

LEGAL PROTECTION OF STATE, NATIONAL AND COMMUNITY SYMBOLS IN SLOVAKIA



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1. Definition of state symbols and symbols of self-governing entities and their legal regulation in the Slovak Republic

The state symbols and symbols of self-governing regions, towns and municipalities are among the most important symbols in the Slovak legal order, in Slovak society and culture. They can be seen as symbols of the state and the statehood, of the history of the state,¹ as symbols of state authority and its organs, but also of their performance of the state power, but also as symbols of the Slovak nation as a constituent nation.² The law regulates state symbols and provides a high level of protection to state symbols. The reason for this rigorous regulation is precisely the high symbolic value of state symbols, the protection of which is in the interest of preserving respect for the state, in the interests of preserving the cohesion of society³ and of preserving the state as such.

However, also other symbols representing not only the state as such, but also the constituent nation (some of which are regulated by law, others are not regulated by law and are informal in their nature) have a high symbolic value as well.

1 Drgonec, 2015, p. 220.

2 Palúš et al., 2016, p. 113.

3 According to the Slovak author Ľ. Cibulka, state symbols are “a certain tool for identifying citizens with their state.” See Svák, Cibulka and Klíma, 2009, p. 275.

The symbols of cities, municipalities and self-governing regions also enjoy legal protection in the Slovak Republic. On the other hand, in the case of other public entities, including self-governing bodies other than bodies of regional and municipal self-government, the regulation of their symbols under public law is minimal. A certain exception are universities.

The formal symbols of other communities, such as national minorities, sexual minorities, or other communities, have comparatively low levels of specific public regulation.

Symbols in different societies have always been not only a way to express affinity for certain values, but they have also been the object and instrument of social conflicts. In the Slovak Republic, a recent example is a legislative initiative by two members of the National Council of the Slovak Republic to ban the posting of rainbow flags symbolizing the LGBT+ movement on public buildings. This aspect of social conflicts cannot be circumvented in this chapter either.

The sources of law regulating the state symbols of the Slovak Republic and their use are, in particular, the Constitution of the Slovak Republic no. 460/1992 coll., as amended by later constitutional acts (article 8 and 9 thereof), act no. 63/1993 on the state symbols of the Slovak Republic and their use, as amended (hereinafter referred to in this chapter as “the state symbols act,” or “SsA”), act no. 300/2005 coll., the Criminal Code, as amended — in the text of the chapter hereinafter referred to as the “Criminal Code” and act no. 372/1990 coll. on infringements, as amended — in the text of the chapter hereinafter referred to as the “Infringements act,” provide for the protection of state symbols.

Other relevant sources of law governing certain aspects of the use of state symbols, but also formal or informal national symbols and symbols of cities and municipalities and universities are in particular:

- Act no. 369/1990 coll. on Municipal Establishment
- Act no. 302/2001 coll. on the self-government of higher territorial units (Act on self-governing regions)
- Act no. 241/1994 coll. on the city of Martin as the center of the national culture of Slovaks, as amended by Act No 182/2009 coll.
- Act no. 377/1990 coll. on the capital of the Slovak Republic, Bratislava
- Act no. 401/1990 coll. on the City of Košice
- Act no. 1/2014 coll. on the organization of public sports events and amending certain acts
- Act no. 131/2002 coll. on higher education and amending certain other acts.

The aim of the chapter is to examine the Slovak aspects of the research subject within the framework of the monograph; more specifically, to outline brief general and legal history and constitutional regulation of state, national and community symbols; protection of state symbols in the Slovak Republic both at the level of criminal law (and/or law of minor offenses) and at the level of civil and administrative

law; protection of national symbols and legal protection of symbols of communities (both also in relation to each of the abovementioned branches of law).

The structure of the chapter corresponds to the outlined objectives. The chapter consists of these parts: Excursion into the topic of history of state symbols in the Slovak Republic, constitutional and legal protection of state symbols of the Slovak Republic—divided into positive protection of state symbols (authorized persons and authorized uses of state symbols, state symbols and copyright, use of state symbols in business) and negative protection of state symbols (prohibited uses of state symbols, legal consequences of breach of legal obligations relating to state symbols at the criminal and administrative level). The chapter further contains an excursion into the use of foreign state symbols in the Slovak Republic and an excursion into the use of state symbols at sports events). Finally, it deals with national symbols (both formal and informal), with symbols of self-governing regions, towns, and municipalities and with community symbols in the Slovak Republic and their legal protection.

In terms of methodology, the method of heuristic inquiry (focusing mainly on normative texts, but also with a focus on scientific literature) was used in the research preceding the creation of the chapter, together with the methods of analysis, synthesis, deduction, and induction. Among the empirical methods, direct observation was mainly used. The chapter itself does not have a significant comparative dimension, since this function is fulfilled by the monograph as such.

2. Historical excursion into state symbols in the Slovak Republic

In Slovak historiography, there are different views on the historical origin of the two-armed cross as a symbol of Slovakia and of Slovaks. Some historians perceive it as part of the Great Moravian heritage, as a symbol that came to Great Moravia as part of the mission of the Saints Cyril and Methodius.⁴ The subsequent use by the House of Árpád and in the Hungarian state emblem is said to be linked to the symbolic of the northern part of Hungary (Upper Hungary, Principality of Nitra).

The two-barred cross, later placed on the middle peak of a mountain consisting of three peaks, has been part of the Hungarian heraldry⁵ and the coat of arms of the Kingdom of Hungary since the Middle Ages. However, unlike the coat of arms of the Slovak Republic, both the historical Hungarian heraldry and Hungary's current coat of arms depict the mountain in green color. The association of the left (from the point of view of the bearer) field of the Hungarian emblem, which contains a double cross on a trimount, with the historical territory of Upper Hungary, is explained as the

4 See Svák, Cibulka and Klíma, 2009, p. 296.

5 Drgonec, 2015, p. 339.

trimount being a symbol of the three mountain ranges: Tatra, Matra and Fatra.⁶ Of these mountains, two are now located in Slovakia (High Tatra, Low Tatra, Little Fatra and Great Fatra) and the third (Mátra) in Hungary. The coat of arms of the Slovak Republic can thus also be seen as a testimony of the common historical and cultural heritage of Slovakia and Hungary.

As a Slovak emblem, the argent double cross standing on the middle peak of a dark blue trimount in a red field started to be used in 1848. The representatives of the Slovak national revolutionary movement adopted the emblem from the left field of the emblem of Hungary, but replaced the green trimount with a blue one, as the white-blue-red tricolor corresponds to the Slavic colors.

After the creation of Czechoslovakia in 1918, the double cross on trimount as a symbol of Slovakia and Slovaks was incorporated into the coat of arms of the Czechoslovak Republic. After the creation of the war-time Slovak state in 1939, the double cross on trimount — although in an altered form—once again became its emblem. After the Second World War, Czechoslovakia was re-established, and the Slovak emblem again became part of the Czechoslovak coat of arms. However, in 1960, the double cross on trimount in the Czechoslovak coat of arms was replaced by a new communist symbol of Slovakia — it was a red, gold-rimmed pavise shield, with a blue depiction of the mountain of Kriváň with a fire of the partisans—symbolizing the Slovak National Uprising in 1944. Following the revolution in 1989, the representation of the Slovak emblem was revised again with effect from March 1, 1990.⁷ The coat of arms has once again become a double silver cross, elevated on a trimount on a red shield. Shortly after (April 20, 1990) it became part of the revised coat of arms of Czechoslovakia.

Following the break-up of Czecho-Slovakia and the creation of the Slovak Republic—as governed by the then new SsA — the double silver cross, elevated on a trimount on a red shield has been adopted as the coat of arms of the Slovak Republic in the form laid down in Section 2(1) of this act. As we are already talking about the current state of legislation, more detailed information will be provided in the third sub-chapter of this chapter.

The history of the Slovak national flag began in 1848,⁸ when the Štúr movement⁹ started to use the Slovak flag in a red-white double-combination similar to the one used at the time by the other western Slavic nations — Czechs and Poles. In the same year, however, a blue band was added in the context of the traditional Slavic

6 Although some authors question this link, e.g., Krošlák et al., 2016, p. 252.

7 Constitutional act no. 50/1990 coll. of the Slovak National Council on the name, coat of arms of the state, state flag, state seal and state anthem of the Slovak Republic. See also: Hlavová and Žatkuliak, 2002, pp. 70–71.

8 Vrtel, 2021, p. 219. The Slovaks demanded the introduction of their own Slovak national flag in the so-called Demands of the Slovak nation in 1848. Kohútová, 2008, p. 137.

9 The Štúr movement or the Štúr group (“Štúrovci”) was the the most important group of Slovak national activists, politicians and artists around 1848. They are named after their leader — Ľudovít Štúr. For further reading see for example Kučera, 2017, pp. 247–249.

tri-combination of colors. The lay-out of the flag was not stable¹⁰ (it was sometimes also used with the representation of the national emblem and the arrangement of the three colors only stabilized at a later stage).

At the time of the creation of the common state of Czechs and Slovaks in 1920 a blue wedge was inserted into the original white-red flag of Bohemia, creating the new Czechoslovak flag, which became the most prominent and recognizable symbol of Czechoslovakia. Today, the Czech Republic uses this flag, which has created controversy and sparked passions in the period shortly after the dissolution of Czechoslovakia.¹¹ At the time of the Slovak state during WWII, a white-blue-red tricolor was used as a state flag without depicting the coat of arms (a flag very similar to the current flag of the Russian Federation).

On March 1, 1990, the Slovak flag was reintroduced in a combination of three coloured stripes without a sign. However, that flag gave rise to a risk of confusion with—then essentially also new—flags of Russia¹² and Slovenia. The national emblem was therefore inserted in the front field of the flag and the flag took the form that continues to be used today (see the third subchapter).

The state anthem of the Slovak Republic is the song “*Nad Tatrou sa blýska*” — “Lightning over the Tatras.” The author of the song text is Janko Matúška, a Slovak romantic poet, a prominent representative of the Slovak 19th century national revival *Štúr* group. At the time of its creation (1844), its author was 23 years old and it was composed as a “protest song.” The melody comes from the folk song “*Kopala studienku*.”

Under Czechoslovakia, the first stanza of “*Nad Tatrou sa blýska*” was the second part of the state anthem. Between 1939 and 1945, the state anthem of the Slovak Republic was the song “*Hej, Slováci*,” which (with slightly different wording) was considered to be an anthem of all Slavic peoples (this song was also, at certain times, the state anthem of Yugoslavia, Serbia, Montenegro; the Polish state anthem — *Mazurek Dąbrowskiego* — has almost the same melody).

At present, the state anthem of the Slovak Republic is made up of the first two stanzas of “*Nad Tatrou sa blýska*.”

The Slovak state seal in its current form is the “youngest”¹³ Slovak state symbol. It is derived from the coat of arms. Its historical predecessor was the state seal from the period 1939 to 1945, which also consisted of a representation of the coat of arms

10 See Svák, Cibulka and Klíma, 2009, p. 298.

11 According to Art. 3 para. 2 of the Constitutional act no. 542/1992 coll. on the dissolution of the Czech and Slovak Federal Republic the Czech Republic and the Slovak Republic may not use the state symbols of the Czech and Slovak Federal Republic after the dissolution of the Czech and Slovak Federal Republic.

