

LEGAL PROTECTION OF STATE,
NATIONAL AND COMMUNITY SYMBOLS
IN POLAND



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1. Introduction

National and state symbols emphasize the character and independence of the country to which they belong. They usually derive from the history of a nation and thus serve to build patriotic attitudes and national identity. Polish national symbols include the flag, emblem, and anthem, and they are established by law in a special act and are constitutionally protected. Some researchers say that other things, such as traditions, folk costumes, legends, places important for forming statehood, military uniforms, etc., can also be considered as national symbols.

In Polish literature, the issue of national and state symbols has been the subject of various studies, especially in the legal–historical context and criminal protection. The ongoing discussion in Poland on amending the act on the emblem, colors, and anthem of the Republic of Poland and on state seals is an opportunity to summarize the legal status to date and the position of doctrine on this issue. It is also an opportunity to verify the solutions in force in the context of assessing the degree of legal protection.

The chapter on state, national, and community symbols in Poland will be the analysis of symbols that have a formalized character (flag, emblem, anthem). The author will also refer to such signs, which, although not specified in normative acts, are traditionally associated with the Polish state and the Polish nation, and have reference primarily to history and religion. Although Poland is not a multinational

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state, it protects national and ethnic minorities through a special law. The chapter will therefore also present this issue, i.e., the attitude of the Polish state to the protection of symbols of ethnic and national minorities.

The study will present the history of Polish national symbols and explain their present shape. In particular, the issue of the formation of the national emblem and the anthem of Poland will be presented. Next, the author will point to the legal basis for recognizing certain symbols as national symbols. In this respect, constitutional and statutory solutions will be presented. Furthermore, the author will discuss the guarantees of protection of national symbols based on normative acts and case law. Legal protection will include constitutional, administrative, and criminal dimensions. Aspects of civil law protection will also be highlighted.

The analysis will assess whether the current legal solutions in Poland properly and sufficiently ensure the protection of national symbols and whether they are conducive to the formation of a sense of belonging to a particular state and nation in society.

The main research method will be the analysis of historical documents and studies (regarding the history of national symbols) and the analysis of normative acts and the selected jurisprudence of the courts (regarding the shape and protection of national symbols). A complimentary review of the literature on the subject will be made.

2. The concept, types and meaning of national and state symbols

Humans are social beings, which results in their natural ability to join different groups and identify with them. Among those groups, there is a community that can be described as a nation. It develops for a long time and is expressed in the relationship of generations, which consists of ancestors, living people and their descendants. A nation can maintain its historical continuity, assume the heritage in the form of language, emblem, flag, cultivate it and pass it on to the next generations as a value related to society.¹ The sign-symbolic structure of culture enables people to capture and express some order and meaning that are present in the world.² In the case of national community, signs-symbols that structure and express it—there are certain national signs-symbols.³ It is also an important element of building awareness about statehood. Part of being attached to a nation is a common understanding of its symbols. They usually refer to events and facts commonly recognized as crucial

1 Frankiewicz, 2012, p. 20; Winczorek, 1998, pp. 52–53.

2 Pisarek, 1983, p. 8; Kieliszek, 2011, p. 241.

3 Kłosowska, 1996, p. 100.

in the history of a given nation or state. They are related to the common values a given community is guided by.⁴ Therefore, they are important for national identity.⁵ Therefore, a set of individual national signs and symbols becomes a structure that connects a given group of people into a specific nation and at the same time, more or less clearly distinguishes it from other communities.⁶ They connect the group of people into a community of people who culturally perceive and shape reality in a similar way.⁷

State symbols are closely related to the historical tradition and history of a given nation and state. They characterize the existence of a nation and a state and have a strong impact on the sense of national identity, which means that in the light of EU law, this issue remains in the sphere of national law regulation.⁸

The importance of symbols for the shaping and functioning of individual communities does not have only a cultural dimension. They are the subject of sociopolitical discourse. They identify the state among other countries and constitute an element connecting citizens in the territorial and cultural community.⁹ The basic functions of national and state symbols include those associated with distinguishing a state from other states and confirming its identity.

In the context of European legal culture, emblems, colors and songs are recognized as symbols of particular importance. Rarely these are the seal, the state's motto, and the president's flag. In Polish literature, the concept of national symbols is distinguished from state symbols, although the referents of these two categories are often convergent or even the same. The distinguishing feature is that in the case of state symbols, the legislator recognized the symbols of a specific country to be official.¹⁰ Therefore, representatives of the doctrine of Polish law recognize state symbols such as national symbols that have obtained legal fixation and regulation, thus affecting the manifestation of the legal personality of the state¹¹.

The reference to traditional symbols that are known in history is especially visible in the case of states regaining independence. On the other hand, the rejection or modification of the former symbolism is characteristic of countries undergoing

4 Borucki, 2013, p. 3.

5 Paweł Sarnecki states that state symbols confirm the identity of Poland and placing them in "Chapter I" of the Constitution is a reference to the fragment of the Preamble to the Constitution "in gratitude to our ancestors for their work, for the fight for independence paid for by enormous sacrifices, for the culture rooted in the Christian heritage of the nation" and a direct reference to the national heritage (Sarnecki, 2007, p. 2).

6 Kłoskowska, 1996, p. 100.

7 Kieliszek, 2011, p. 242. This means that national and state symbols also have educational and culture-forming functions (Lizak, 2016, p. 39).

8 Kubuj, 2016, para. 28–32.

9 Hernacka–Janikowska, 2020, p. 47.

10 Grabowski, 2011, p. 33.

11 Komarnicki, 1992, p. 236.

significant political system or ideological changes, which was also visible in the shaping of state symbols in Poland.¹²

The determination of state symbols belongs to the educational sphere of a constitutional act, and it has a socio-inclusive character.¹³ For this reason, the constitutional regulation of state symbols is usually limited to basic regulations and usually refers to ordinary laws.

3. Legal basis for regulating national and state symbols in Poland—general issues

An analysis of the protection of national and state symbols requires indicating its legal sources. As far as Poland is concerned, to understand certain mechanisms, it is necessary to quote historical normative acts and to clarify the political and legal contexts that accompanied the formation of both given symbols and their legal regulations. Older solutions have been followed up and are largely reflected in the current legislation¹⁴.

The current Polish state coat of arms prototype is the one from 1927. It was used in Poland, although not unchanged, by various states with ideologically different systems. The similarity of subsequent designs of the Polish coat of arms is apparent. The state of coats of arms from 1927, 1952 and 1990 distinguishes many important elements that allow to symbolically describe the changes taking place in the state¹⁵.

