in the Register of Municipal Symbols (REKOS).⁹³

According to the basic rules for creating the coat of arms of a municipality (or the region), the new symbol must not be the same as the existing coat of arms of the municipality in the Czech Republic and must not be identical with the state coat of arms or the coat of arms of the region. The character should be as simple as possible,

92 Čarek, 1985, p. 453.

93 At present, all 14 regions and their flags and emblems are registered here, as well as 5,465 municipalities (5,428 flags, 5,245 coats of arms). As of January 2022, there were a total of 6,258 municipalities in the Czech Republic. For more details see <https://rekos.psp.cz/>.

and should contain as few figures as possible. The coat of arms may not include company logos, trademarks, etc. Realistic depictions of specific buildings or natural formations are not permitted in the content of the coat of arms of the municipality. Such figures must be heraldically stylized. Depictions of saints or real characters are approved only in very exceptional cases. Texts or separate letters are not used in the municipality coat of arms.⁹⁴ For flags, the ratio of its width to length must be the same as for the state flag (2:3). The new flag must not be interchangeable with the already existing flags of the municipalities of the Czech Republic, state flags, and generally known regional flags of the self-governing units of the existing states. The flag of the municipality should be simple, distinctive, unmistakable, and in line with the principle of flight. The colors of the newly created flag must be based on the same colors as the coat of arms of the municipality.

Another significant difference between the state symbols and the symbols of territorial self-governing communities lies in the impossibility of changing the form (appearance) of the symbol. The state symbols and their depictions are strictly required by law and cannot be changed.⁹⁵ On the other hand, the coat of arms and the flag of a municipality or a region can be changed. Again, the request of the municipality (region) and the decision of the Speaker of the Chamber of Deputies is sufficient.

The question is whether, in addition to the coat of arms and the flag, local governments can have other symbols. The law does not address this issue at all. Given that the issue of the municipal (regional) symbols belongs to the independent competence of the territorial self-governing units, as well as the fact that the issue is not comprehensively and exhaustively regulated by law, it is necessary to allow the municipality or region to determine and use “other municipal (regional) symbols” than the coat of arms and the flag.⁹⁶ These can be, for example, the colors of the municipality, the seal of the municipality, its logo, motto and more.⁹⁷

As far as the protection of the symbols of territorial self-governing units is concerned, there is no constitutional protection at the level of constitutional law. Perhaps in exceptional cases, we could consider the possibility of a territorial self-governing unit to file a constitutional complaint against the illegal intervention of the state in the constitutionally guaranteed right to self-government. The complaint is submitted to the Constitutional Court of the Czech Republic. This remedy would be hypothetically usable in a situation where the Speaker of the Chamber of Deputies would unreasonably refuse to give a coat of arms or a flag to the self-governing unit and thus interfere with its right to self-government. However, such a case is not known in practice.

94 For more details on the rules of creating the coat of arms of the municipality, see <https://rekos.psp.cz/heraldicke-zasady/>.

95 A change would only be possible by changing the Act on the State Symbols of the Czech Republic.

96 Furek, 2008.

97 Břeň, 2019.

The Act on Municipalities, the Act on Regions and the Act on the Capital City of Prague provide a certain protection for the symbols of self-governing communities. This is by regulating the use of these symbols. However, this is a very general and at the same time brief regulation. The coat of arms and the flag can always be used without restriction by the concrete territorial self-governing unit and by entities that are established by the unit. Other entities may always use the coat of arms of the municipality or region with its consent.⁹⁸ There is no legal claim to consent. If the consent is granted by the municipality or the region, it may stipulate the conditions for the use of the symbol. On the contrary, the use of the flag is unrestricted for other entities, i.e., the consent of the municipality or the region is not required (and therefore it cannot be regulated in any way, for example by setting conditions for its use). The other communal symbols and their use are not regulated by law at all. Therefore, they can be used again in free mode, without the possibility of restrictions by the municipality (the region).⁹⁹ Legal regulation of the use of symbols of municipalities and regions can be considered a means of administrative protection.