12 Russia re-adopted its historical flag in 1991. From a vexiological point of view, Russia had a priority right to this tricolor, as it had used it before Slovakia did (Svák and Cibulka and Klíma, 2009, pp. 298–299).

13 It was introduced by the 1990 Constitutional act no. 50/1990 coll. of the Slovak National Council on the name, coat of arms of the state, state flag, state seal and state anthem of the Slovak Republic.

(which, however, was graphically different from the one currently used by the Slovak Republic, e.g., the ends of its arms were not concaved) and a circular inscription, which, however, differed from the current circular inscription (in the current state seal, the circular inscription “Slovak Republic” is used, in the WWII the inscription was reading “Seal of the Slovak Republic”). Further difference was a significantly different font of the inscription. The current state seal has a linden leaf at the bottom of the circular inscription, the historic state seal had an isosceles double cross at the bottom of the circle, the symbol of the ruling *Hlinková* Slovak People’s Party¹⁴ and its ideology. The diameter of both state seals is the same: 45 mm.

3. Constitutional and legal protection of state symbols of the Slovak Republic

According to the Constitution of the Slovak Republic (Art. 8), the state symbols of the Slovak Republic are the coat of arms, the flag, the state seal and the state anthem. Art. 9 contains a brief description of the symbols and provides that a Law shall lay down the details and use of the state symbols. The existence of a constitutional regulation of state symbols, including their description, provides them with a higher degree of esteem and protection and significantly complicates their change.

However, since the Constitution does not provide additional specific protection to state symbols, and since the more detailed description of the state symbols is regulated within the SsA, we will draw mainly from its wording in the following text.

According to SsA, the coat of arms of the Slovak Republic consists of a silver double cross on a red early gothic¹⁵ shield, erected on the central, elevated hill of three blue hills. Extremities of the cross are amplified, and its ends are concaved. The coat of arms is used in color. Exceptionally, the color representation may be omitted if it is not possible or appropriate for objective reasons. The silver color of the double cross may also be replaced by white when depicted in color. Under the SsA, a one-color, metallic, stone or ceramic representation is also a coat of arms of the state, if this representation corresponds to the representation of the coat of arms. The coat of arms thus depicted is used, for example, in the main meeting chamber of the National Council of the Slovak Republic, where its monumental wooden sculpture is located above the presidential bench. A depiction of the Slovak coat of arms forms Annex 1 to the SsA.

The Slovak flag consists of three longitudinal stripes, white, blue and red, of the same width, arranged horizontally. The Slovak coat of arms is placed at the hoist side. The coat of arms is equidistant from the upper, fore and bottom edges of the

¹⁴ Kamenec, 1992, p. 31.

¹⁵ For more information on the topic of heraldic shield shapes, see Von Volborth, 1996, pp. 22–23.

flag and is equal to half the height of the flag. The aspect ratio of the flag is 2:3. A depiction of the Slovak flag forms Annex 1 to the SsA.

The state flag may also be used in the form of a banner (Section 10 of the SsA). The main difference here is in the method of affixing—the state banner is always firmly attached to a pole or a cross-beam. Another difference is the ratio of the sides; in the case of the state banner it is less rigid—it is only provided, that the length of the banner shall not exceed three times its width. state banner may also hung vertically, in that case, the coat of arms is also in a vertical position.

A depiction of the state banner forms Annex 3 to the SsA. The provisions of Section 8, with the exception of paragraphs 5, 9, 10 and 12, shall apply to the use of the state banner.

The Slovak state seal is round. In its center, the coat of arms is depicted, the colors of it being marked by heraldic hatching. A circular inscription is placed around the coat of arms. There is a linden leaf at the bottom of the circle of the state seal. The diameter of the national seal is 45 mm. A depiction of the state seal forms Annex 4 to the SsA.

The state anthem of the Slovak Republic are the first two stanzas of the “*Nad Tatrou sa blýska*” song.¹⁶

3.1. Positive protection of state symbols

“Positive protection of state symbols” consists of those elements of normative regulation that define state symbols and regulate, who has the right to use state symbols and how.

The negative protection of state symbols restricts or prohibits the use of state symbols by certain persons and/or in a certain way. This includes the regulation of tortious liability.

A part of legal protection of state symbols are rules, which give them an exclusivity status in relation to other symbols, in particular in relation to foreign state symbols. Therefore, the rules governing the use of foreign state symbols in the

16 The song has a total of six stanzas, only the first stanza was used as part of the Czecho-Slovak anthem.

The first two stanzas are worded as follows:

1. Lightning flashes over the Tatra,
the thunder pounds wildly,
Let's stop them, brothers,
they will surely disappear,
the Slovaks will revive.
2. That Slovakia of ours,
had been sleeping so far,
But the thunder's lightnings,
are rousing the land
to wake it up.

territory of the Slovak Republic may also be perceived in terms of the legal protection of Slovak state symbols.

Positive protection is already provided for in Section 1 of the SsA. state symbols may be depicted, produced and used only in the manner regulated by this act. Everyone is required to respect the symbols. Education for patriotism and respect for the state symbols of the Slovak Republic must be included in the national school education program.

A very specific feature of the coat of arms of the Slovak Republic is its relative graphical simplicity. Based on my own observation of various state symbols, it appears to one of the most graphically simple coat of arms in the world. This specificity can be seen as a very fundamental factor determining the regulation of the use of the coat of arms. Most of the world's states coat of arms can be drawn or painted by an ordinary person only with difficulty. However, even a small child can draw a simple and relatively faithful graphic representation of the Slovak coat of arms in a short time. This has several potential positive and negative impacts:

- the positive effect is that Slovaks are strongly identified with the coat of arms as their national emblem — symbols, that are very easy to reproduce graphically, understandably rather find a path to use in everyday life;
- the negative impact is that a simple graphic representation of a coat of arms can also be easily drawn in a degrading way or in a degrading context, although the person, who has done so, could argue, that it is not the (official) coat of arms, since the graphic representation in question does not correspond to the legal rules governing the representation of the coat of arms.

These specificities (among others) create a need for regulation not only of the coat of arms proper, but also of its simplified graphic reproductions:

- in paragraph 6a of the SsA the so-called emblem of the coat of arms is regulated, which, in accordance with subparagraph 1 of that article, consists of a double cross, erected on the central, elevated hill of three hills, extremities of the cross are amplified, and its ends are concaved,
- in paragraph 13b of the SsA the so-called national symbol is regulated (in accordance with paragraph 13b(1) the national symbol consists of a double cross erected on the central of three hills).

Neither the emblem of the coat of arms nor the national symbol are classified by law as a state symbol, however the fact, that law regulates them, also indirectly protects the coat of arms. If the simplified graphic representations of the double cross on three hills were not legally regulated, their defamation would also not be punishable.

Concerning emblem of the coat of arms and the national symbol, the chapter deals with them in more detail in Sections 4.1. and 4.2.

3.1.1. Authorized persons and authorized uses of state symbols

The SsA regulates the use of state symbols in a differentiated manner according to the group of entities using them. First of all, it regulates the use of state symbols by public entities, which use them to indicate that they act on behalf of the state, in the exercise of state authority, and by other persons, who use it to express, that they officially represent the state and the Slovak nation. On the other hand, it also regulates the use of state symbols by natural persons and legal persons who do not act as representatives of the state authority or as official representatives of the Slovak Republic and of Slovaks.

According to the Section 3(1) of the SsA, the coat of arms is to be used in the manner prescribed by that law by:

(a) the National Council of the Slovak Republic and the Office of the National Council,

(b) the president of the Slovak Republic and the Office of the president,

(c) the government,

(d) ministries and other bodies of central government,

(e) the Supreme Audit Office,

(f) the public prosecutor's office, the courts and the Constitutional Court,

(g) the persons designated by the state pursuant to special laws,

(h) diplomatic missions, permanent missions and consular posts of the Slovak Republic,

(i) the armed forces, the security forces, and the fire and rescue corps,

(j) state schools and state school establishments,

(k) local and regional self-government authorities,

(l) the Slovak Academy of Sciences and its authorities and other state scientific organizations, national museums and galleries and other organizations established by the state in the field of culture, and

(m) the National Bank of Slovakia and state banks.

For an example of persons authorized to use the coat of arms of the state to express the official representation of the Slovak Republic and Slovaks, we can refer to Section 3(3) of the SsA. According to this provision, the coat of arms is used to identify natural and legal persons representing the Slovak Republic at official international events. The Slovak Republic's sport representation uses the coat of arms in major competitions, including the preparation for the competition by depicting it in the manner laid down in this act on sports clothing. This provision was inserted in the Act only in 2019 as a reaction to the "scandal" concerning the new jerseys of the Slovak Ice Hockey national team, when the Slovak Ice Hockey Union—instead of the coat of arms—displayed its own logo on the jerseys, which is a stylization of the coat of arms (the blue trimount is replaced by white-blue stylized hockey sticks, forming a silhouette of the three peaks; instead of the classic silver double cross with amplified extremities and concaved ends in the red field there is a white, sharp-edged double cross depicted from the profile). The replacement of the coat of arms on the jerseys

has given rise to considerable reluctance, in particular by nationalist Slovak politicians¹⁷ and a nationally more sentient part of Slovak society, although it is common for top national ice hockey national teams to use stylized symbols on their jerseys (e.g., Swedish “*tre kronor*,” stylized Czech lion or Canadian maple leaf). It should be noted, that in Slovakia ice hockey is a “national sport” and national team matters can trigger very strong emotions. One of the critically perceived factors in this case was an accusation, that the Slovak Ice Hockey Union changed the design of the jerseys for commercial purposes (because it can exercise exclusive intellectual property rights over their own logo and therefore nobody would be able to sell replicas of the jerseys and other fan merchandise with their official design without a licence from the Slovak Ice Hockey Union).

In response to the said “scandal,” a rather extensive amendment to the SsA was introduced by act no. 126/2019. As a result of this amendment and the new provision in Section 3(3), the sporting representation of the Slovak Republic in a major international competition (i.e., for example, the World Ice Hockey Championship), but also in preparatory matches for such competition, may no longer use the coat of arms on its dresses other than in the manner provided for in this act. The use of the stylized or altered coat of arms would thus constitute an infringement of the law.

The SsA regulates also the manner, in which the authorized persons can use the state symbols. It should be recalled here that if the user is a state authority, Article 2(2) of the Constitution of the Slovak Republic applies to it, according to which state authorities may act only based on the Constitution, within its limits and to the extent and in the manner prescribed by Law. This rule also applies to the use of state symbols. Therefore, for example, a state authority is not only entitled, but also obliged to display the coat of arms of the state on the building, in which it resides.