Until the adoption of the constitution of the People's Republic of Poland,¹⁶ the issue of state symbolism was a matter of customary law, and it was partially regulated by acts of a lower order. In the period of the Second Polish Republic (1918–1939), this issue was first regulated by the act of August 1, 1919 on the emblems and colors of the Republic of Poland.¹⁷ Art. 1 of the above act provided for the use of emblems and colors by state offices according to the models attached to it, until the borders of the Polish state were determined and the emblems, state colors and the titles of state offices and institutions were determined by the constitution. The act contained specimens of the coat of arms of the Republic of Poland, colors, seals, banners, diplomatic and war flags, as well as military banners and banners, as well as flags and emblems of individual ministries. The use of these signs by entities other than public (i.e., non-state institutions and private persons) required the permission

12 Wiszowaty, 2011, p. 31.

13 Sarnecki, 2007, p. 2.

14 Grabowska, 2010; Grabowska, 2016, pp. 175–186.

15 Grabowski, 2011, p. 33.

16 Constitution of the People's Republic of Poland of 22 July 1952, Journal of Laws no. 33, item 232, as amended. See also: consolidated text of 1976, no. 7, item 36.

17 Journal of Laws no. 69, item 416 as amended.

of the Minister of the Interior. The provision of Art. 2 of the act mentioned above was of a criminal law nature. The use of state marks without permission, or even with permission, but in a manner “in breach of the honor due to the Republic of Poland” sanctioned alternative and cumulative penalties. These were fines ranging from 10,000 to 10,000 marks and imprisonment ranging from three days to six months unless other laws provided for more severe penalties. Undoubtedly, the mark in the form of “dishonor to the Republic of Poland” was highly appraised. The concept of worship is multidimensional and there is even to this day a dispute in terms of its understanding.¹⁸ However, the concept of worship has evolved over the years due to the ongoing socio-economic changes.¹⁹

That law was a temporary solution. It was replaced by the Regulation of the president of the Republic of Poland of December 13, 1927, on state emblems and colors and on signs, banners, and seals.²⁰ According to the regulation, the state emblems were: 1) the state coat of arms,²¹ 2) the flag of the Republic of Poland, owned only by the president of the Republic of Poland.²² The state colors were white and red in two horizontal, parallel stripes of equal width and length, the upper one was white and the lower one was red (a shade of cinnabar). The flag of the state was established as a flag of state colors.²³

The regulation of 1927 broadened and clarified the extent of state marks and the level of their protection. This act stipulated that person guilty of using the state coat of arms or the state eagle, the flag of the Republic of Poland, the flag of state colors or the flags and other military signs in a manner that violated the honor due to the Republic of Poland would be subject to a prison sentence of one month to two years or imprisonment for up to six weeks. Art. 22 of the Regulation penalized conduct essentially in insulting a country’s honor by improper use of national symbols. The courts competent to adjudicate in this regard were regional courts. Penalization extended by the indication that this offense is also committed when the act was committed in relation to similar signs that may give the impression of a state coat of arms, a state eagle or a banner and the signs described in this provision. The indicated shape of the standard enlarged the subject of protection and emphasized its importance. Acts considered inappropriate were penalized, even in relation to symbols that, although they did not correspond strictly to state symbols, were like them and thus allowed for the separation of Polish statehood. Although there is currently no similar legal norm in the Polish legal system, and the expanding interpretation is generally negated in criminal law, an analogous view can be found in both doctrine and jurisprudence.

The Presidential Regulation of 1927 imposed an obligation to obtain appropriate permits for the use of state marks, prohibiting the use of state eagle seals by private

18 Zgoliński, 2019, pp. 340–341.

19 Kozłowska-Kalisz, 2013, p. 219.

20 Journal of Laws of 1939 no. 2, item 8 as amended.

21 It was an image of a White Eagle with golden talons, on a rectangular shield in a red field.

22 It was a red flag with the image of the national eagle in the center and with a border around it.

23 Kubuj, 2016, para. 4.

entities. Failure to comply with these obligations was slightly less severe because the penalty was a fine from 10 to 500 zł, and the penalty was imprisonment for up to three months. It was also possible to impose both penalties together. The courts competent to adjudicate in such cases were the private courts. It sanctioned, in addition, the conduct consisting in deficiencies related to the production of seals and the supervision over their production. The penalty for such acts was a fine of 50 to 500 zł, a custodial sentence of up to six months, or both penalties imposed together. Also, in this case, the judicial powers were conferred on the district courts. The above was the provision of Art. 21 and 22 of the Regulation, respectively.²⁴

State symbols were also protected by the Criminal Code of 1932. In Chapter XXV of the Criminal Code of 1932, “Crimes against public order,” Art. 153 penalizing behavior consisting in insulting the emblem, banner, flag, banner, or other Polish national emblem and damaging or removing signs of this kind issued to the public. The penalty for committing the crime was a prison sentence or imprisonment of up to two years. Therefore, the provision distinguished in its content two types of enforcement activities, i.e., insult and removal or damage. For the sake of preservation in the form of insult, there is no requirement that the state mark be issued in public.²⁵

The state symbols of other countries were protected by the standard provided for in Art. 112 §1 of the 1932 Criminal Code, in accordance with the principle of reciprocity. Penalized with imprisonment of up to one year were conducts consisting in insulting, damaging, or removing the emblem, banner, or flag of a foreign state, which were displayed to the public by the representative office of that state. Therefore, the protection of foreign state symbols was narrower, had a smaller scope, and was sanctioned with a lower penalty. The behaviors which make up the causative act were interpreted in a similar way as in the case of Art. 153 of the 1932 Criminal Code.²⁶

The matter of state symbols was regulated neither in the constitution of March 17, 1921 nor in the constitution of April 23, 1935. However, such an announcement was included in the Act on the emblems and colors of the Republic of Poland of 1919.²⁷

During World War II, the significance of Polish state symbols took on greater importance. One should agree with Igor Zgoliński that citizens have a greater attachment and identification toward personifying signs in the face of state crises, irrespective of their aetiology. This fact proves their significant integrating role²⁸.

The 1944 Polish Army Criminal Code²⁹ omitted the obligation to respect Polish state symbols. However, the legislator sanctioned the behavior detrimental to foreign state marks, similar to the provision of Art. 112 of the 1932 Criminal Code. The provision of Art. 101 of the Criminal Code of the Polish Army states that anyone who, in

24 Zgoliński, 2019, p. 342.

25 Makarewicz, 1932, p. 252.

26 Zgoliński, 2019, p. 343.

27 Sarnecki, 2007, p. 1.

28 Zgoliński, 2019, p. 343.

29 Decree of the Polish Committee of National Liberation of 23 September 1944 Criminal Code of the Polish Army, Journal of Laws no. 6, item. 27..

the territory of the Polish state, commits insult, damage, or removal of the emblem, flag, or cockade of a foreign state, issued in public by his representative, shall be subject to a prison sentence of up to two years.