Another important means of administrative protection of the municipal symbols is given in the form of a liability for the administrative offense. From this point of view, the Act on Certain Misdemeanours, which regulates misdemeanors in general internal administration, is crucial. The administrative offense is committed by a person who damages, or abuses or grossly disparages a symbol protected by law other than the state symbol of the Czech Republic.¹⁰⁰ And it is the symbols of territorial self-governing units that can be considered as these “other” symbols. The perpetrator of the offense can be a natural person or a legal entity. The state, municipality or region also bears responsibility if it commits an infringement. If the perpetrator of the offense is a natural person, fault (subjective responsibility) must always be examined. As for fault, the law requires intent. In the case of a legal person, on the other hand, it is not based on fault, it is an objective liability. However, there are legal grounds for liberation. The liability can be released if the person proves that he or she has made all the efforts that could be required to prevent the offense.

The administrative authorities (the municipal authorities) decide the offenses. The infringement proceedings are always initiated *ex officio*. Classical criminal law principles are applied in the proceedings, such as the principle *nullum crimen sine lege*, *nulla poena sine lege*, the presumption of innocence, *ne bis in idem*, *in dubio pro reo* and others. A typical administrative penalty that can be imposed for these offenses is a fine. A fine of up to CZK 3,000 can be imposed for the offense. Instead of a fine, a sanction of a moral nature can also be imposed, namely a reprimand. However, a fine and a reprimand cannot be imposed at the same time.

98 However, as regards the use of only some element of the coat of arms, other entities do not need the consent of the municipality. See Judgment of the Municipal Court in Prague of August 30, 2013, no. 8 A 186 / 2010–37.

99 Furek, 2008.

100 It would be possible to include the use of the symbol of a territorial self-governing unit without the consent of the municipality (region) under this administrative offense.

Regarding the protection from the point of view of criminal law, it can be stated that the Czech legislation does not contain specific criminal offenses that would relate directly to the protection of the municipal symbols. Regarding the specific circumstances of the case, we could nevertheless consider the fulfilment of some common types of crimes, such as property crimes (if the damage to the symbol exceeds 10,000 CZK and other formal and material features of a particular crime were met) or a crime of disorderly conduct.

Finally, it is necessary to analyse the possible private law protection of symbols of municipalities and regions. Thus, to answer the question whether these symbols are protected under copyright law. These symbols can potentially fulfil the characteristics of a “copyright work” within the meaning of copyright law, with all the legal consequences that follow. In this respect, however, section 3 of the Copyright Act, which regulates exceptions to protection under this act, is essential. This provision provides for exhaustive copyright exclusions for certain subjects for which there is a public interest in their free distribution and public access to them. These are therefore exceptions justified by the public interest.

Section 3 of the Copyright Act stipulates that the protection under copyright does not apply to so-called “official works.” The legislator demonstratively states what is included among these official works, while the list also includes symbols of territorial self-government units. This means that the subject of exclusion is all the symbols that the territorial community of citizens has and uses.¹⁰¹ The consequence of this exclusion is that the use of communal symbols does not require the permission of the author, nor is it necessary to provide a reward.¹⁰²

Unfortunately, the Copyright Act does not address in practice the frequent situation where a work is not created by the author as an official work (i.e., primarily for the public interest) and becomes an “official work” only later (at a time when the author’s copyright to the work already exists). This leads to a conflict of public interest and private copyright protection. Regarding the constitutional basis of copyright protection (Arts. 11 and 34 of the Charter of Fundamental Rights and Freedoms), it should be noted that such an interference with the subjective copyright can only take place with the consent of the author. If this were to happen without the consent of the copyright owner, it would be an interference with the constitutionally guaranteed right to own property.