It is neither necessary nor meaningful to mention all the provisions of the SsA which govern the specific modalities of use of state symbols by authorized persons. We will therefore only give a more concise outline:

Section 3(6) of the SsA governs the following use of the coat of arms of the Slovak Republic—to indicate *inter alia*:

- the borders of the Slovak Republic with other states,
- the buildings of the state authorities, the armed forces, the security forces and the fire and rescue corps, state schools and state schools, local authorities and institutions referred to in paragraph 1(l),
- polling stations, meeting rooms of state authorities, state schools and state school establishments, local government authorities, institutions referred to in paragraph 1(l), other official rooms of state authorities and their public relations rooms, classrooms of state schools, classrooms and Slovak national monuments,

17 <https://hokej.pravda.sk/reprezentacia/clanok/485183-hrnko-z-sns-kritizuje-hokejistov-za-nove-dresy-pohrozil-odobratim-dotacie/>.

- objects and areas protected under nature protection and monuments regulations, and
- Collection of Laws of the Slovak Republic.

As regards the state flag, the SsA governs its use in Paragraph 8 as follows: the state authorities, the armed forces, the security forces, the fire and rescue corps and the municipal and regional self-government authorities display the state flag on the buildings in which they are located, the state authorities also designate the official room of their highest official.

The state flag is further used on public holidays, as well as at a call of the Ministry of the Interior of the Slovak Republic (if it is a major official affair on the national level — e.g., an official visit by the head of another state) or by a municipality (if it is a local official affair).

The state flag is hoisted on a flagpole. In the case of international events in the Slovak Republic, in case of odd number of flags, the state flag is placed in the middle, in case of even numbers, on the left side from the front view in the middle pair. In the case of a major event of the Slovak Republic or a major event of a local nature, the national flag shall always be used; the national flag of another state is used only when an official delegation of another state is present. In this case, the Slovak flag is used in the place of honor (left side from the front view). If the state flag is used together with a municipal flag, both are placed side by side at the same height, with the national flag positioned on the left.

In the case of state mourning,¹⁸ the state flag is flown at half-mast.

The use of the state banner shall be subject, *mutatis mutandis*, to the provisions on the use of the flag, with some exceptions expressly provided for.

The use of the state seal is regulated very briefly in Section 12 of the SsA: it is used original document of the Constitution and constitutional laws of the Slovak Republic, international treaties, credentials of diplomatic representatives and in other cases in which its use is usual.

Pursuant to Section 13(2) of the SsA, the state anthem is played or singed on public holidays, commemorative days, anniversary and other significant national or local occasions; the state anthem of another state shall be played if its official delegation is present. The previous sentence is without prejudice to the right of natural and legal persons to play or sing the state anthem of another state.

Under Paragraph 6(3), the state anthem must also be played or singed before the opening of first and last meetings important bodies of the state and local government designated by law in every term of office, and at other major events.

18 The state mourning is proclaimed by the government; it is governed by Section 9a of the state symbols act, there are mandatory and optional grounds for its declaration.

3.1.2. Individuals and legal persons

In short, it can be stated right away, that natural persons and legal persons in the Slovak Republic may, in principle, use the state symbols of the Slovak Republic, but this use must be dignified and correspond to their status as state symbols.

Section 3(4) of the SsA provides, that other natural and legal persons may also use the coat of arms, except for the designation of their buildings, documents, stamps and uniforms; this shall not apply to natural and legal persons as provided for in specific legislation.¹⁹ All natural and legal persons may always use the coat of arms only in such a way, that its use is dignified and respect its status as a state symbol.

Under Section 11(2) of the SsA, both natural and legal persons may use both the state flag and the state banner; however, their use must also be dignified and respect their status as state symbols.

Understandably, natural persons and legal persons can play and sing the state anthem of the Slovak Republic. Although the state anthem is governed by that law, there is no specific requirement for the dignity of its singing. This seems to be logical — compliance with such a duty could not be fairly demanded. After all, people cannot be prohibited from singing just because they are not good singers. However, it is necessary to recall the general provision of the first sentence of Section 1(2) of the SsA, according to which everyone is required to respect the state symbols of the Slovak Republic.

Thus, only the regulation of the use of the state seal remains to be mentioned. This is the only state symbol that cannot be used by natural and legal persons by nature, as its use is reserved only to the top state authorities for the most important public documents.

3.1.3. State symbols and copyright

Under the Section 5(d) of the Slovak Copyright Act (act no. 185/2015 coll. Copyright Act), the state symbols, symbols of municipalities, symbols of the self-governing regions are not considered to be subject to copyright; however, this does not apply in the case of a work which forms the basis for the creation of a symbol. Of course, at least some of the state symbols of the Slovak Republic had at some time the status of copyright protected work. For example, the text of the state anthem is an 1844 poem of the poet Janko Matúška. Thus, state symbols do not currently have the status of copyright works, but the works that were used to create them, do.

State symbols may be included in copyright protected works. For example, it is possible to create a painting involving the state flag. There is a general requirement here that the author must act with respect for the state symbol in such a way as to preserve its dignity.

¹⁹ The part of the sentence after the semicolon can already be seen as a negative regulation of the use of the coat of arms by natural persons and legal persons.

A sensitive issue are cases of caricatures of state symbols used in copyright protected works. Part 3.2.2. examines this topic closer.

3.1.4. Use of state symbols in business

The SsA does not explicitly prohibit the use of state symbols in business. However, it is necessary to recall again the initial provision of that law, namely Section 1(1) thereof, according to which the state symbols may be represented, produced and used only in the manner prescribed by that law. This means that private persons may, for example, include a state symbol in the design of their product as long as they fulfill the requirement of Section 3(4) of the SsA, i.e., that its use will be dignified and will respect its status as a state symbol. For example, if a publishing house publishes a photographic book about Slovakia, it may use the Slovak coat of arms on the cover, unless this creates the appearance, that it is an official public document. It is also possible to use the coat of arms for example on advertising items or, for example, on souvenirs. The law in no way precludes an entrepreneur from manufacturing and selling clothing or fan items with a state symbol. On the other hand, if someone was to produce and sell, for example, toilet paper with the print of the coat of arms or, for example, a doormat depicting a state flag, it would not be a dignified use and would therefore be a violation of the law.

Of course, any use of state symbols in business must also comply with the legal rules for doing business in general.

In relation to business which concerns state symbols, the question of the relationship between state symbols and intellectual property rights must be specifically mentioned. state symbols, as mentioned above, are not protected by copyright. However, copyright protected works in which the national symbols are included (*lege artis*) may be protected and such works may be commercially exploited.

It is not possible for someone to register a state symbol as a trade mark. Pursuant to Section 5(1)(j) and (k) of act no 506/2009 coll. on trade marks, a sign is not to be entered in the register of trade marks, if:

- it contains a sign of high symbolic value, in particular a religious symbol;
- it contains, without the consent of the competent authorities, signs, emblems, or coat of arms other than those protected under an international convention and which are of public interest.

On the other hand, it is possible to register a graphic sign as a trade mark, which is a stylized image of a state symbol. Such a case has already been mentioned in the chapter in relation to the logo of the Slovak Ice Hockey Union.

3.2. Negative protection of state symbols

The negative protection of state symbols in legislation may be understood as a set of rules, which prohibit or restrict certain ways of dealing with state symbols,

whether expressly or implicitly. This includes also laws penalizing certain forms of handling of state symbols, whether in terms of criminal liability or liability for administrative offenses.

3.2.1. Prohibited uses of state symbols

In relation to the Slovak coat of arms, the following uses are expressly excluded by law:

- it shall not be displayed on buildings in dilapidated conditions, although they fall within the scope of Paragraph 4(1) of the SsA;
- unless a specific law provides otherwise, private persons may not use the coat of arms to designate their buildings, documents, stamps and uniforms – as governed by Paragraph 3(4) of the SsA.

Some prohibited uses of the coat of arms derive implicitly from a statutory provision. However, these provisions must always be interpreted in the context of other provisions of the SsA.

For example, the SsA provides in the first sentence of Section 3(3), that the coat of arms shall be used for designation of natural and legal persons representing the Slovak Republic at official international events. However, a person, who represents the Slovak Republic at an unofficial sporting event, may also use the coat of arms for his or her designation, since such right is granted to such a person in Section 3(4) of the same act. Thus, the wording “at official international events” does not in fact imply an implicit restriction on the use of the coat of arms by natural persons at non-official international events. On the other hand, the second sentence of Section 3(3) of the SsA expressly provides that a sports representation of the Slovak Republic uses the Slovak coat of arms in a major competition, including the preparation for such competition, by displaying it in the manner provided for in this act on sports clothing. It follows implicitly from this provision, that the sporting representation of the Slovak Republic cannot use the coat of arms in a major competition, including the preparation for such competition, by displaying it in a manner different from the one provided for in the act (i.e., for example, stylized depiction). On the other hand, in case of other sporting events—for example, a “friendly” match — the national representation may also use a stylized emblem on sports clothing.

Furthermore, the use of the coat of arms implicitly limited by law includes i.a. use of the coat of arms by private primary schools or secondary schools other than as a watermark on school diplomas.

Regarding local self-government (municipalities, towns, municipal districts, self-governing regions), there is also an implicit restriction on the use of state symbols, which is very important in practice. The most important use of the coat of arms of the state by local and regional self-government authorities is the use in their official stamps. Local and regional self-governing authorities have two types of official stamps — official stamps with the Slovak coat of arms, and official stamps bearing

their own coat of arms. Under Section 5(3) of the SsA, local and regional self-government shall use the official stamp with the coat of arms of the Slovak Republic, the inscription “Slovak Republic” and the name of the municipality for decisions in matters in which they carry out state administration under specific legislation. These are therefore cases of so-called “transferred state administration”²⁰ carried out by a local authority. Thus, it follows implicitly from Paragraph 5(3), that the official stamp bearing the coat of arms of the state shall not be used by the self-government authority in the exercise of its own self-governing powers. In these cases, the local authorities are required to use official stamps with their own coat of arms. (This rule is also explicitly included in Section 1b(4) of the act no. 369/1990 coll. on Municipal Establishment.) the Act on self-governing regions does not expressly regulate official stamps of a self-governing region.

In the case of private persons, the use of the coat of arms is implicitly excluded by law if it is not dignified and does not correspond to its status as a state symbol (second sentence of Section 3(4) of the SsA).

The SsA regulates negative obligations, restrictions and prohibitions concerning the use of the state flag (and, as appropriate, state banner) as follows: No decorations, inscriptions, images, ribbons, etc. shall be placed on the national flag or on the pole.²¹ The state flag may not be used damaged or dirty and may not be bound into a rosette.²² The state flag shall be raised and lowered without interruption, slowly and with dignity; when lowered, it shall not touch the ground.²³

In the case of the state flag and the state banner, no specific negative regulation of the manner of use is provided in relation to private persons. Thus, the negative obligations and restrictions applicable to private persons are the same as those generally mentioned above.