The constitutionalization of state symbols in Poland took place in the People's Republic of Poland Constitution of 1952. It was a novelty, as previously, the matter had not been subject to constitutional regulations. However, the state symbols were not given greater importance by the constitution-maker, and he placed regulations concerning them in the final part of the constitution of the Polish People's Republic³⁰. The basic change in symbolism was expressed in the image of the state's coat of arms, in which the crown was removed from the eagle. The coat of arms was referred to as the "emblem." The Banner of the Republic of Poland was removed from the collection of state symbols, referring to the tradition dating back to the beginnings of the Polish state.³¹

At that time, the protection of national symbols by criminal law was also provided for by the 1969 Criminal Code. The offense was classified as one of the crimes against public order. A more precise definition of the subjects of protection in other chapters has depreciated the sense of the different assignment. Art. 284 §1 of the 1969 Criminal Code penalized an offense consisting in insulting, damaging, or removing a publicly displayed Polish emblem, banner, flag, cockade or other state mark, or a mark of an allied state or symbol of the international workers' movement. The punishment for its Commission was a term of imprisonment of up to three years. The insulting of a monument or other work displayed in public to commemorate a historical event or to commemorate a person was also subject to penalization. Art. 284 §1 of the 1969 Criminal Code was also applicable in the event of committing an act to the detriment of an allied state if that state ensured reciprocity. Its content guaranteed both the protection of Polish signs and the signs of other countries (only allied countries), as long as they ensured reciprocity in this respect. The symbol of the international labor movement is also under protection. The above means that the 1969 Criminal Code significantly extended the scope of protection.³²

Amendments to the constitution of the People's Republic of Poland,³³ which were introduced by the act of December 29, 1989, on the amendment to the constitution of the Polish People's Republic, included the name of the state and the sphere of symbols, including the state emblem and coat of arms. The solutions introduced in 1952 turned out to be extremely durable and—apart from the restoration of the crown to the eagle in 1989, others have survived to this day.³⁴ The issue of state symbols was made more

30 Sarnecki, 2007, p. 1. Lech Jamróz emphasizes that the Constitution of the People's Republic of Poland had primarily an ideological function, and to a lesser extent a legal one (Jamróz, 2009, p. 239).

31 Grabowski, 2012, p. 61.

32 Zgoliński, 2019, pp. 345–346.

33 Journal of Laws no. 75, item 444 as amended. See also: Ciemniewski, 2009, pp. 27–46; Rogowski, 2008, pp. 314–330.

34 Wiszowaty, 2011, p. 33.

specific by the act of January 31, 1980, on the emblem, colors and anthem of the People's Republic of Poland,³⁵ which in its amended form is still valid today.

During the work on the Constitution of the Republic of Poland of 1997,³⁶ it was postulated that national and state symbols should be regulated at the constitutional level.³⁷ During the works of the Constitutional Commission of the National Assembly, the issue of national symbols appeared within two issues. One of the considerations topics was the place of the provisions on symbols in the systematics of the constitution. The basic question was whether they were to be included in the chapter devoted to the constitutional principles of the state, or in a separate chapter devoted solely to the symbolism of the state, or perhaps they should be included in the final provisions of the Constitution.³⁸ The prevailing concept was expressed in most of the draft Constitutional projects, which were the subject of the work of the Constitutional Committee, according to which the provisions devoted to state symbols became the subject of Chapter I, which formulated the basic principles of the Polish political system.³⁹

In the course of the work of the Constitutional Committee of the National Assembly, there were also comments from the Polish Heraldic Society, signalling that a mistake was made when using the term “emblem” to describe the state's coat of arms. Therefore, there was a good opportunity to regulate this matter in accordance with the heraldic tradition. Ultimately, the provision's content was not changed and the opportunity to correct the error reported for years was not used.⁴⁰

Art. 28 of the Constitution RP regulates the issue of state symbols in “Chapter I,” which raises the importance of the issues in question and speaks in favor of recognizing it as one of the integral elements characterising the Polish state. This provision refers to the previous regulations and includes the emblem, colors and the anthem of the Republic of Poland as the basic state symbols. At the same time, the detailed arrangements in this regard are left to the legislator.

The Constitution RP provides national symbols—the emblem, colors and the anthem—with legal protection, which results in the need to establish appropriate provisions, primarily statutory ones, introducing criminal and penal-administrative protection, and administrative provisions regulating the situations of official use of these symbols.⁴¹

When analyzing this constitutional provision, it should be noted that by inserting Art. 28 in the first chapter of the constitution, entitled “*Rzeczpospolita*,” the protection provided for state symbols acquires a deeper meaning. “Chapter I” of the

35 Journal of Laws no. 7, item 18 as amended.

36 Constitution of the Republic of Poland of 2 April 1997. Journal of Laws of 1997 no. 78, item 483, as amended (Constitution RP).

37 Szymański, 1990.

38 Bulletin of the Constitution Committee of the National Assembly 1995, no. XIII, p. 88.

39 Chruściak, 1997.

40 Bulletin of the Constitution Committee of the National Assembly 1995, no. XV, p. 57.

41 Sarnecki, 2007, p. 3.

Constitution contains the so-called systemic principles that “form the foundation of the entire constitutional law and determine the nature of the state system.” Chapter I of the Basic Law is thus a chapter defining the state’s identity. As emphasized by Bogusław Banaszak “state symbols are important for integrating citizens with the state and expressing their national identity.”⁴²

Moreover, referring to the rationale of the Supreme Court’s judgment of July 2, 2013, national symbols are values within the system of moral rules. They are an expression of national identity and a nation’s history, and the respect and veneration associated with them is the common good of society as a whole.⁴³

Detailed regulations on state symbols are included in the act of January 31, 1980, on the emblem, colors and the anthem of the Republic of Poland and on state seals. This act, in Art. 1, para. 2 stipulates that “to honor and respect these symbols is the right and duty of every citizen of the Republic of Poland and all state bodies, institutions and organizations,” and Section 3 provides this issue to be regulated by separate provisions. Criminal liability for violating the principle of respect for state symbols is regulated by Art. 137 of the Criminal Code⁴⁴ or Art. 49 §2 of the Petty Offenses Code.⁴⁵ This protection is also visible in other areas of law.⁴⁶

42 Banaszak 2009, pp. 12, 28.

43 Judgment of the Supreme Court in the case brought by T. Spółka Akcyjna in W. against the Chairman of the National Broadcasting Council for cancellation of the decision, after examination, at a hearing held in the Labour, Social Insurance and Public Affairs Chamber on 2 July 2013, of the plaintiff’s cassation appeal against the judgment of the Court of Appeal of 11 August 2011, ref. no. III SK 42/12.