However, it should be added to the above that the exclusion does not affect the copyright to certain ways of depicting municipal symbols. For example, in a situation where it is an artistic representation of the municipal coat of arms in the form of a sculpture, the copyright of the artist will be preserved.

101 The exclusion therefore applies to the coat of arms, flag, and other symbols, if the municipality or region has them.

102 Telec and Tůma, 2019, p. 71.

5.2. Symbols of national minorities in the Czech Republic and their protection

The important minorities (not only) in the Czech Republic are national minorities.¹⁰³ Their existence, as well as their status and rights, are reflected and protected directly at the constitutional level. Art. 3 of the Charter of Fundamental Rights and Freedoms states that everyone has the right to decide freely on his or her nationality. At the same time, it explicitly forbids influencing a person's decision-making about his or her nationality, and all forms of coercion leading to denationalization are also prohibited.¹⁰⁴ However, as Bobek rightly points out, the Charter does not specify what is meant by the terms "nationality" and "nation."¹⁰⁵ One of the most important works of the 20th century on this topic defines the nation and belonging to it (i.e., nationality) through two elements: subjective (volitional) and objective (cultural). The point is that a certain group of people must share common objective features of the community (e.g., language, tradition, religion), which we can call "culture." At the same time, the individual must identify with this community (the individual's will to be a member) and at the same time the community must accept this individual as its member.¹⁰⁶ We can agree with this definition.

The Charter deals with the national minorities and their rights in more detail in Title Three. The Charter states that belonging to any national minority must not be to the detriment of anyone. The Charter does again not define the concept of a national minority.¹⁰⁷ This definition is found only in the Act on the Rights of Members of National Minorities. According to this act, a national minority is a community of Czech citizens living in the Czech Republic, who differ from other citizens usually by common ethnic origin, language, culture, and traditions, form a large minority of the population and at the same time show the will to be considered a national minority. The purpose of their existence is a joint effort to preserve and develop their own identity, language, and culture, as well as to protect their interests. A member of a national minority is therefore a citizen of the Czech Republic who declares

103 "There is a consensus among the Contracting states of the Council of Europe that the special needs of minorities and the obligation to protect their security, identity and way of life should be recognized, not only to protect the interests of minorities themselves but also to preserve cultural diversity." Judgment of the Grand Chamber of the ECtHR in the Case of Chapman vs. The United Kingdom of January 18, 2001, complaint no 27238/95.

104 Jílek, 2000, pp. 12–24.

105 Wagnerová et al., 2012, p. 112.

106 Gellner, 2006, pp. 52–57.

107 In this respect, it is not only a problem in the Czech Republic. "The court states that it is not its task to express an opinion on whether or not the Silesians are a "national minority," let alone to formulate a definition of this term. Undoubtedly, creating such a definition would be a difficult task, especially since none of the international treaties—not even the Council of Europe's Framework Convention for the Protection of National Minorities—define the term "national minorities." Judgment of the Grand Chamber of the ECtHR in the Case of the Party of Freedom and Democracy (ÖZDEP) v. Turkey of 8.12.1999, complaint no. 23885/94.

themselves to be of a nationality other than Czech and expresses a wish to be considered a member of a national minority together with others who declare themselves to be of the same nationality.¹⁰⁸ A national minority is a community of persons that meets all the above criteria, “it is not enough that a certain community of persons shows a will to be considered a national minority.”¹⁰⁹

The Charter further stipulates that the citizens forming national minorities are guaranteed all-round development, in particular the right to develop their own culture together with other members of the minority, to disseminate and receive information in their mother tongue, and to associate in the national associations. Under the conditions laid down by statutory regulation, they are also guaranteed the right to education in their language, the right to use their language in official communication and the right to participate in resolving matters concerning the national and ethnic minorities.¹¹⁰ The implementation of these rights is regulated in more detail in the Act on the Rights of Members of National Minorities, but also in other acts (e.g., the Act on Municipalities, the Act on Regions, the Education Act, the Act on Czech Television and others).