In the case of both state anthem and state seal, the SsA contains only a positive regulation of their use, i.e., who can use them and how they can be used. This also implies, of course, *a contrario*, how the two national symbols may not be used. In the case of the state anthem, this limit is only given by the general requirement to respect the state anthem as a state symbol.²⁴

This is different in the case of the state seal. Since the range of ways in which it may be used under the law is very narrow, it implies an implicitly very broad restriction on its use. It cannot therefore be used other than on the original document of the Constitution and constitutional laws of the Slovak Republic, international treaties, credentials of diplomatic representatives and in other cases in which its use is usual. However, other use of the state seal is not possible by nature (except in cases

20 Vrabko et al., 2012, p. 151.

21 Section 8(9) of the SsA.

22 Section 8(11) of the SsA.

23 Section 8(12) of the SsA.

24 Section 1(2) of the SsA. One specific implicit restriction still follows from the provision contained in Paragraph 13a(1) and (2) of the state symbols act.

of obvious forgery), given that, under Section 12(3) of the SsA, the state seal is kept by the president of the Slovak Republic.

Of course, for all state symbols, the limits on their use also result from the regulation of criminal and administrative liability, as discussed in Section 3.2.2.

3.2.2. Legal consequences of breach of legal obligations relating to state symbols

Failure to comply with the obligations and restrictions laid down in relation to the use of state symbols may have various negative legal consequences (but also non-legal consequences). The negative legal consequences of such actions are the incurrance of tortious public liability, be it criminal liability or liability under administrative law (liability for infringements or administrative offenses).

If, however, there was a breach of the legal obligation relating to the use of state symbols by an official or employee of a public authority, disciplinary liability is also possible.

Although we will not address civil liability, we must say that damage to a thing (in terms of a certain material object), by which a symbol is portrayed, always results in a certain legal liability, be it public liability (according to the value of the object, it is either criminal or administrative liability — offense of damage to foreign property), or civil liability (liability for damage).

3.2.2.1. Criminal offenses

Among the criminal offenses contained in the Slovak Criminal Code, the criminal protection of state symbols is covered by the provision in Paragraph 364. It is the crime of disorderly conduct. That offense is committed, inter alia, by any person who commits, in words or physically, publicly or in a place accessible to the public, gross indecency or disorder by defamation of a state symbol (Section 364(1)(b) of the Criminal Code). For such conduct, the offender can be punished by imprisonment for up to three years (the lower limit of the rate is not provided for in the law in this case).

We will briefly explain how some of the terms used in the Section 364(1)(b) of the Criminal Code are to be interpreted:

- offense committed publicly — under Section 122(2) of the Criminal Code, a criminal offense is committed publicly when committed
 - a) by the content of a book or print media or by the distribution of the file, or by film, radio, television, using a computer network or other similarly effective means; or
 - b) in front of more than two persons present at the same time;
- a place accessible to the public may be, for example, a street, square, or other public space, a building accessible to the public, but also another place open to the public, even if the public is not present there;

- according to J. Ivor, a gross indecency is a serious breach of the rules of civil coexistence and the principle of civil morality, whereas disorder is an act which seriously undermines peace and public order, and, unlike gross indecency, it is usually an act of physical or psychological violence directed against persons or against property, or actions that raise concerns about the safety of people or property, or significantly reduce esteem of a larger number of people;²⁵
- a state symbol, according to the above-mentioned work, must²⁶ be understood not only as the state symbol of the Slovak Republic, but, and this is very important, it should be understood as meaning any state symbol.

The Section 364(1) of the Criminal Code governs the basic constituent elements of the offense and the corresponding penalty. However, the Criminal Code also regulates the qualified offense in Paragraph 364(2), with a higher penalty rate (six months to three years). The offender would be guilty of the qualified form of the offense if he or she had committed the offense referred to in paragraph 1:

- a) from a specific motif;
- b) by a more serious way of acting;
- c) in the presence of a group of persons below the age of eighteen;
- d) against the protected person; or
- e) although he or she has been convicted in the previous twenty-four months or punished in the previous twelve months for an alike or similar act.

A more serious way of acting in this context could be conduct that is committed in breach of an important obligation arising from employment, status or function of the perpetrator²⁷ — for example, if a state symbol would have been defamed by a public office-holder or a soldier or police officer. Among the specific motives provided for in Section 140 of the Criminal Code, in the event of an offense of disorderly conduct committed by defamation of a state symbol, it would be possible, in particular, to consider committing this crime because of hatred against a group of persons or an individual for their actual or alleged affiliation with a race, nation, nationality, ethnic group, for their actual or alleged origin, color, sex, sexual orientation, political opinion or religion.

In regards to this offense, we must at least briefly outline information concerning the basis of criminal liability in the Slovak Republic.

25 Ivor et al., 2021, p. 506. According to another work, gross indecency means conduct that grossly violates the principles of civil coexistence and the principles of civil morality. It must be a more serious indecency. The gross nature of indecency cannot be assessed only on the basis of the character of the perpetrator's personality, but also from his specific expression, even in relation to the environment where it occurred. Samaš and Stiffel and Toman, 2010, p. 773.

26 Ivor et al., 2021, p. 507.

27 Section 138(h) of the Criminal Code.

Generally, the perpetrator of all criminal offenses in the Slovak Republic may be a natural person. Legal persons within the meaning of act No 91/2016 coll. on the criminal liability of legal persons can only be the subject of exhaustively listed offenses. Those offenses do not include the offense of disorderly conduct, thus, criminal penalties for disorderly conduct are possible only in the case of a natural person.

Criminal offenses committed by natural persons must be committed intentionally, unless that law expressly provides that negligence is sufficient. Since in the case of the criminal offense of disorderly conduct, the law does not provide that negligence is sufficient, that offense may be committed only by deliberate action.

In terms of types of offenses, the Slovak Criminal Code divides offenses into two categories — misdemeanors or felonies (Section 9 of the Criminal Code). Under Section 10(1) of the Criminal Code a misdemeanor is:

- (a) an offense committed negligently; or
- (b) an intentional criminal offense for which this act provides, in its special part, for a maximum term of imprisonment not exceeding five years.

Thus, in the case of the offense of disorderly conduct, in the light of the scope of penalties laid down by law, the offense is a misdemeanor, which applies both to the offense in the primary form according to Paragraph 364(1) and to the more serious form according to Paragraph 364(2).

This is a very important piece of information in terms of finding a line between criminal and administrative liability for undesirable actions involving state symbols. Under Paragraph 10(2) of the Criminal Code, there is no misdemeanor where, having regard to the way the act was carried out and its consequences, the circumstances in which the act was committed, the degree of fault and the motivation of the offender, the seriousness of the offense is minor. It is the so-called “material remedy,” which “decriminalizes” offenses with a minimum degree of social hazard.

Finally, the questions of the personal scope and territorial scope of the Slovak Criminal Code need to be mentioned. This is important from the point of view of the fact that Slovak state symbols may also be defamed outside the territory of the Slovak Republic and perpetrators may also be non-nationals of the Slovak Republic.

Pursuant to Section 3 of the Slovak Criminal Code, the criminal liability for an act committed on the territory of the Slovak Republic is to be assessed under this act. The offense is considered to have been committed on the territory of the Slovak Republic, if the offender has:

- a) committed his/her conduct, at least in part, within the Slovak territory; or
- b) committed the act outside the territory of the Slovak Republic, if there was a breach or threat to an interest protected by the Slovak Criminal Code or if such a consequence should have occurred at least in part in the territory of the Slovak Republic.

This may be the case when someone defames Slovak state symbols online, for example, streaming a video from another country, but via a platform where the addressees are usually located in Slovakia.

Under the Slovak Criminal Code, the criminal liability for an act committed outside the territory of the Slovak Republic on board a ship flying the flag of the Slovak Republic or on board an aircraft entered in the Register of aircrafts of the Slovak Republic is also assessed.

As regards the scope *ratione personae*, under Section 4 of the Slovak Criminal Code, the criminality of an act committed outside the territory of the Slovak Republic by a citizen of the Slovak Republic or by a foreign national permanently resident in the Slovak Republic shall also be assessed.

Under Section 6 of the Criminal Code, the criminality of an act committed outside the territory of the Slovak Republic by a foreign national who does not have permanent residence in the Slovak Republic is to be assessed, if the offense is also punishable under the law in force in the territory where it was committed, the offender has been apprehended or arrested in the territory of the Slovak Republic and has not been extradited for criminal prosecution to a foreign state. However, such an offender shall not be liable to a more severe penalty than that provided for by the law of the state on whose territory the offense was committed.²⁸

In practice, sometimes in relation to the defamation of state symbols, the possibility of committing certain other criminal offenses is also discussed. These may include the offenses of “defamation of the nation, race and belief”²⁹ and “incitement to national, racial and ethnic hatred”.³⁰ In our opinion defamation of state symbols may, in some cases, also cover the constituent elements of these offenses, but this will not always be the case. What matters is if the signs of those criminal offenses are met in their entirety. The mere defamation of the symbols of a state does not always mean *eo ipso* also defamation of its constituent nation. For example, if someone defames the flag of a state that conducts war operations in violation of international law, this does not mean that he manifests hatred toward a nation that is ethnically dominant in that state.

In the following text, we will mention some cases, which, under the Criminal Code, could fulfill the merits of the abovementioned disorderly conduct offense.

In the Slovak Republic, use of a caricature of the coat of arms became widespread in 2011 and 2012 in response to the so-called “Gorilla Scandal”—a political corruption case, which began with the leak of a secret file bearing the cover name “Gorilla” from the Slovak Intelligence Service to the public in December 2011. It contained transcripts of audio recordings that showed corruption in Slovak politics. In

28 Apparently using this provision, the elite Slovak police unit *NAKA* tried to prosecute Hungarian fans for defaming the national flags of the Slovak Republic at the international football match Hungary — Slovakia in Budapest on September 9, 2019. However, it is also possible that the perpetrators were Slovak citizens of Hungarian nationality. In such a case, the assessment of the applicability of the Slovak Criminal Code would fall under Section 3. We note, that we do not know the course or outcome of this criminal proceeding. Available at: <https://hnonline.sk/slovensko/2005621-protislovenske-vypady-fanusikov-v-budapesti-riesi-uz-aj-naka>

29 Section 423 of the Criminal Code.

30 Section 424 of the Criminal Code.

the caricature, the trimount in the coat of arms was replaced by the head and arms of a massive gorilla, on the gorilla's head was a partly peeled banana shaped in the form of a double cross.

Igor Matovič, who is currently in the office of the Slovak minister of Finance (back then, he was a pro-government MP), also used this cartoon at the entrance gate of the Slovak parliament. He said that

there are politicians who have stolen from Slovakia for 23 years and citizens do not deserve to be led by such people. They hide behind the double cross, act as a state authority, and in fact they are thieves. This coat of arms will be much better represented by them.³¹

Igor Matovič's act sparked criticism of some politicians. The then president of the National Council of the Slovak Republic, Pavol Hrušovský, strongly criticised his then coalition partner. He found his actions unacceptable and said, that Matovič grossly disgraced a symbol of Slovak statehood.³² A criminal report was also filed against Matovič by at least one private person. It is not known from the media coverage, how this criminal report was dealt with, i.e., whether criminal proceedings were initiated at all, but it is known that Igor Matovič was not convicted.