44 National symbols are dealt with in Art. 137 §1 “Whoever publicly insults, destroys, damages or removes an emblem, banner, flag, flag or other state symbol shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.” The legislator also criminalises infringement concerning national and state symbols of other countries. Pursuant to Art. 137 §2, “The same punishment shall be imposed on anyone who, on the territory of the Republic of Poland, insults, destroys, damages or removes an emblem, banner, flag, flag or other sign of a foreign state, displayed publicly by a representative office of that state or by order of a Polish authority.” See the simulation of the proportionality test from Art. 31(3) of the Polish Constitution of the indicated norms carried out by Bartłomiej Figiel in relation to interference in the freedom of expression and the analysis of this provision in the context of the principle of adequacy (Figiel, 2016, pp. 202–204).

45 It follows from this provision that anyone who contravenes the provisions on the emblem, colors and anthem of the Republic of Poland is liable to a custodial sentence or a fine.

46 See e.g., Pokojowa, 2018. Although the rules for commercial use of the emblem, colors and anthem have been liberalised, the registration of trade marks containing images of national symbols is still subject to significant restrictions. As a rule, registration is refused. The Supreme Administrative Court, in its judgment of 21 April 2010, stated that the image of an eagle placed in a trademark applied for by the Free Trade Union of Drivers may indicate organizational links between the union and state institutions. This judgment corresponds with the judgment of the ECJ of July 16, 2009, C-202/08 P and C-208/08 P concerning refusal to register a trademark depicting a maple leaf, which is a symbol of Canada. The Court held that state symbols cannot be registered, regardless of whether or not they are likely to mislead as to the applicant’s links with the institutions of the state whose symbol is used in the mark. The Court emphasized that the broad protection of national symbols is also manifested in the fact that the prohibition of registration applies not only to the exact reproduction of that symbol, but also to its imitation.

It should be emphasized that the crime included in Art. 137 is universal and intentional. To incur criminal liability for insulting the national symbol, this act must be committed in public. In addition, it is also important to analyze the intention to perform a specific causative action. In relation to behavior in the form of destruction, damage or removal, the intent to perform this act may take the form of a direct or resulting intention. However, in the case of insult, the intent of the act is identified only with the direct intention.⁴⁷

Cult toward national symbols is a special subject of protection, while the sense of dignity of citizens becomes an indirect one. Although “insulting” from Art. 137 of the Criminal Code refers to the objects covered by Art. 137 this activity treats about the feelings of people who show respect for state symbols. Insult should therefore be understood as demonstrating in any way a lack of respect for the object covered by legal protection. An example will be any action that means insult, disgrace, ridicule, or disgrace. Therefore, it will be such an action of the perpetrator, which—in an unequivocal way—will be the perpetrator’s manifestation of a negative attitude, showing him contempt or depreciation of this symbol, and at the same time will be made in an offensive form. In addition to taking the action of insulting, it can be found in Art. 137 of the Criminal Code, activities consisting in destruction, damage, and removal. Also, in relation to these forms of behavior, it is necessary to punish these activities in public.⁴⁸

The next causative action is destruction. However, the legislator did not specify in Art. 137 of the Criminal Code, a legal definition. It will be useful to refer to the provisions of Art. 288 of the Criminal Code regarding the destruction of movable property. Within the meaning of the provisions of the Criminal Code, destruction is the act of making physical changes to a given thing.

What is more, it is assumed that an executive action in the form of destruction of things is complete annihilation of it or far-reaching damage resulting in the fact that it no longer belongs to the kind to which it belonged at that time, i.e., before the execution of the prohibited act. The damage is a violation of the shape of things but without its destruction. The last activity provided for by the legislator related to the protection of national symbols is the crime of removing a specific symbol. On the other hand, removal consists of removing the national symbol from its place of establishment⁴⁹.

Because of the relevant importance of national values expressed in the Constitution RP, the legislator in Art. 137 §1 of the Criminal Code granted protection to the interests of the Republic of Poland related to respect for state symbols.

Protection of the symbols of the Republic of Poland in the Criminal Code currently boils down to the prohibition of insulting, destroying, damaging, or removing them. It is, therefore, parallel to those contained in previous Polish criminal

47 Commentary on Art. 137 of Polish Criminal Code.

48 Commentary on Art. 137 of Polish Criminal Code.

49 Commentary on Art. 137 of Polish Criminal Code.

regulations. However, it should be emphasized that the legislator introduced in the content of the provision also other elements than those listed in the Constitution RP, such as the emblem, colors, and anthem. The term “state mark” used in Art. 137 §1 of the Criminal Code, on the other hand, includes the emblem, banner, flag and “other state signs.” Not all of them have their legal definitions because the legislator did not specify, for example, the model of the banner, so this concept functions only on the level of colloquial language⁵⁰. The Criminal Code does not use the concept of symbols. It uses the term “other state marks.” This reinforces doubts about the subject of protection. By means of Art. 137 §1 of the Criminal Code, marks of material nature are protected. Therefore, it does not cover colors and the national anthem. The sign is undoubtedly the emblem, i.e., the symbol and the flag, as a material substrate of colors. The very colors referred to in the Constitution remained outside the protection of this norm of criminal law⁵¹.

In the literature, one can find the position that the insulting of the state anthem will be subject to a criminal law assessment through the prism of Art. 133 of the Criminal Code. However, this view is debatable, as is the inclusion of the anthem in the count of “other state trademarks” from Art. 137 §1 of the Criminal Code. On the other hand, Art. 49 §2 of the Code of Offenses provides for a custodial sentence or a fine for violating the provisions on the emblem, colors and anthem of the Republic of Poland. This act can be committed both deliberately and unintentionally. It seems that only on the basis of this provision can one currently seek the criminal protection of the national anthem⁵².

Every citizen has a duty to obey the law and to respect national symbols. Nevertheless, not every public use of national symbols gives rise to legal consequences. An example may be the decision of the Court of Appeal in Katowice of October 29, 2008, on fans who drunkenly sang “Poland, White-Red!” during the game. According to the court’s order, the manifestation of such behavior does not constitute an insult to national symbols. The following argumentation can be found in the content of the document:

Therefore, since the defendants, while singing in a state of intoxication “Poland, White-Red,” expressed their identification with the Polish state, it is impossible—despite the critical assessment of their behavior—to conclude that at the same time they intended to insult Polish national colors, even in the situation when in certain fragments of the event they dropped the Polish flag on the ground or dragged it on the ground. There are no unquestionable grounds for accepting that they wanted to express contempt for the state flag in such a form and that this was the motivation for their actions.