The Czech Republic therefore clearly protects and supports the all-round development of national minorities. This support covers several areas, such as the development of culture, traditions, the use of the mother tongue, etc. Undoubtedly, we can also include support for the use of various symbols and signs identifying and uniting a particular national minority. However, specific legislation is lacking in this regard. Among the most numerous national minorities in the Czech Republic are the Slovak, Ukrainian, Polish, Vietnamese, German, Russian, and Roma minorities (this is data obtained from the census in the Czech Republic in 2021). In addition to the Roma minority, the other minorities are citizens who claim a nationality linked to another, foreign state. In relation to these members of national minorities, it is therefore necessary to address the question of whether and how the state symbols of foreign states can be used (by them) in the Czech Republic, and whether these foreign state symbols are protected in the Czech Republic.

Unfortunately, it must be stated at the outset that the issue of the use of foreign state symbols in the Czech Republic is not sufficiently regulated. The only exception is the regulation of the hoisting of the Czech national flag if it is hoisted together with the flags of other states. The Act on the Use of state Symbols sets out precise rules for the placement of the Czech flag for these situations. This issue is only partially addressed by international agreements on consular and diplomatic missions. However, further adjustments are currently lacking. Similarly, the first Czechoslovak regulation, specifically act. No. 252/1920 coll. did not solve this issue (and

108 Critically on the narrowing concept of the minority according to this act versus the broad concept of the minority according to the Charter, see Wagnerová et al., 2012, p. 543.

109 Decision of the Supreme Administrative Court of the Czech Republic of August 17, 2021, no. 7 As 324/2020-42.

110 On the rights of national minorities, see Pospíšil, 2006, pp. 1–187.

neither Regulation No. 512/1920 coll., which regulated the use of state symbols of the Czechoslovak Republic, paid attention to it). However, the Supreme Administrative Court of the Czechoslovak Republic, in its judgment of 1926, prohibited the association from using a badge made in the colors of a foreign state.¹¹¹ Probably the most attention was paid to this issue by act No. 269/1936 coll. The act stipulated that in the territory of the Czechoslovak Republic, state symbols of foreign states may be used permanently only by consuls of these states and extraterritorial persons. Other persons could use foreign state symbols only with the permission of the provincial office. Permission could only be granted if the applicant has proved that the foreign state does not object to the use of its symbol in our territory. It should be emphasized in this regard that the Act on the Use of state Symbols of the Czech Republic and the rules set out therein cannot be applied by analogy to the use of state symbols of foreign states in the Czech Republic. As the Supreme Court of the Czech Republic stated, “It cannot be successfully concluded that the intention of the Czech legislator in this case should be to subject the use of all state symbols of foreign states to the regime of this act.”¹¹²

The Roma minority in the Czech Republic is also a national minority, its members are not nationals of any foreign state. This national minority also has its own symbols, typically the Romani flag and the Romani anthem. The Roma flag consists of a blue stripe in the upper half, a green stripe in the lower half and a red chakra with 16 rays in the middle. The chakra symbolizes the Indian origin of the Roma nation. The flag was created in 1933 by the General Union of Romanian Roma and in 1971 was approved as the official Roma flag at the first International Roma Congress in London. The Romani anthem is considered to be the Romani song “*Gejlem, gejlem.*” This song was declared the Roma anthem again at the first International Roma Congress in London (1971). There is no special legal regulation concerning the explicit use and protection of Roma symbols in Czech law

The use of the symbols representing the relevant national minority is part of a broader catalogue of the rights of persons belonging to national minorities. The Czech Republic recognizes these rights, guarantees their exercise, and provides them with protection. At the same time, however, this corresponds to the obligation of members of the national minorities to use the symbols and other features of their minority exclusively in a lawful manner.¹¹³ In this respect, the case of the activist Miroslav Brož is known, who hoisted the so-called Czech–Roma flag on his balcony