In our opinion, Matovič's action could not be punishable as disorderly conduct for several reasons. Most important, the subjective aspect could not be fulfilled, since Matovič clearly did not intend to defame the state symbol, but merely wanted to express his criticism of the increase of corruption in Slovakia. He expressly stated that the symbol he placed on the gate of the parliament was meant as a symbol of corrupt politicians, who in his opinion were not worthy to use the actual coat of arms. It can therefore be said that he tried to symbolically strip those politicians of the right to be represented by the state symbols and gave them symbolically a new symbol — a caricature of the coat of arms. On the other hand, Igor Matovič has long been known for some provocative political “showing off” and it cannot therefore be excluded that he was not guided solely by this “noble” motive.

Even more sensitive was the case of a controversial artist and activist, Ľuboš Lorenz, known for damage, destruction, removal and defamation of various symbols in the public space (typically the memorials of the Soviet army and of representatives of the Communist regime). In 2016 and 2018, he repeatedly wore in public T-shirts depicting the double cross on a trimount in an undoubtedly defamating way. It was a diamond-shaped representation reminiscent of an obscene symbol of the female genital organ. In this case too, it was a criminal complaint filed against Lorenz, but it seems he was not convicted.

There were several differences between the Matovič and Lorenz cases. First, in the case of Igor Matovič, the depiction of the symbol was not in itself obscene.

³¹ <https://domov.sme.sk/c/6225012/matovic-zavesil-na-parlament-znak-gorily-s-bananom.html>

³² Ibid.

Images of gorillas and bananas are not perceived as vulgar, while images of the genitals are generally perceived as obscene. Furthermore, in Matovič's case, there was a clear semantic link between the case to which he responded, and the caricature, that made clear the critical message of his act. Matovič also explained his deed in an understandable way, which of course we do not evaluate in terms of truth or in terms of political positions. On the other hand, Lorenz's act was probably supposed to be a manifestation of general criticism of Slovak society, it was quite obscene and at the same time ambiguous.

A specific and quite frequent case in Slovakia is that anti-fascist protesters protest with the symbol of a double cross crossed out. Such manifestations are criticised by far-right nationalists as acts of defamation of the Slovak nation. However, such criticism is misleading. First, it is not known that anti-fascist demonstrators would ever display a crossed-out coat of arms or another official state symbol — it is always the isosceles double cross not placed on a trimount, and thus a symbol, that has not the attributes of the coat of arms. Secondly, this symbol, i.e., the isosceles double cross, is not a symbol of the Slovaks, it's a symbol of the totalitarian fascist ideology. It is not used (not crossed out) in a context other than to show sympathy to the Slovak WWII fascist regime, its ideology and the war-time Slovak state. His strikethrough is by no means a sign of a negative attitude toward Slovakia or Slovaks, but only a manifestation of opposition to the fascist ideology, politics and history of fascist totality during the Second World War.

Generally, the sanctioning — in particular by means of criminal law — of potentially defamatory acts toward state symbols must be viewed very sensitively, since these acts always are a form of exercise of freedom of speech. State symbols are, as their name implies, symbols of the state — thus, they are, of course, a possible “target” of symbolic expressions of criticism of the state and state authorities.

It goes without saying that — especially in a democracy — it is not right to place an “equals” sign between the current holders of state power and the state as such. The state is transcendent in relation to current holders of power, as such, of long-term social value, and for the cohesion of society it is necessary to ensure respect for the state, including through respect for its symbols. On the other hand, room for criticism in the exercise of freedom of speech must also be accepted. However, this criticism must not be defamatory in relation to state symbols.

The (unsuccessful) legislative initiative of the members of the far-right party *Kotleba — Ľudová strana Naše Slovensko* (“Kotleba — the People's Party Our Slovakia”) of 2018, who proposed to sanction such acts as part of the newly regulated criminal offense of “defamation of the state symbols of the Slovak Republic,” should also be mentioned. The aim was “to protect the state symbols of the Slovak Republic more consistently and strictly against defamation.” The explanatory report stated that “the national symbols of the Slovak Republic are an expression of state sovereignty and a permanent reminder of the importance of the independent Slovak Republic for the whole Slovak society. Their defamation is therefore a gross and dangerous manifestation of anti-Slovak extremism.” The proposers also referred to the cases of Matovič

and Lorenz, which were discussed above. They stated that “the Criminal Code, while penalizing public defamation of any state symbols, only in the context of the disorderly conduct offense, for which there is no minimum penalty. Thus, in practice, the offender can only receive a sentence of imprisonment of only a few days.”

However, this draft law was not approved.

3.2.2.2. Administrative offenses

In Slovak law, in addition to the criminal offenses prosecuted by the law enforcement authorities (police and prosecution) and sanctioned by the courts, there are also minor anti-social conducts, which are punished based on culpability through administrative proceedings by the administrative authorities. These are so-called infringements.

While a criminal offense and an infringement can only be committed by a natural person and must be based on fault, there is also a category of so-called hybrid administrative offenses, which are sanctioned regardless of fault, and whose entities may generally be legal persons and natural persons authorized to conduct a business.³³

Liability for infringements and hybrid administrative offenses may also be considered in the event of a breach of obligations in respect of state symbols — but also other symbols dealt with in this chapter.

Pursuant to Section 42(1)(a) of the Infringements act, a person who intentionally damages, abuses or derogates a state symbol or other symbol protected by a generally binding legal act commits an infringement in the field of general internal administration. Under paragraph 2 of the same article, a fine of up to EUR 99 may be imposed on the offender in respect of that offense.

In view of the construction of this infringement and its comparison with the criminal offense under Section 364(1)(b) of the Criminal Code (disorderly conduct), it is necessary to examine the dividing line between these public offenses. Under the *ne bis in idem* principle and the prohibition of double punishment, it is impossible for a person to commit this infringement and this crime in one act (with the exception, that we will mention below).

The dividing line between these two offenses concerns several aspects. First, a conduct, which is not committed publicly or in a place accessible to the public, cannot constitute the criminal offense of disorderly conduct. Furthermore, in the case of the criminal offense intentional defamation of a state symbol is required, whereas in relation to the infringement it is abuse, damage or derogation. “Defamation” (criminal offense) must be seen as a more serious act than “damage” or “derogation” (infringement). In the case of defamation, therefore, it will be a conduct associated with a higher rate of “reduction in the dignity” of the state symbol. Moreover, it should not be forgotten that, in order to constitute a criminal offense, the first part of Section 364(1) of the Criminal Code must also be fulfilled by the respective action

³³ Hamuláková and Horvat, 2019, p. 179; or Vrabko et al., 2012, p. 301.

in its entirety — that is to say, it must also be “gross indecency” or “disorder.” A mere disrespect for a state symbol (for example if someone depicts the coat of arms with a strikethrough) will usually not be so serious, that it is considered “gross indecency” or “disorder.”

Another difference is what the offender’s intention is directed toward. Both offenses require intentional fault, but the intent must relate to the entire object and conduct. Thus, in the case of the criminal offense, there must be an intention to defame the state symbol. Thus, if someone intends, for example, to damage the state flag, but does not want to defame it (i.e., if it is a simple vandalism, where the perpetrator does not intend specifically to manifest gross disrespect of the state symbol), it will not be the criminal offense of disorderly conduct, but it may be the criminal offense of damage to another’s property and at the same time the infringement under Section 42(1)(a) of the Infringements act.

For the same reason, an action cannot be regarded as an offense of disorderly conduct, when the offender’s intention is not to defame the state symbol, but, for example, to criticize the generally long-lasting circumstances in the state.

Finally, the distinction between the two offenses in question is generally determined by the substantive corrective (Paragraph 10(2) of the Criminal Code), according to which there is no misdemeanor if, having regard to the manner, in which the act was carried out and its consequences, the circumstances in which the act was committed, the degree of fault and the motivation of the offender, the seriousness of the conduct is negligible. Thus, if the circumstances of the case justify the use of this corrective, it will probably be only a infringement under Section 42(1)(a) of the Infringements act.

Finally, we will provide readers with some general information on liability for infringements in the Slovak Republic.

As mentioned above, only a natural person can be held responsible for an infringement. Liability for infringements is always based on fault. The infringement under Section 42(1)(a) of the Infringements act must be committed intentionally, since that provision expressly requires intent.

In view of the nature of the above-mentioned infringement, which is relevant to this publication, attention should be paid (as we did with the Criminal Code) to the personal and territorial scope of the Infringements act. These issues are regulated in Section 8 of the Infringements act as follows: an offense committed on the territory of the Slovak Republic is to be assessed under this act. Under this act, an offense committed abroad by a citizen of the Slovak Republic or by an alien permanently resident in the territory of the Slovak Republic shall also be assessed, if such person has breached an obligation under Slovak law outside the territory of the Slovak Republic, or if it results from an international treaty by which the Slovak Republic is bound.

As mentioned above, the entity that can be held responsible for the infringement can be only a natural person. However, the SsA (Section 14) also regulates another category of administrative offenses, which can only be committed by legal persons. Pursuant to Section 14, for breaking the Section 3(3) to (6), Section 5(3), Section

6, Section 11(2) and Section 13b(2), the District authority may impose a fine on a legal person of up to EUR 7 000. When imposing a fine and deciding on its amount, the gravity, manner of conduct and duration of the unlawful situation shall be considered.

3.3. Excursion into the use of foreign state symbols in the Slovak Republic

The SsA also regulates the use of foreign state symbols in the Slovak Republic.

Under Article 4(6) of that law, the coat of arms of another state may be used only to designate buildings of that state's representative offices.

In the case of foreign state flags, the SsA regulates them in the context of their use together with the state flag of the Slovak Republic. It provides in Section 8(6) and (7), that in the case of international events in Slovakia, in case of odd number of flags, the state flag is placed in the middle, in case of even numbers, on the left side from the front view in the middle pair. In the case of a major event of the Slovak Republic or a major event of a local nature, the national flag shall always be used; the national flag of another state is used only when an official delegation of another state is present. In this case, the Slovak flag is used in the place of honor (left side from the front view).

In relation to foreign state anthem, Section 13(2) is relevant, according to which the state anthem of another state shall be played, if its official delegation is present. However, the act further provides that the first sentence of Section 13(2) is without prejudice to the right of natural and legal persons to play or sing the state anthem of another state.

3.4. Excursion into the use of state symbols at sports events

Public sports events are a forum in which the use of state symbols, be they the state symbols of the Slovak Republic, or foreign state symbols, often takes place. They are also events where there is an increased risk of violence, manifestations of extremism, hate or defamatory speech and other unlawful or at least socially undesirable acts. The use of Slovak or foreign state symbols can also become a catalyst for such actions. In addition, sport is often associated with national pride and therefore the use of state symbols, whether Slovak or foreign, in public sports events, is very sensitive³⁴. For the reasons set out above, act No 1/2014 coll. on the organization of public sports events and amending certain acts, as amended (hereinafter also referred to as the “act on sports events”), has relevance regarding the regulation of the use of state symbols, including state symbols of states other than the Slovak Republic.