50 Lis, 2017, p. 226.

51 Zgoliński, 2019, p. 348.

52 Ibid.

Accordingly, the match participants were not held criminally responsible for insulting the national symbols because their actions were not intentional.⁵³

It should be stressed that the protection provided for by the Act of 1980 and the criminal law protection do not exclude each other. The axiology preferred by the legislator has been consistently considered in Art. 137 of the Criminal Code. Therefore, violation of the standard under Art. 1, para. 2 of the Act of 1980 may be a sufficient condition for the application of sanctions (e.g., by the broadcaster of a television program), regardless of whether there has also been a violation of Art. 137 of the Criminal Code (constituting an insult). Moreover, Art. 14 of the Act on the emblem imposes on citizens the obligation to maintain seriousness during the reproduction of the national anthem. Particularly important for the discussed issue is Art. 15 of the act stating that “the emblem and colors of the Republic of Poland are placed, and the anthem of the Republic of Poland is performed or reproduced in a manner ensuring their due honor and respect.”

Moreover, Art. 16 prohibits the affixing of national symbols to objects intended for trade. The norms above show that national symbolism is a value valued by the Polish legislator, who, in addition to the criminal sanctions discussed below, introduced specific regulations aimed at influencing the attitude of individuals toward the emblem, flag, and national anthem.

Recently, there has been a discussion on adopting a new act on state symbols. A draft law on state symbols of the Republic of Poland was submitted for public consultation. The act prepared as part of the Ministry of Culture, National Heritage, and Sports is primarily aimed at adapting state symbols to the requirements of new digital technologies and introducing corrections postulated for a long time by heraldists and musicologists (in the case of the national anthem). It is intended to replace the existing 1980 regulation. The bill builds a coherent system of state symbols, which include: 1) the emblem of the Republic of Poland depicting the image of the White Eagle in the crown; 2) the emblem of the Republic of Poland depicting the image of the White Eagle in the crown placed in the red field; 3) the colors of the Republic of Poland constituting components of the state flag; 4) the anthem of the Republic of Poland and the rules for their use. The main objective of the proposed act is to adapt national symbols to new digital techniques (the proposed act will introduce digital graphic and musical attachments to the project), organize the legal status regarding the use of symbols by state institutions, legal and natural persons, increase their protection and refresh the appearance. The act, among others, organizes heraldic terminology, the arrangement of anthem verses in accordance with the chronology of events, distinguishes the “state flag” from the “national flag” and introduces a national bow. It also increases the availability of symbols for citizens. The process of implementing the proposed regulation and the related costs were

53 Decision of October 29, 2008, ref. no. II AKz 777/08.

spread over many years, so as not to burden the state budget and the budgets of local government units.⁵⁴

The use of national symbols occurs in certain circumstances, most often during state ceremonies. However, there are also cases when national symbols are used outside the ceremony. Examples are various manifestations, assemblies and strikes caused by the existing sociopolitical situation. Sometimes, it is problematic to use national and state symbols in artistic activities. Often, actions occur during such events, which can be interpreted as a manifestation of insult to symbols and national signs.⁵⁵

Examples include the use of the symbol of Fighting Poland—the sign of the Polish underground state from the Second World War was used and the fight for access to in vitro was used as the slogan “Polish Fighting.” Participants of the protest were accused of insulting the Fighting Poland sign by publicly displaying a banner on which the reworked Fighting Poland sign was displayed in such a way that gender symbols were placed at its bottom bases. The court acquitted the persons concerned and considered that the Fighting Poland trademark was not insulted, and the combination of it with gender symbols did not lead to a decrease in its value⁵⁶.

Otherwise, a notification was submitted about the possibility of committing an offense under Art. 137 of the Criminal Code regarding insulting the state symbol in such a way that the symbol of the White Eagle during the equality march of July 8, 2018, was placed on a rainbow background—one of the symbols of the LGBT+ community. The prosecutor’s office discontinued the investigation in this case. It justified this because the subject of the proceedings does not have the features of a national flag, so it can be considered a banner at most. Due to the change in the banner’s colors and the eagle, it was found that we are not dealing with the national flag and emblem, and therefore the subject of the notification was not subject to protection under Art. 137 of the Criminal Code. In addition, it was emphasized that a given background could not be identified only with the LGBT+ environment because the rainbow is also a sign of religious and mythological significance. However, the prosecution did not consider that the biblical rainbow has seven colors, and the symbol of the LGBT+ environment six—and a given symbolism finds a specific justification.⁵⁷

Another example is the trial of Jan Kapela. He was accused based on Art. 49 §2 of the Code of Offenses for reworking the anthem. The national anthem modification consisted of changing the words referring to the government’s anti-refugee policy. The author of the work was found guilty twice by the courts of two instances. The

54 Full text of the draft and results of the consultation on Ministry of Culture and National Heritage.GOV: <https://bip.mkidn.gov.pl/pages/posts/projekt-ustawy-o-symbolach-panstwowych-rzeczypospolitej-polskiej-3610.php>.

55 Hernacka–Janikowska, 2020, p. 59.

56 Judgement of District Court of Warsaw of October 5, 2017, ref. XI W 1413/17.

57 “Kuriozalna decyzja prokuratury! Orzeł na tęczowym tle, to nie zniewaga symboli narodowych: ‘To aluzyjna interpretacja flagi.’” <https://wpolityce.pl/polityka/415911-prokuratura-orzel-na-teczowym-tle-to-nie-zniewaga-symboli>.

cassation to the Supreme Court was brought by the ombudsperson, stating that the lower courts were guided by automatism in interpreting the law in relation to the situation, without considering the objective premises and intentions of the author. The Supreme Court decided that the subject of refugees requires publicity. In the way Mazurek Dąbrowskiego was interpreted by the accused, he found nothing reprehensible. The Supreme Court considered that only a socially harmful act could be considered an offense, and the manifestation of the author of the text was not socially harmful⁵⁸.

Because the permanent symbols of national and state-regulated status are the emblem, the flag (with national colors) and the anthem, the further argument will consider these signs and indicate the legal framework for their application and protection. When discussing the current regulations in the context of the protection of national symbols, one should refer primarily to the Constitution RP, the Act on the emblem, colors and anthem of the Republic of Poland and on state seals, the Criminal Code, and the Code of Offenses,⁵⁹ which does not mean that this subject is not present in other acts, especially in executive regulations.

4. Legal grounds for the protection of the national flag and colors

The issue of the flag is closely related to the coat of arms. The colors shown on the flag correspond, in accordance with the principles of heraldry, to the color of the coat of arms. The Polish flag combines the white of the eagle and the red of the shield.⁶⁰ From the 12th to 18th centuries, historical Polish state banners usually depicted a White Eagle on a red background. Usually, the state coat of arms was placed on a red background, but also the red-white-red flags divided horizontally were used. Over the centuries, the shade of red changed (crimson, dark dirt, amaranth).⁶¹ The first cases of using white and red as national colors were recorded at the end of the 18th century.⁶²

The first case of legal regulation of the issue of national colors was the resolution of the Sejm functioning during the November Uprising (at a time when Poland was not on the map) of February 7, 1831, on the national bow. The resolution was

58 Siedlecka, 2019.

59 See more: Kilińska-Pękacz, 2015, pp. 1–13; Zgoliński, 2019, pp. 339–353; Szeleszczuk, 2020, pp. 147–164.

60 The red color obtained in the process of dyeing cloth at that time was called crimson or carmine, hence these colors were for a long time considered typical for Polish coats of arms and banners, Znamierowski, 2003, p. 158.