111 Decision of the Supreme Administrative Court of the Czechoslovak Republic, no. Boh. Adm. 5706/1926.

112 Judgment of the Supreme Court of the Czech Republic of 17 December, 2019, no. 23 Cdo 184/2019.

113 This can be deduced by analogy, for example, from the judgment of the Supreme Administrative Court of the Czech Republic, where the court stated: “the right of a national minority to use the language of a national minority in official communication, resp. the right to the assistance of an interpreter may not be abused to intentionally and purposefully prolong the proceedings.” Judgment of the Supreme Administrative Court of the Czech Republic of 30 October 2014, no. 6 As 149/2014–21.

on April 8, 2021.¹¹⁴ A man placed a red chakra on the state flag of the Czech Republic. In essence, he combined the Czech and Roma flags. While he wanted to point out the importance of the Roma community and its connection with the Czech state, he did so in an illegal way. The Act on the Use of state Symbols of the Czech Republic stipulates that there must be no text, images, emblem, etc. on the state flag. The man thus grossly despised the state flag as a state symbol and committed an administrative offense. He was fined CZK 1,000.¹¹⁵ If a person had hoisted the Czech national flag and the Roma flag next to it properly and in accordance with legal rules, his or her actions would have been legal (the national flag must always be flown in the most honorable place).

The Czech Republic had already dealt with a similar case in 2013. At that time, the artist T. Rafa organized an exhibition of flags in Prague entitled “Tender for the Czech–Roma flag.” The state flags of the Czech Republic issued here were combined in various forms with the Roma flag. The author and the organizers wanted to symbolize the coexistence of the Roma minority and the Czech nation with their proposals. The police of the Czech Republic had all seven flags assessed by an expert, and in three cases they concluded that this was an administrative offense. The artist was fined CZK 2,000. However, on appeal, this decision was annulled and the misdemeanor proceedings were terminated.¹¹⁶ It was stated that this was a manifestation of freedom of art and freedom of expression, not an illegal act (i.e., it was not a denigration or damage to the national flag). It should be added that the inscriptions on the national flags can be found in the Czech Republic in connection with sports matches (especially football, hockey). Fans often write the name of their city or club on the national flag. Even in these cases, they are committing an administrative offense.

As for the protection of the use of the symbols of national minorities, it can be found at the level of administrative and criminal law. Administrative law protects the exercise of the rights of persons belonging to the national minorities in the form of a liability for administrative offenses. The use of the symbols by minorities (of course in a lawful manner—see above) can undoubtedly be considered an integral part of the exercise of their rights. The offense is committed by a person who restricts or prevents a member of a national minority from exercising his or her rights. This could be, for example, a situation where a member of the Roma national minority would be prevented from using, for example, Roma flags on certain occasions. A fine of up to CZK 20,000 or a reprimand may be imposed for such an administrative offense against a civil cohabitation.¹¹⁷ In addition, a liability for other types of offenses is not excluded, but they are no longer explicitly linked to belonging to a

114 International Roma Day.

115 <https://moderniobec.cz/uzivani-obecnich-symbolu/>.

116 https://www.idnes.cz/praha/zpravy/prazsky-magistrat-zrusil-pokutu-za-vystaveni-cesko-romske-vlajky.A150123_171843_domaci_fer.

117 Art. 7 of act no. 251/2016 coll., On certain offenses.

national minority. These may be, for example, offenses against property (intentional destruction or damage to the Roma flag). If the infringement reaches a higher degree of social harm or higher damage is caused, the liability for the crime may also arise. The Criminal Code states that if a crime is committed out of national hatred, it is an aggravating circumstance.¹¹⁸ In the case of several criminal offenses, the commission of a criminal offense on the grounds of belonging to a certain nationality means the fulfilment of a qualified factual basis and the associated higher, i.e., stricter, punishment.¹¹⁹