³⁴ In Slovakia, football matches are particularly sensitive from this point of view.

The act on sports events regulates different categories of public sports events. The regime for the use of state symbols — whether Slovak or foreign — in public sports events depends on the category of event.

An event is considered “public” if it is accessible to individually unspecified viewers. The provisions of this act shall not apply for an event, the organizer of which is a legal person or an entrepreneur and the participants in the event are natural persons who have a legal relationship with the organizer of the event, such as a member, student, employee, or a close person of such a person.

For the purposes of the act on sports events:

- an international event involves teams or athletes from different states; an event in which foreign athletes compete as members of Slovak sports clubs or an event designated as a domestic event by a national sports association shall not be considered to be an international event;
- a risk event is an event identified as risky by the organizer, sports federation, municipality or police force because of a threat to public order or to security, health, morality, property or the environment;
- a special regime event is:
 1. a football or ice hockey match in the two highest league competitions in the adult category or the last four rounds of football and ice hockey cup competitions in the adult category;
 2. an event involving 4,000 or more viewers, or
 3. an event that foresees more than 90% occupation of a sports facility with a capacity of 2 000 or more viewers.

First of all, we will mention the obligations of the organizer of a “normal” public sport event with regard to state symbols: The organizer is obliged, *inter alia*, to ensure at the beginning of the event the Slovak state anthem is played (only in the case of an international event in which a Slovak team or individual is competing, and the final event of the highest national competition), and is obliged to ensure that the symbols of foreign states or their predecessors are not used in domestic events in a derogatory manner or in any other way that may encourage the disruption of public order or endanger the proper conduct of the event.

The organizer of a risk event has the same obligations as the organizer of an “ordinary” public sports event, thus including those referred to above, but also has other obligations, including the obligation to ensure that participants in an event do not bear the national symbols of other states or their predecessors in domestic events.

Participants in any public sporting event shall be prohibited, *inter alia*:

- use the state symbols of foreign states or their predecessors in a derogatory manner or in any other way that is likely to create an incentive to disturb public order or endanger the proper conduct of a domestic event;
- introduce state symbols of foreign states or their predecessors to a domestic event where public order or safety, health or morals of the participants in the event may be compromised.

Pursuant to Section 30(2) of the act on sports events, the use of state symbols of the Slovak Republic at events under this act is governed by the SsA.

In conclusion—fans may bring to any public sports event those Slovak state symbols, for which their nature allows it (i.e., the flag may also be in the form of a banner), but their use at a public sports event must be dignified and correspond to their status as state symbols. Supporters can also sing the state anthem of the Slovak Republic. Foreign state symbols may be introduced to “ordinary” public sports events, but may not be used in a derogatory manner or in any other way that may incite to disturb public order or endanger the proper conduct of the event (i.e., they must not be used, for example, for provocation). This also applies to the national symbols of the predecessors of foreign states — in Slovak conditions, this applies specifically to the Kingdom of Hungary.

The situation is slightly different in the case of risk public sports events, where, on the one hand, it is the responsibility of the organizer to ensure that, in domestic events, participants do not bear the symbols of other states or their predecessors, and this corresponds to the obligation of participants in such events not to bear the symbols of foreign states or their predecessors, where public order or safety, health or morality of the participants may be disturbed. Thus, if, for example, a *DAC Dunajská Streda*³⁵ — *Slovan Bratislava* football match is assessed as being at risk (which is likely to be the case), the organizer should, for example, ensure that the *DAC Dunajská Streda* supporters do not bring to the stadium, for example, Hungarian state flags, and fans are obliged to refrain from doing so. However, here we see the shortcomings of this regulation — for example, the law does not prohibit the organizer of a risk event to set up foreign state symbols for supporters in the stadium, or objects from which the image of a foreign state symbol can be created. This is the case, for example, with posters which the organizers place on the seats and which, held by the fans, create a picture of a flag.

4. National symbols and their legal protection

In addition to the “official” state symbols of the Slovak Republic, which are expressly provided for by the Constitution of the Slovak Republic in Article 8 — and in conformity with it by the SsA in Section 1(1) — there are other symbols in the Slovak

³⁵ Dunajská Streda (Dunaszerdahely) is a town in southern Slovakia with Hungarians forming the majority of inhabitants. The football club DAC was vice-champion in the supreme football league in seasons 2018/19 and 2020/21. In those seasons, Slovan Bratislava won the championship.

Republic and in a Slovak society that symbolize the Slovak state and the Slovak nation.³⁶ These symbols are very diverse, as is their regulation.

In addition to the official state symbols, the SsA also regulates some other symbols which, while not being state symbols, can be seen as official and formally regulated national symbols.

Other symbols regulated in various laws can also be seen as formally regulated national symbols. They do not need to be explicitly called “national symbols”. It is essential that these are legally regulated symbols of high symbolic value, representing Slovak statehood, the history of Slovakia and Slovak people, and the Slovak nation. Among these symbols, the presidential standard, public holidays and orders, decorations, and medals of the Slovak Republic should be highlighted.

However, based on empirical experience, Slovaks often perceive also other symbols as symbols of the Slovak nation, although they are not formally regulated as symbols (e.g., geographical features, plants, towns, personalities, etc.), alternatively, their legal regulation exists, but it is focused primarily on aspects other than their symbolic value (e.g., the regulation of Bratislava as the capital of the Slovak Republic, the regulation of the city of Martin as the center of Slovak national culture). Finally, these may be partly legally regulated symbols, but they also have other than only symbolic dimensions, such as selected historical figures, who have their own law.

4.1. Emblem of the coat of arms

The emblem of the coat of arms is a legally regulated national symbol. It is regulated by the SsA in Section 6a. The emblem of the coat of arms shall consist of a double cross, erected on the central, elevated hill of three hills, extremities of the cross are amplified, and its ends are concaved: a graphically simplified representation of the coat of arms. Unlike the coat of arms, it does not need to be placed on an early gothic shield (or any shield). The dimensions, proportions and colors of the double cross or of the trimount in the emblem are not regulated.

The institute of the emblem of the coat of arms was inserted into the SsA with effect from 15 May 2019 by an amendment introduced by Act no. 126/2019 coll.

Under Article 6a(2) of the SsA, the use of the emblem is governed by Paragraph 3(4) of that law. Section 3(4) of the act governs the use of the coat of arms of the Slovak Republic by private persons, i.e., those, who are not entitled to use the coat of arms as representatives of the state and of Slovakia. Thus, it follows from Paragraph 6a(2), that the emblem of the coat of arms cannot be used, for example, by a state authority, since the state authority is not covered by Paragraph 3(4).

It is also follows from Paragraph 6a(2), which refers to Paragraph 3(4), that the emblem of the coat of arms may not be used by natural and legal persons to designate their buildings, documents, stamps and uniforms.

³⁶ The state symbols themselves also have their historical origin in national symbols. See Svák, Cibulka and Klíma, 2009, p. 294.

The emblem of the coat of arms may be used only in such a way, that its use is dignified and proportionate to its status. The requirement of the dignity of the use of the emblem also protects the coat of arms itself — it is now a violation of law for someone to display disgracefully, for example, a simplified representation of the coat of arms, which does not cover all the aspects of the coat of arms itself (as laid down by law). Prior to the amendment, a person who defamed the simplified representation of the coat of arms could have objected, that it was not the “official” coat of arms and, therefore, that such a conduct was neither unlawful nor in any way punishable.

4.2. National symbol

The national symbols laid down by law also include the eponymous national symbol in Section 13b of the SsA. Pursuant to Paragraph 13b(1), the national symbol shall consist of a double cross erected on the central of three hills. It is therefore the simplest graphical representation of the symbol of Slovakia and Slovaks, which can be drawn in one or two seconds. Just as the emblem of the coat of arms, the so-called national symbol was introduced into the SsA with effect from 15 May 2019 by the amendment implemented by act no. 126/2019 coll.

The national symbol may be used under Section 13b(2) of the SsA by both natural and legal persons; however, its use must be dignified. This requirement for the dignity of the use of the national symbol also protects the coat of arms itself—in the same way as we stated above for the emblem of the coat of arms.

De lege lata, if a natural person culpably violates an obligation under Section 13b(2) of the SsA, he/she may commit an infringement pursuant to Section 42(1)(a) of the Infringements act, for which a fine of up to EUR 99 may be imposed. In case of similar conduct of a legal person, it is an administrative offense under Section 14(1) of the SsA, for which the district authority may impose a fine of up to EUR 7,000.

The law does not provide for the use of the national symbol by public entities: it cannot therefore be used by the state authorities within the meaning of Article 2(2) of the Constitution of the Slovak Republic.

4.3. Other regulated and informal national symbols

The standard of the president of the Slovak Republic is one of the most prominent symbols of state authority in the Slovak Republic, but it is not a state symbol.³⁷ Unlike the state symbols, its form and use is not regulated by the Constitution, only by the “ordinary” act, which is act no. 51/1993 coll. on the standard of the president of the Slovak Republic. The standard of the president of the Slovak Republic shall be used by the president of the Slovak Republic as a symbol of his position. The standard takes the form of a red square, from the lower edge of which grows a blue trimount with a white double cross with proportions corresponding to the coat of arms of the

³⁷ Ibid., p. 250.

Slovak Republic. The square has a white-blue-red rim. The standard of the president of the Slovak Republic is a national symbol in the broader sense, as the president is the head of state and represents the Slovak Republic.

Formally in a law (act no. 241/1994 coll. on the City of Martin as the center of the national culture of Slovaks) as national symbol is designated the city of Martin located in the north of Slovakia, in the Turiec region. Cultural and national revival activities of Slovaks in the 19th century were concentrated here. Art. 4(1)(a) of that law expressly provides that the city of Martin acts, inter alia, as the center and national symbol of Slovaks at home and abroad. It can therefore be said that the city is a formally labelled national symbol of Slovaks. In Martin, there are the headquarters of the “*Matica Slovenská*” cultural and educational establishment, the seat of the Slovak National Library and the National Cemetery.

Legal concepts of symbolic value, which are not officially regulated as state symbols or national symbols, but which can be understood as such in a broad sense,³⁸ include, for example, public holidays and commemorative days provided for in act no. 241/1993 coll. on public holidays, non-working days and commemorative days, as amended. Orders, decorations, and medals of the Slovak Republic have a similar symbolic status.³⁹

Other national symbols are less formal and still have some symbolic value (such as geographical features, plants and animals, works of art, buildings and cities, and personalities).

Among geographical features perceived as informal symbols of Slovakia one of the most prominent is the *Kriváň* mountain in the High Tatra mountains, which is also depicted in some Slovak eurocent coins. *Kriváň* is also mentioned in the third stanza of “*Nad Tatrou sa blýska*” — but this stanza is not a part of the state anthem, since the anthem consists only of the first two stanzas. The High Tatra mountains as such also have a strong symbolic value. Other mountains, that can be considered as national symbols, are *Kráľova hoľa* in the Low Tatra, the *Sitno* mountain (legendary *Sitno* knights are told to be hidden here, who in the worst times will come out and will defend Slovaks) and the *Polana* mountain. Some rivers also have status of informal symbols. The Danube is of particular importance, despite being a border river for Slovaks, it has a prominent place in the folk songs and tales. However, the *Váh* river is perceived as a national river. The importance of these mountains and rivers is mainly due to their prominence in folk tales, folk songs, traditional fairy tales, and artistic literature.