61 Kubuj, 2016, para. 16.

62 Znamierowski, 2003, p. 159.

justified by the need to give a uniform badge to Poles, and it was recognized that the national bow will be white with red.⁶³

In the 19th century, the colors white and red became a symbol of Polishness, also used outside the Polish lands. These colors were used not only by Poles but also by foreigners wishing to express their Polish sympathies. Polish symbols and colors accompanied Poles fighting during the Spring of Nations in 1848 and during the Turkish–Russian war. During the January Uprising, the patriotic attitude was expressed by displaying Polish national symbols, banned by the tsarist authorities in 1831–1832. Interestingly, many flags and banners from that period had a red color placed on the upper lane and white on the lower lane. The white-red flags in the form used to this day appeared in 1916 during the celebration of the 125th anniversary of the adoption of the Constitution on May 3, 1791.⁶⁴

The issue of the colors of the Republic of Poland was regulated for the first time in the act of August 1, 1919, on the emblems and colors of the Republic of Poland. In Art. 1, it was considered that the colors of the Republic of Poland are white and red, in parallel longitudinal strips, the upper one being white and the lower—one red. The act provided for national colors. By including them in the normative act, these colors became state colors. The legislator has limited the possibility of using national symbols, including national colors. Art. 2 of the act of 1919 prohibited the use of the flag by private persons without the permission of the Minister of the Interior. The model of the flag is set out in Model 5 annexed to the act. The act also specified the specimens of special flags used by state authorities and institutions, military flags, and maritime flags. Among them was the flag for diplomatic representatives of the state, which was distinguished from the basic design by the coat of arms of the Republic of Poland placed on the upper white belt. It should be noted that the flag designs attached to the 1919 act were black and white. Colourful images of state symbols were published in 1921 by the Ministry of the Interior.⁶⁵

The Act of 1919 was repealed by the Regulation of the president of the Republic of Poland of 13 December 1927 on state emblems and colors and on signs and seals.⁶⁶ In Art. 2 of the Regulation, it was found that the national colors are white and red in two horizontal parallel strips of equal width and length, the upper one being white and the lower one being red. The red color corresponds to the color of cinnabar. Art. 5 of the Regulation stipulated that the national flag is a tarp of state colors. The regulation did not prohibit the use of the flag, and only the use of state emblems, seals and special flags was subject to restrictions.⁶⁷

63 Russocki, Kuczyński and Willaume, 2006, p. 19.

64 Rosner, 2003, pp. 172–194.

65 These patterns were included in the brochure “Emblem and colors of the Republic of Poland” by Stanisław Łoza. According to the design introduced then, the red of the shield and flag should have a crimson tint (Znamierowski, 2003, p. 160).

66 Journal of Laws no. 115, item 980.

67 Arts. 15 and 16 of the Regulation of the president of the Republic of Poland of 13 December 1927 on emblems and colors of the state and on signs and seals.

The Regulation of 1927 changed the state coat of arms and thus also changed the flag used by authorities, offices and institutions abroad. It was distinguished by a state coat of arms, in accordance with the model from 1927, placed in the middle of the white belt. The Polish authorities used this flag in exile during World War II and after its end until 1990.⁶⁸

The issue of colors in the Polish People's Republic was regulated in Art. 89, para 2 of the People's Republic of Poland constitution of 1952.⁶⁹ It was also the first Polish constitution to regulate these issues. Detailed regulations concerning the design of the flag and the rules for its use were left to the lower-ranking legal acts. Such solutions were contained in the decree of the state Council of December 7, 1955 on the emblem and colors of the Polish People's Republic.⁷⁰ In Art. 3, para. 2 of the decree, the flag's proportion was incorrectly set at 3:8. This error was corrected, and the flag's ratio was changed to 5:8, returning to the commonly used proportions of national and state flags.⁷¹ The 1955 decree did not restrict the use of the white-red flag, in Art. 13, however, introduced criminal liability in the event of unlawful use of the coat of arms, the flag with the coat of arms and special flags.⁷²

Subsequent changes in the scope of Polish state symbols took place in 1980 when a law comprehensively regulating this issue was adopted.⁷³ In Art. 4, the wording of the 1955 decree regarding colors and the state flag was almost literally repeated. Art. 15 of the act ordered the use of symbols with respect, while the circumstances of using the flag were to be determined by the act or regulations issued on its basis. The 1980 act significantly changed the graphic design of the flag⁷⁴. A new shade of red was introduced, darker than cinnabar. The attachment also provides precise technical coordinates for the colors white and red. Since 1980, the issue of red coloring has not been discussed.

The revision of the Polish People's Republic constitution made on 29 December 1989 did not cover the provisions on state colors and the flag. It was limited only to changing the name of the country. Art. 4 of the act introduced several transitional

68 Grabowski, 2011, p. 44.

69 "The colors of the People's Republic of Poland are white and red."

70 Journal of Laws no. 47, item 314. See Arts. 2 and 3 of the Decree.

71 Regulation of the prime minister of March 20, 1956, on the correction of an error in the Decree of December 7, 1955, on the emblem and colors of the People's Republic of Poland and on the state seals, Journal of Laws no. 7, item 4. According to current legislative standards, it should be recognized that this was not a correction of an error, but an amendment to the Decree.

72 Art. 13 of the act criminalised behavior involving the unlawful use of the emblem of the People's Republic of Poland, the state flag with the emblem of the People's Republic of Poland, the Polish flag or the image of the eagle specified in the decree. The punishment for this act was imprisonment for up to one year and a fine of up to 10,000 zlotys. It was possible to stop at imposing only one of these penalties. To determine whether the perpetrator had exhausted the prerequisites of the offense, it was necessary to make a primary finding, which consisted in attributing and assessing his/her behavior with regard to the content of administrative law provisions.

73 Journal of Laws of 1980 no. 7, item 18.

74 Annex 2 to the act.

periods for the use of the flags of old designs. The longest transitional period concerned military marks, which had to be changed by December 31, 1997.