A positive fact in the Czech Republic is the fact that the protection of the rights of members of national minorities is institutionalized. The Government Council for National Minorities operates at the national level. It is an advisory body of the Government of the Czech Republic, whose members are also members of the national minorities. The Council comments on draft legislation and other measures concerning the rights of persons belonging to national minorities, prepares various recommendations for the government, ministries, and other administrative authorities to meet the needs of persons belonging to national minorities, especially in the fields of education, culture and media, mother tongue, social and cultural life. It also proposes the distribution of funds spent from the state budget to support the activities of members of national minorities.¹²⁰

The protection of minorities and their rights is implemented not only at the national level, but also at the regional level and at the local level. A municipality in whose territorial district, according to the latest census, at least 10% of the municipality's citizens belonging to non-Czech nationalities live, the municipality establishes a committee for national minorities if the association representing the interests of the national minority so requests.¹²¹ At least half of the members of the committee must be the members of the national minorities. The regulation at the regional level is similar.¹²² According to the latest census, a region in whose territorial district at least 5% of the region's citizens who declare themselves to be of a nationality other than Czech live establishes a committee for national minorities if an association representing the interests of a national minority so requests in writing. At least half of the members of the committee must be members of national minorities.

118 Art. 42 of the Criminal Code.

119 The ECtHR also calls for a strong investigation of every racially, nationally or religiously motivated crime. See Judgment of the ECtHR in the Case of *Lakatošová a Lakatoš vs. Slovakia* of 11 December 2018, complaint no. 655/16, or Judgment of the ECtHR in the Case of *Balázs vs. Hungary* of 20 October 2015, complaint no. 15529/12.

120 <https://www.vlada.cz/cz/ppov/rnm/historie-a-soucasnost-rady-15074/>.

121 Art. 117 of act no. 128/2000 coll., On Municipalities.

122 Art. 78 of act no. 129/2000 coll., On Regions.

5.3. *Symbols of churches and religious societies and their protection*

The Charter of Fundamental Rights and Freedoms states that the Czech Republic is based on the democratic values and must not be bound by an exclusive ideology or religion (Article 2). It is an expression of the liberal foundation of a state that upholds religious and worldview neutrality.¹²³ It is this attitude that makes it possible to fulfill worldview and religious pluralism and to establish tolerance and harmony in the state and society in this respect.¹²⁴ As for religious neutrality, it presupposes the secularization of the state.¹²⁵ The secularized state declares its neutrality in relation to dogmas arising from different religions. The state must not influence the content of religious freedom, nor evaluate its citizens' faith or absence of it. At the same time, the state must allow for the external manifestations of religious beliefs, of course in accordance with the rule of law. At the same time, however, it is necessary to emphasize the words of the Czech Constitutional Court that

the cultural development of Europe and its corresponding development of democratic constitutional law thinking as a result of the state secularization does not mean abandoning the historical value tradition, including religious traditions.¹²⁶

The Charter guarantees freedom of religion to everyone, including the possibility to change it or remain without religion at any time (Art. 15). It is a guarantee of the internal autonomy of the individual in religious matters, in which the state must not interfere (the so-called *forum internum*).¹²⁷ Most important, however, is Article 16 of the Charter, which states that everyone has the right freely to manifest his religion or belief, either alone or in community with others and in public or private. Churches and religious societies manage their affairs independently of the state authorities.¹²⁸ The exercise of these rights may be restricted by law if the measures in a democratic society are necessary to protect public security and order, health and morals, or the rights and freedoms of others. In this article of the Charter, the external

123 On the importance of neutrality in these aspects, see Judgment of the Grand Chamber of the ECtHR in the Case of Bayatyan vs. Armenia, of 7 July 2011, complaint no. 23885/94.

124 Wagnerová et al., 2012, pp. 84–86.

125 Art. 2 of the Charter of Fundamental Rights and Freedoms guarantees religious pluralism and religious tolerance, resp. the separation of the state from concrete religions (the principle of a confessionally neutral state). This principle is implemented by the cooperation model of the relationship between the state and the churches and their mutual independence. See Decision of the Constitutional Court of the Czech Republic of November 27, 2002, no. Pl. ÚS 6/02, or Decision of the Constitutional Court of the Czech Republic of 1 July 2010, no. Pl. ÚS 9/07.