Among the animals, eagles and falcons have a symbolic value for Slovaks. The linden tree and linden leaves are also Slovak symbols, they show the Slavic identity of the Slovak nation. As mentioned above, the linden leaf is also a part of the state seal of the Slovak Republic and as such is officially protected.

Geographical features, plants, and animals are not legally regulated and protected as symbols (with the above-mentioned exception of the linden leaf).

38 Ibid., p. 303.

39 Ibid., p. 308.

Of the Slovak cities, Martin has probably the strongest symbolic value (as already mentioned). The city of Nitra is also symbolic, although not formalized as a symbol, and is perceived as the historical center of Slovak statehood (“ancient glorious Nitra”). The *Devín* castle has a similar status, and like Nitra, it was also an important center of Great Moravia. Its symbolic importance is reinforced by its position on the confluence of the *Morava* and Danube rivers, where the castle acts as a guardian of the entrance to the Pannonian Basin. Nitra and *Devín*, unlike Martin, do not have their own laws.

Its own constitutional (Art. 10 of the Constitution of the Slovak Republic) and statutory provisions has the capital of the Slovak Republic, Bratislava, which can also be seen as an informal symbol of Slovak statehood. Its perception as a national symbol may be less prominent, because (similar to the city of Košice, which also has its own legislation) as a historically multi-ethnic town it was less associated with the Slovak nation. Bratislava’s location on the periphery of the national territory is also a specific feature.

In view of the important place of Roman Catholic faith in shaping the Slovak identity, pilgrimage sites, particularly those associated with Mother Mary, Our Lady of Sorrows, the patron saint of Slovakia, can also be attributed a symbolic value. This patronage can also be seen as an informal national symbol, although of course not all the Slovak population is identified with it.

Some historical figures are highly symbolic — perhaps the most important being the highwayman and folk hero Juraj Jánošík, to such an extent, that in Czech discourse, Slovaks are sometimes called “*Jánošíks*.”

Some historical personalities even have their own law, which provides that they have merits for Slovakia. As for historical figures, their evaluation is usually the more controversial, the less distant the time in which they lived. Without major reservations, personalities who were active until 1918 are generally accepted, when the Czechoslovak Republic was established and the Slovak political and culture elite paradoxically lost the strongest unifying ideological impulse — the emancipation of Slovaks from Hungary. Even personalities such as Alexander Dubček, the leader of the reform movement during the Prague Spring of 1968, are not clearly perceived as positive, especially by anti-communists. Probably the most common understanding of historical importance, and the associated symbolic status, applies to Ľudovít Štúr, a Slovak politician, a member of the Hungarian Parliament, a language scientist and poet of the 19th century, and the politician, scientist and soldier Milan Rastislav Štefánik, who was active before and during the First World War. They are both associated with the struggle for national revival and the emancipation of Slovaks. In the context of the above-mentioned importance of the Roman Catholic Church, it is interesting, that both these personalities were protestants.

Personalities dating back to ancient times — the Great Moravian King Svätopluk and the missionaries — known as the “Apostles to the Slavs” — Saints Cyril and Methodius — also have symbolic value. Legal regulation is not associated with Svätopluk, but partly is with the Saints Cyril and Methodius, as there is a national holiday dedicated to them. The status of an informal symbol of the Saints Cyril

and Methodius is also evident in connection with the social conflicts concerning the placement and damage of their sculpture in the town of *Komárno* (southern Slovakia). In the south of Slovakia, however, there was also cases of damage and theft of *Turul* bird statues, these statues have a symbolic value for the Hungarian minority.

The so-called hymn songs can also be seen as informal symbols of Slovakia and of Slovaks, especially “*Hej, Slováci*,” “*Aká si mi krásna*,” “*Kto za pravdu horí*,” “*Na Kráľovej holi*,” and “*Slovensko moje, otčina moja*.” These songs are not regulated by law.

5. Symbols of self-governing regions, towns and municipalities

Territorial self-government in the Slovak Republic consists of local authorities organized at two levels: at the regional level, the so-called “higher territorial units,” also referred to as “self-governing regions,” and at the basic level the municipalities.

There are eight self-governing regions in the Slovak Republic and 2,927 municipalities (including self-governing city districts of Bratislava and Košice).

There is a fundamental difference between municipalities (and towns) and self-governing regions concerning their historical tradition. Although there were centuries-old traditions of self-government in Slovakia at regional level (*stolice*, *župy*), during the 20th century, regional self-government was gradually reduced and disappeared in the 1930s. The re-establishment of regional self-government took place only in 2001, when today’s self-governing regions were created. However, these regions have borders corresponding to the regions (“*kraje*,” as created in 1996; regions are state administrative units). The self-governing regions in the Slovak Republic have practically no link to historical “*stolice*” or “*župas*” — the “natural” regions in Slovakia. For example, the historical eastern Slovak regions of *Spiš*, *Šariš* and *Zemplín* are divided between the Prešov self-governing region and the Košice self-governing region, the territory of the former “*Nitrianska stolica*” is now part of three self-governing regions (*Trnavský*, *Nitriansky* and *Trenčiansky*), the historical “*Trenčianska stolica*” is in two self-governing regions (*Trenčiansky* and *Žilinský*), while the *Trnavský* self-governing region and *Žilinský* self-governing region are completely newly created units, because such “*stolice*” have historically not existed. By contrast, municipalities in the Slovak Republic mostly have a history of many centuries.

It is essential to mention these historical aspects because they also have an impact on the symbolics of local and regional self-governing bodies. Indeed, it is true that while, at least for most cities, their symbols have quite long traditions (the coat of arms of Košice even is the first officially awarded coat of arms to an entity other than a natural person; it was already awarded in 1369⁴⁰), the symbols of self-

40 Mannová, 2003, p. 74.

governing regions are new heraldic creations created two decades ago — usually as a modern interpretation and combination of symbols of the historical regions, whose territories belong to today’s self-governing region.

Unlike the state symbols, the positive regulation of the symbols of self-governing regions and municipalities is not included in the Constitution of the Slovak Republic; it is only left to “normal” laws. In particular, these are:

Act no. 369/1990 coll. on Municipal Establishment;

- Act no. 302/2001 coll. on the self-government of higher territorial units (act on self-governing regions);
- Act no. 377/1990 coll. on the capital of the Slovak Republic, Bratislava; and
- Act no. 401/1990 coll. on the City of Košice.

The general regulation of the municipal symbols is contained in the provisions of Section 1b of the Municipal Establishment act. Under this regulation, a municipality has the right to its own symbols. A municipality with its own symbols is obliged to use them in the exercise of self-government. It follows, that in the exercise of delegated state administration, the municipality shall use state symbols.

According to the law, the symbols of a municipality are the coat of arms of the municipality, the flag of the municipality, the seal of the municipality and, possibly also the anthem of the municipality. Legal persons set up or established by the municipality, other legal persons and natural persons may use the symbols of the municipality only with the consent of the municipality. Parts of the municipality also have the right to own symbols. The provisions of this act on the use of municipal symbols apply equally to local districts of Bratislava and Košice.

The coat of arms of the municipality and the municipality’s flag are used to mark the building, where the seat of the municipality authorities is located (the municipal hall), the meeting room of the municipal council and the official room of the mayor of the municipality. The municipality uses the official stamp with the coat of arms and the municipality’s name for the decisions, authorizations and certification of facts issued in the exercise of self-government competences.

Towns are legally a sub-category of municipalities in the Slovak Republic, thus, they are also covered by the provisions on municipalities. There are some special provisions for the symbols of towns in in Section 24 of the Municipal Establishment act. Under those provisions, inter alia, the towns council establishes the town’s coat of arms, the towns’s flag, the seal of the town and, possibly also the towns’s anthem, and the mayor keeps and preserves the city’s flag and seal and uses its insignia.

Slovak law has a special regulation on symbols in act no. 377/1990 coll. on the capital of the Slovak Republic, Bratislava. According to the Section 20 of this act, the symbols of Bratislava are the coat of arms, the flag and the seal of Bratislava. Their design is also regulated by the same act. A detailed representation of the city symbols shall be attached to the Statute of the City of Bratislava, which shall also regulate their use.

The specificity of the two Slovak “statutory” cities (Bratislava and Košice) is, that they have a two-tier local self-government structure — in addition to the city itself, self-governing districts also operate within them, whose status is largely similar to that of municipalities. Therefore, Section 24a of the act no. 377/1990 coll. also regulates the symbols of these districts: the coat of arms, the flag and the seal. The rules on the use of city district symbols shall be governed by an ordinance of general application of the city district.

The special rules governing the symbols of the city of Košice and its districts are partly similar, but more succinct. According to Section 19 of act no. 401/1990 coll. on the City of Košice, the symbols of the city are the city’s coat of arms, the flag and the banner of the city, the seal of the city and the anthem of the city. The representation, description and use of city symbols are regulated by a city’s ordinance. The symbols of a city district are the coat of arms of the district, the flag and the banner of the district, the seal of the district and, possibly also the anthem of the district. The symbols of the city districts, their representation and description, are regulated by a city district’s ordinance.

The regulation of the symbols of self-governing regions in the Act on self-governing regions is very succinct — this is only the sixth subparagraph of Section 1, according to which a self-governing region has its symbols which it may use in the exercise of self-government; the symbols of the self-governing region are the coat of arms, the flag and the seal or, possibly also the anthem. An interesting difference can be noted here regarding the symbols of municipalities, since in the case of self-governing regions the law provides that the self-governing region “may” use them, whereas in the case of municipalities (if they have symbols) it is an obligation.

In the case of territorial self-government symbols, there is no detailed regulation of their positive and negative legal protection comparable to state symbols.

As far as negative protection is concerned, we already mentioned two specific offenses that may be committed by certain unlawful conduct in relation to state symbols (criminal offense of disorderly conduct and infringement under Section 42(1)(a) of the Infringements Act).

Symbols of territorial self-government are not defined as objects of the disorderly conduct criminal offense under Section 364(1)(b) of the Criminal Code. However, such an offense could nevertheless be committed by acts which would defame a symbol of territorial self-government, provided that those acts fulfill the general constituent elements of the offense of disorderly conduct — that is to say, acts by which someone commits, in words or physically, publicly or in a place accessible to the public, gross indecency or disorder, which is directed against the symbol of a town, municipality or self-governing region. On the other hand, the general constituent elements of the disorderly conduct criminal offense expressed in Paragraph 364(1) may be perceived as problematic from the point of view of the application — or perhaps violation — of the principle *nullum crimen sine lege certa*.

A different situation is in the case of an infringement under Section 42(1)(a) of the Infringements act. This infringement may be committed in such a way, that a

person intentionally damages, abuses or derogates a state symbol or other symbol protected by a generally binding legal act. A symbol of territorial self-government may also be seen as such “other protected symbol”.