The regulations concerning colors and flags in the period of political transformation of 1989 are contained in the 1980 act on the emblem, colors and anthem of the Republic of Poland⁷⁵. As in the case of the Constitution, no new legal act was adopted, but minor changes were made to the content of the applicable provisions. The political changes that took place in 1989 did not lead to a change in the colors or pattern of the state flag. However, the flag with the coat of arms was changed, introducing a new model of the state coat of arms in accordance with the 1990 model (Annex No. 3 to the act). Similar changes included military flags, air force, navy and other special flags.⁷⁶

By amending the regulations after 1989, the norms defining the state colors as white and red, the ordinary white and red flag and the white and red flag with a coat of arms were maintained. Thus, the concepts of national colors and the national flag were not restored. At the same time, the use of the white-red flag with a coat of arms is strictly regulated, and this right is not granted even to the president of the Republic of Poland.⁷⁷

The flag issue was regulated in the Constitution RP. Art. 28, para. 2 states: "The colors of the Republic of Poland are white and red." This is a repetition of the 1989 standards. Detailed regulations The Constitution RP leaves it to the act. the Act on the Emblem, Colors and Anthem of the Republic of Poland and on state Seals of 1980 is still in force today. It has been amended many times, including in 2004, Art. 5, introducing section 2 in the following wording: "Everyone has the right to use the colors of the Republic of Poland, in particular in order to emphasize celebrations, holidays or other events."⁷⁸ In addition, Art. 6a was added by virtue of which the Flag Day of the Republic of Poland was established on May 2.⁷⁹

The act of January 31, 1980, on the emblem, colors, and anthem of the Republic of Poland and on state seals obliges every citizen to worship and respect all symbols listed in the act. National colors in Art. 4 and Art. 5 are defined as white and red, in a horizontal position, in two strips of the same width, the upper one is white and the lower one is red. They constitute the flag of the Republic of Poland, which all citizens can use to emphasize the importance of the ceremony, distinguish an important event or celebration.

Despite the existing provisions protecting the national flag and colors, the problem of insulting the national flag (regulated in Art. 137 of the Criminal Code)

75 Art. 43, para. 1 act on the emblem, colors and anthem of the Republic of Poland.

76 Znamierowski, 2003, pp. 162–183.

77 Znamierowski, 2003, pp. 162–183; Grabowski, 2011, pp. 45–46.

78 Act of 20 February 2004 amending the Act on the emblem, colors and anthem of the Republic of Poland, Journal of Laws no. 49, item 467.

79 This date is linked to May 2, 1945, when Polish soldiers who took part in the conquest of Berlin hung the Polish flag on the Siegessäule column, a victory column located in the Grosser Tiergarten Park, commemorating Prussia's triumph over Denmark in 1864.

was repeatedly the subject of decisions of Polish courts. There are known cases in which the perpetrator's actions were overwhelmingly symbolic, as well as those in which the behavior of the convicted person bore only the hallmarks of a hooligan's act.

The Court of Appeal in Szczecin heard the appeal against the judgment of the District Court in Gorzów Wielkopolski in a case concerning insulting the national flag. The case was examined in the light of the following facts. KB was accused of acting in a hooligan's act, i.e., publicly and for no reason, thus showing gross disregard for public order, insulting the national flag of the Republic of Poland, hitting it on the railings, causing the breakage of the trunk, and then swung and threw the flag at the windshield of a moving passenger car, causing the breakage of the windshield in the vehicle and causing damage in the amount of PLN 2094.08, and exposing the driver and the owner of the RK vehicle to a direct risk of loss of life or serious injury. The district court found KB guilty of the accused acts, imposed a sentence of five months imprisonment and obliged the convicted person to repair the damage caused partially. The accused's attorney raised the fact that the subjective side of the "insult" was not taken care of at all by the court and a priori assumed that anyone who hits the flag on the railings and throws it at the windshield of the car commits an act prohibited under Art. 137 of the Criminal Code. According to the defense, the actions taken by the convict (i.e., hitting the flag on the rails and throwing it at the vehicle) should not be interpreted in the category of insult, which is to be an expression of contempt or ridicule or insult to national symbolism. The above allegations were not shared by the Court of Appeal, upholding the judgment of the lower instance, "considering the appeal of the defendant's lawyer to be manifestly unfounded." The General Court referred to a plea alleging that KB's action was indeed an insult to the national flag. It was considered that the District Court correctly interpreted the concept of "insult": the very word "insults" contains several activities that can be undertaken to fulfill the analyzed premise. Such behavior is spitting on the flag or trampling it, but it is also activities with a lower intensity of negative emotion and less expression. Throwing a flag at a moving car and jerking a flag against a railing is an intentional act, expressing disregard for state symbolism. The court argued that the decision was based on a system of moral rules of Polish society, in which, in its opinion, national colors play a special role.⁸⁰

In April 2010, an incident occurred in Wrocław, during which the national flag was insulted. On the night of April 14–15, 2010, a woman identified as M.P. tried to set fire to a national flag displayed in a public place. However, when this failed, the convict wrote a vulgar slogan on the flag that was honoring recently deceased President Lech Kaczyński. An important circumstance is undoubtedly the fact that the perpetrator herself reported to the police and admitted to the acts. She explained her behavior with the desire to express her opposition to the ongoing national mourning. M.P., through expression, wanted to draw attention to the attitudes adopted by Poles

⁸⁰ Judgment of the Appeal Court in Szczecin of 4 July 2013, ref. no. II AKa 114/13.

after the catastrophe that were not authentic, in her opinion. The convict explained that her actions were not intended to insult the national flag. Eventually, the District Court found M.P. guilty of committing an offense under Art. 137 §1 of the Criminal Code sentenced the convicted person to six months of imprisonment in suspension for three years and supervision of the probation officer and acquitted the convicted person of insulting the president.

In Wrocław, two men, having previously consumed alcohol, after unsuccessful attempts at arson, threw the flag into the mud and then placed it in the trash can. The perpetrators were convicted based on Art. 137 of the Criminal Code—they were fined PLN 1,000.

Polish jurisprudence does not reveal a tendency to the milder treatment of perpetrators who wanted to express certain ideas through unlawful actions. In addition, in the indicated cases, a person acting for no apparent reason, in a state of intoxication, was sentenced to a less onerous punishment.