126 Decision of the Constitutional Court of the Czech Republic of November 27, 2002, no. Pl. ÚS 6/02.

127 Wagnerová et al., 2012, p. 394.

128 In more details see Madleňáková, 2014, pp. 1–224.

manifestations of a religion and faith are regulated and guaranteed.¹²⁹ In this respect, the state has an obligation not only not to interfere in the exercise of this right, but also to create favorable legal and factual conditions for its exercise, including its protection.¹³⁰

Part of the realization of religious freedom is the use of religious symbols.¹³¹ It can be stated that this issue has not yet been explicitly addressed in the Czech legal system. An exception is the Act on the right of assembly, which prohibits participants in the assembly from having their faces covered in such a way that it is impossible or difficult to identify the person. This ban also affects the wearing of religious symbols in the form of burqas or niqabs. In the Czech Republic, the case of a Somali girl and her forced departure from high school was the most publicized (due to the ban on wearing a Muslim headscarf—a hijab). The Public Defender of Rights in the Czech Republic (“ombudsperson”) took the view that there was an indirect discrimination. In the case of some school subjects and their teaching, the ban may be justified (e.g., teaching physical education), but the situation can be solved alternatively (Muslim sports scarves). Only in some cases is the ban justified, for example in relation to the protection of life and health, where the legal system prescribes the use of personal protective equipment in teaching, which precludes having a Muslim headscarf at the same time.¹³² Courts, including the Supreme Court of the Czech Republic, have also dealt with this case. That court recalled that Art. 9 of the Convention and Art. 14 of the Charter guarantee the protection of expressions of religion and belief and the exercise of religious freedom.¹³³ Within the meaning of these provisions, expressions of religious belief may be restricted by law and only if that restriction pursues a legitimate aim (protection of public security and order, health, morals and the protection of the rights and freedoms of others). At the same time, this restriction must be necessary in a democratic society, that is, there must be no other measure that would pursue the same goal and with less interference with religious freedom. The Supreme Court therefore found in this case that the ban on wearing headgear by Muslim students during theoretical schooling was not justified by a legitimate aim and constituted an indirect discrimination within the meaning of Section 3 of the Anti-Discrimination Act.¹³⁴

In summary, the Czech Republic strives to respect the principle of religious neutrality. The state does not interfere with the freedom of religious beliefs and their

129 Both spheres, ie *forum internum* and *forum externum*, are considered to be inseparable. See Decision of the Constitutional Court of the Czech Republic of November 27, 2002, no. Pl. ÚS 6/02 or Decision of the Constitutional Court of the Czech Republic of 1 July 2010, no. Pl. ÚS 9/07.

130 Judgment of the ECtHR in the Case of *Otto-Premigier-Institut vs. Austria* of September 9, 1994, complaint no. 13470/87.

131 Chocholáč, 2016, p. 9.

132 Report of the Public Defender of Rights on the inquiry into the prohibition of wearing headgear, dated 2 July 2014, no. 173/2013/DIS/EN.

133 Judgment of the Supreme Court of the Czech Republic of November 27, 2019, no. 25 Cdo 348/2019.

134 *Ibid.*

expressions, it tries to create conditions for their realization and to protect the exercise of this right. This protection includes, among other things, the protection of the right to use religious symbols, within the limits set by Czech law. The Czech legal system does not contain an explicit and comprehensive regulation of means of protection in relation to the symbols of religious communities and their use. However, this does not mean that such protection does not exist in Czech law. However, it is provided under the ordinary remedies' regime. Under administrative law, it is primarily a matter of liability for a misdemeanor against civil cohabitation. Legislation in the Czech Republic also prohibits radio and television broadcasters from including programs that would encourage religious intolerance. Violation of this obligation is again a misdemeanor. Protection is also provided by civil courts, in accordance with the Anti-Discrimination Act. If a person is discriminated against for religious reasons (including the use of religious symbols), the person can apply to the court to stop the discrimination and receive reasonable satisfaction. If a religiously motivated crime is committed, criminal liability arises. Finally, in certain cases, protection can also be sought before the Constitutional Court, in the form of a constitutional complaint for violation of the constitutionally guaranteed freedom of religion. The Public Defender of Rights also plays a positive role in the field of protection.