In the case of state symbols, we have already referred to Section 5(d) of the Slovak Copyright Act, according to which a state symbol, a symbol of a municipality, a symbol of a self-governing region is not considered to be a subject of copyright; however, this does not apply in the case of a work which forms the basis for the creation of such a symbol. Thus, the symbols of territorial self-government do not have the status of copyright works, but works which form the basis for their creation, are copyright protected. Similarly, the symbols of territorial self-government may be included in works protected by copyright (such as works of art).

In the case of territorial self-government symbols, the conclusions on the possibility of including them in product designs we have referred to in relation to the state symbols apply *mutatis mutandis*; in this case, the options are even more liberal for entrepreneurs, since the regulation of use of the symbols of territorial self-government is very minimalist.

Even in the case of symbols of territorial self-government, it is not possible for anyone to register them as a trade mark (Section 5(1)(j) and (k) of Act no. 506/2009 Coll. on trade marks) — of course, except for the municipality, city or self-governing region to which they belong.

6. Community symbols in the Slovak Republic and their legal protection

Other public corporations in the Slovak Republic (in addition to the bodies of territorial self-government), which have their symbols specifically regulated by law, are universities. Pursuant to Section 2(9) of Act no. 131/2002 Coll. on higher education, higher education institutions have the exclusive right to award academic degrees, scientific and educational degrees and artistic – pedagogical degrees, to use academic insignia and to carry out academic ceremonies. The right to use academic insignia is among the academic freedoms and academic rights guaranteed by Section 4(1) of the Higher Education Act.

The Higher Education Act itself does not specify, what academic insignia a higher education institution has or may have, nor does it regulate the rules for their use. The Act leaves the regulation of these issues to the internal rules of higher education institutions, namely the Statute — Section 15(2)(j) of the Higher Education Act.⁴¹

⁴¹ Examples of such internal legislation include the provision contained in Art. 5 of the Statute of the Comenius University Bratislava, according to which the academic insignia are: an emblem and a seal with the emblem, the rector's ring, medals on rector's and deans' chains, the scepters of the rector and of the deans.

Under Section 22(14), faculties also have the right to use their own academic insignia and to perform academic ceremonies in accordance with the internal regulations and traditions of the higher education institution.

In the Slovak Republic, there is no regulation on the use of community symbols in the sense, for example, of ethnic, national or linguistic groups, or, for example, sexual minorities. Of course, some of these communities have symbols — such as emblems, flags, etc. — in some cases these symbols are also national symbols of third countries. There is no specific regulation of symbols of national minorities and ethnic groups in Art. 34 of the Slovak Constitution. National, ethnic and other said communities are entitled to use their symbols, as they are acts covered by Art. 2(3) of the Slovak Constitution, under which everyone may do what is not prohibited by law and no one may be forced to do anything that is not prescribed by law. However, community symbols must be used in accordance with the law, for example if the symbol of an ethnic minority is a flag, which corresponds to the state flag of a foreign state, its use is covered by the SsA.

The protection of community symbols is indirectly provided by certain criminal offenses of the kind of so-called hate crimes. Under Section 423 of the Criminal Code, which governs the crime of defamation of nation, race and beliefs, when someone publicly defames

- a) any nation, language, race or ethnic group; or
- b) a group of persons or an individual because of their actual or presumed belonging to a race, nation, nationality, ethnic group, actual or presumed origin, color, religion or belief.

This can also be done in practice through the defamation of a symbol of a nation, race or ethnic group, but also a religious symbol.

Section 424 of the Criminal Code and the criminal offense of incitement to national, racial or ethnic hatred also comes into play as an indirect instrument for the legal protection of certain symbols. This offense is committed by a person who publicly incites violence or hatred directed against a group of persons or individuals because of their actual or presumed belonging to a race, nation, nationality, ethnic group, actual or presumed origin, color, sexual orientation, religion or belief, or publicly encourages the restriction of their rights and freedoms. Here too, it is conceivable that the offender's conduct includes defamatory manifestations in relation to the symbol of the relevant group of persons.

However, symbols of communities may also enjoy legal protection in other legal regimes — for example, if the community symbol is embodied in the form of a cultural monument, its damage is penalized in a similar way to other cultural monuments.

It can also be stated here, that damage to a thing (in terms of a certain material object), by which a symbol of a community is portrayed, always results in a certain legal liability, be it public liability or civil liability (liability for damage).

As regards national minorities in Slovakia, their language obviously also has symbolic value for them. The use of the language of national minorities is governed by act no. 184/1999 coll. on the use of national minority languages; for the purposes of this act, minority language means codified or standardised language traditionally used in the territory of the Slovak Republic by its citizens belonging to a national minority which is different from the state language; the minority language is Bulgarian, Czech, Croatian, Hungarian, German, Polish, Roma, Romanian and Ukrainian.

7. Conclusions

The chapter presented a brief outline of the historical development of the state symbols of the Slovak Republic. The historical, political, cultural and heraldic/vexilological features of the state symbols of the Slovak Republic can be summarized as follows:

- the state symbols and their historical genesis reflect the historical and cultural ties of Slovakia and Slovaks with historical Hungary, but also reflect the emancipation of the Slovak people in Hungary and the struggle for their own statehood;
- the national symbols of the Slovak Republic reflect the Slavic identity of Slovakia;
- the coat of arms, the flag and the state seal, also express the predominantly Christian identity of Slovakia (despite the fact that, according to the Constitution of the Slovak Republic, the state is not linked to any religion), since they include the depiction of a Christian symbol (the double cross);
- all the state symbols of the Slovak Republic represent in some form the basic geomorphological features of the Slovak lands, namely the mountainous parts of Slovakia;
- the state anthem of the Slovak Republic expresses its attachment to the Slovak folk culture, as its melody has its origins in a folk song.

The constitutional regulation of state symbols is relatively brief, but it provides a higher degree of esteem and protection for the state symbols and significantly complicates their change. However, the most important part of the normative regulation of state symbols is contained in the SsA.

The chapter discusses positive and negative legal regulation of the use of state symbols. “Positive protection of state symbols” consists of those elements of normative regulation that define state symbols and regulate, who has the right to use state symbols and how. The negative protection of state symbols restricts or prohibits the use of state symbols by certain persons and/or in a certain way. This includes the regulation of tortious liability. A part of legal protection of state symbols are rules,

which give them an exclusivity status in relation to other symbols, in particular in relation to foreign state symbols.

State symbols may be depicted, produced and used only in the manner regulated in the SsA. Everyone is required to respect them. Natural persons and legal persons in the Slovak Republic may, in principle, use the state symbols of the Slovak Republic, but this use must be dignified and correspond to their status as state symbols.

State symbols, symbols of municipalities, symbols of the self-governing regions are not considered to be subject to copyright; however, this does not apply in the case of a work which forms the basis for the creation of a symbol. These symbols may be included in copyright protected works. The SsA does not explicitly prohibit the use of state symbols in business, however, they may be represented, produced and used only in the manner prescribed by that law and the use must be dignified.

The negative protection of state symbols in legislation may be understood as a set of legal rules which prohibit or restrict certain ways of dealing with state symbols, whether expressly or implicitly. This includes also laws penalizing certain forms of handling of state symbols, whether in terms of criminal liability or liability for administrative offenses. An example of explicit negative regulation is — in relation to the coat of arms — the rule that it shall not be displayed on buildings in a dilapidated condition (Paragraph 4(3)). Other prohibited uses of the coat of arms derive implicitly from a statutory provision. However, these provisions must always be interpreted in the context of other provisions of the SsA.

The criminal protection of state symbols is covered by the provision in Section 364(1)(b) of the Criminal Code (crime of disorderly conduct). This offense is committed, inter alia, by any person who commits, in words or physically, publicly or in a place accessible to the public, gross indecency or disorder by defamation of a state symbol. The chapter also presents two case studies of cases of “caricature” of the national emblem by politician Igor Matovič and artist Luboš Lorenz. In neither case are we aware that they were ever punished for their actions.

Another type of public law offense, which can be committed in the context of violating the protection of state symbols, is the infringement pursuant to Section 42(1)(a) of the Infringements act. A person who intentionally damages, abuses or derogates a state symbol or other symbol protected by a generally binding legal act commits an infringement in the field of general internal administration. Under paragraph 2 of the same article, a fine of up to EUR 99 may be imposed on the offender in respect of that offense.

The dividing line between these two offenses concerns several aspects. First, the criminal offense of disorderly conduct has to be committed publicly or in a place accessible to the public. In the case of the criminal offense intentional defamation of a state symbol is required, whereas in relation to the infringement it is abuse, damage or derogation. “Defamation” (criminal offense) must be seen as a more serious act than “damage” or “derogation” (infringement). In order to commit a criminal offense, the first part of Section 364(1) of the Criminal Code must also be fulfilled by the respective action in its entirety — that is to say, it must also be “gross indecency”

or “disorder”. Another difference is what the offender’s intention is directed toward. In the case of the criminal offense, there must be an intention to defame the state symbol. The SsA itself (Section 14) also regulates another category of administrative offenses, which can only be committed by legal persons.

The chapter further deals with the use of foreign state symbols in the Slovak Republic, as well as the use of state symbols, whether Slovak or foreign, at sporting events.

In addition to the state symbols of the Slovak Republic, there are other symbols, that symbolize the Slovak state and the Slovak nation. They are very diverse, as is their regulation. In particular, the SsA also regulates some other symbols which, while not being state symbols, can be seen as official and formally regulated national symbols — the emblem of the coat of arms and the eponymous national symbol.

In addition, other symbols regulated in various laws can be seen as formally regulated national symbols, although they do not need to be explicitly called “national symbols.” Among them, the presidential standard, public holidays and orders, decorations, and medals of the Slovak Republic should be highlighted. However, the chapter also briefly deals with informal or even legally unregulated national symbols.

Finally, the chapter also discusses the symbols of municipalities (the coat of arms of the municipality, the flag of the municipality, the seal of the municipality and, possibly also the anthem of the municipality) and self-governing regions (the coat of arms, the flag and the seal or, possibly also the anthem) and community symbols in the Slovak Republic and their legal protection. In addition to the bodies of territorial self-government, the only public corporations, which have their symbols specifically regulated by law, are universities.

In the Slovak Republic, there is no public legal regulation on the use of community symbols in the sense, for example, of ethnic, national or linguistic groups, or, for example, sexual minorities. Of course, some of these communities have symbols — such as emblems, flags, etc. — in some cases these symbols are also national symbols of third countries. National, ethnic and other said communities are entitled to use their symbols, as they are acts covered by Article 2(3) of the Slovak Constitution, under which everyone may do what is not prohibited by law and no one may be forced to do anything that is not prescribed by law. However, community symbols must be used in accordance with the law, for example if the symbol of an ethnic minority is a flag, which corresponds to the state flag of a foreign state, its use is covered by the SsA.

The protection of community symbols is indirectly provided by certain criminal offenses of the kind of so-called hate crimes.

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