6. De lege ferenda

In conclusion, it can be stated that Czech law reflects the existence, significance, as well as the need to protect the state, national, and community symbols. The most important place is occupied by the state symbols of the Czech Republic. Therefore, they are also enshrined directly in the Constitution of the Czech Republic, i.e., in a legal regulation of the highest legal force. However, some criticism can be made of the brevity of the constitutional legislation, which consists in a mere exhaustive list of the state symbols of the Czech Republic. Regarding their importance for the Czech state and its citizens, it would be appropriate to adjust their form directly in the Constitution and to emphasize the importance of national symbolism. As far as the protection of the state symbols of the Czech Republic is concerned, the constitutional law protection is closely linked with the administrative law protection. The rules laid down by the act regulating the use of state symbols, as well as the liability for offenses if these rules are violated are the main tools for their protection. On the contrary, the criminal law regulation is rather complementary. However, from a *de lege ferenda* point of view, this situation can be considered satisfactory and the level of protection sufficient. Practice also shows that the offenses associated with state symbols are sporadic. From the point of view of private law, it is necessary to draw attention to the fact that state symbols are not subject to protection under the Copyright Act. They are explicitly excluded from the scope of this act. This is due to

the public interest (and the state's interest) in making these works as accessible to the general public as possible. However, this is always done with the consent of the author. Here, too, the legislation can be considered satisfactory.

In addition to the abovementioned "official" state symbols of the Czech Republic, there are other artifacts that express the distinctive existence of the Czech Republic and its nation, recall its history, and reflect the generally held values and ideas of the state and society. It therefore plays a similar role as the state symbols of the Czech Republic. Even these symbols, respectively, at least some of them are enshrined in the Czech legal system and are legally protected. In addition, other normative systems provide protection, such as the system of moral norms or customary norms. The list of "unofficial symbols of the Czech Republic" is not enshrined in the legal system, but it is possible to agree upon a certain catalogue of symbols where these unofficial symbols of the Czech Republic could be included. From a *de lege ferenda* point of view, it would not even be possible or appropriate to enumerate them in law. On the contrary, it is beneficial that there may be a discussion in society about what to consider as these symbols and why. In addition, due to historical, political, or other events, these symbols may evolve and change (though not fundamentally). The protection of these symbols is ensured mainly within the framework of administrative law. Some of them are part of the state symbols and thus indirectly enjoy their protection. Perhaps the only consideration *de lege ferenda* in this area is whether to enshrine the Czech language as a national language and a symbol of our state in the Constitution of the Czech Republic.

The symbols of the most important communities in the Czech Republic are also protected by Czech law, at least at a basic level. These are mainly symbols of the territorial self-governing units, national minorities, and religious communities. Czech law seeks to comprehensively support the development of these communities and help realize the various rights of their members. These rights undoubtedly include the right to use community symbols. The main role in terms of their protection is played by administrative protection again (typically, it is the responsibility for offenses and the possibility of defense under the Anti-Discrimination Act).

Overall, it can be concluded that the current legislation on the state, national and community symbols is sufficient in the Czech Republic, including ensuring their protection, both in constitutional, administrative, criminal, and private law. From a *de lege ferenda* point of view, therefore, there is no need to make any major adjustments or changes. On the other hand, it is also true that these symbols are respected by the citizens of the Czech Republic and illegal actions associated with them are rare.

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