Insulting national colors may also occur through satirical practices. Such behavior took place with one of the entertainment programs, whose guests placed the miniature flag of Poland in the imitation of dog droppings. The content of this broadcast caused that the chair of the National Broadcasting Council (NBC), acting pursuant to Art. 53 sections 1 and 2 in connection with Art. 18(11) of the Broadcasting act imposed a fine of PLN 417,000 on the publisher. The decision was justified by the fact that the national symbol was insulted during the broadcast. Such behavior was considered contrary to the Act on the emblem, particularly with Art. 1. The Chairman stated that Art. 18 of the Broadcasting Act and imposed a financial penalty on the sender.⁸¹

The plaintiff challenged the decision of the chair and applied for its repeal in its entirety, indicating, among others, the violation of Art. 54 and 73 of the Constitution RP and Art. 10 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. The District Court in Warsaw annulled the chair. The General Court drew attention to the general nature of Art. 1(2) of the Act on the emblem, which does not provide for sanctions and refers to Art. 137 of the Criminal Code, which deals with insulting national symbols. The court considered that the flag was not insulted during the KW broadcast because the action of the guests invited to the program was not an action aimed at depreciating the flag. In the court's opinion, the broadcaster only referred to certain behaviors, and the broadcast was not intended to promote them within the meaning of Art. 18(1) of the Broadcasting Act.⁸²

The president of NBC appealed the decision of the district court; the Court of Appeal in Warsaw changed the judgment of the lower court. He considered that to violate the standard contained in Art. 1 of the Act on the emblem may occur when the perpetrator expresses a lack of due respect and reverence for the flag. At the same time, the conditions of Art. 137 §1 of the Criminal Code. The behavior presented in

81 Judgment of the Supreme Court of 2 July 2013, ref. no. III SK 42/12.

82 Ibid.

the program was considered offensive, even assuming that its purpose was not to insult the state symbol. The Court of Appeal in Warsaw did not share the assessment of the District Court that the sender did not encourage the public to act against the dignity of the national flag.

Eventually, the Supreme Court heard the case. The adjudicating panel of the Supreme Court, referring to the compliance of punishment of the sender with Art. 10 of the ECHR referred to the test for the jurisprudence on freedom of expression. The Supreme Court also concluded that

despite the broad constitutional protection of freedom of expression, additionally strengthened by Art. 14 of the Constitution, it is possible to introduce restrictions on the exercise of this freedom by television broadcasters. In the opinion of the Supreme Court, to “promote” certain behaviors, it is not necessary when interpreting Art. 18(1) of the Broadcasting act, so that the broadcast of a specific broadcast is accompanied by the intention to convince the recipients of the content contained therein or so that the creators of the broadcast should demonstrate action in the direct or possible intention. That court considered that a program promoting certain attitudes is one whose content and form of expression may encourage viewers to imitate the behaviors shown in it or present some ideas as “right and proper.”

The Supreme Court concluded that, given such elements of the broadcast as the presentation of behaviors hitting the dignity of the flag as a game, the reactions of the audience or the popularity of the host, it could be concluded that it was, in fact promoting attitudes that were contrary to the law. The Supreme Court agreed with the finding of the Court of Appeal, stating that the violation of Art. 1(2) of the Act on the emblem, it is not necessary to prove the crime under Art. 137 of the Criminal Code. It is sufficient to show the symbol a lack of reverence and respect.⁸³

The above findings confirm that the Polish law has protected the flag and national colors. In the doctrine, there is even a specific right of the citizens of the Republic of Poland to use national symbols. On the part of public authorities, this creates an obligation to create a sphere for the realization of this right and a guarantee related to the protection of values which are the national colors and flag. At the same time, in the public debate it is emphasized that using white and red colors in commercial activity is possible and not punishable, because the law protects only the official, defined by law, combination of white and red colors. Its modifications are allowed; so are their modifications or paraphrases which do not infringe the values represented by national symbols. It follows from this statement that we are not dealing with symbols protected by the Act on the emblem, colors and anthem of the Republic of Poland if they do not meet strictly specified statutory requirements. In the case of colors, these are the requirements specified in Appendix No. 2 to the act by indicating their trichromatic coordinates and the permissible difference

83 Ibid.

between the white and red color. Colors not falling within these parameters in the statutory sense will not be national colors. Similarly, a canvas not meeting the proportions indicated in the act will not be called a protected flag. This approach seems to be reasonable, if we assume that everyone is characterized by a certain culture expressed, *inter alia*, by respect. However, there are doubts whether persons who consciously use the national colors and references to the national flag should not be subject to responsibility for infringing what is an external and material expression of the nation's identity.

Possible violations related to the flag and national colors may also be due to less awareness that certain behaviors toward the flag constitute a violation of the law. Unlike in the case of the anthem, education on how to deal with the flag and national colors is at a lower level, so civic education should be developed in this area.

5. Legal grounds for the protection of the national emblem

The emblem is the oldest of Polish symbols. The Polish state coat of arms depicting a crowned White Eagle appeared on the denarii of the first Polish King Bolesław Chrobry after his coronation in 1025. The image of the White Eagle has been used as the state emblem since 1295.⁸⁴

An emblem placed on a special shield is referred to as a coat of arms. The emblem of Poland, referred to as the White Eagle, is traditionally placed on a red heraldic shield. The current coat of arms of the Polish state uses a French shield.⁸⁵ A white eagle on a red shield is a heraldic coat of arms, not an emblem. Such a misnomer can be found in Polish legal acts regulating the issue of state symbols since 1952.

The White Eagle is considered by Poles not only as a state symbol but also as a national symbol. The Polish state ceased to exist due to territorial annexations by neighboring countries in the years 1772–1795 (partitions). During this period, Poles, who were deprived of their state until 1918, developed a peculiar cult of the White Eagle, treating it as a national symbol.⁸⁶ The partitioning states banned the use of this symbol. Meanwhile, it was a constant motif in literature and patriotic songs. The image of the White Eagle recurred twice as one of the symbols of non-sovereign states created in parts of the Polish lands in the first half of the 19th century (the Duchy of Warsaw, established in 1807 by Napoleon Bonaparte; the Kingdom of Poland, a Russian protectorate created in 1815 by Tsar Alexander I). The symbol was also used during the November and January Uprisings.⁸⁷ Polish emigrants also used

84 Jaworska, 2006, pp. 3–5; Znamierowski, 2003, p. 111.

85 Znamierowski, 2003, pp. 27–29.

86 Jaworska, 2006, p. 6.

87 Rosner, 2003, p. 193.

the White Eagle as a symbol of nationality. After Poland regained its independence in 1918, the White Eagle again became the official emblem of the Republic of Poland but remained a national symbol.

After Poland regained independence in 1918, there was no doubt that the eagle was to be the national emblem. What was disputable was its likeness. In a decree issued by the Minister of Internal Affairs on December 1, 1918, a coat of arms designed with an eagle without the crown was introduced since Poland was a republic. As a result of numerous protests,⁸⁸ the regulation was amended by the act of 1 August 1919 on emblems and colors of the Republic of Poland,⁸⁹ according to which the coat of arms referred to the eagle used at the time of Stanisław A. Poniąkowski,⁹⁰ In this form, it was in force until 1927, when it was replaced with the emblem designed by Zygmunt Kamiński.⁹¹ The new image of the eagle was conceived as a synthesis of Polish historical eagles. Despite many critical remarks, especially in heraldic circles, the coat of arms in the version introduced in 1927—in a slightly modified version due to political transformations—has been used until today.⁹²

Regulation of the president of the Republic of Poland introduced the new state coat of arms of 13 December 1927.⁹³ According to Art. 1(1) of the regulation “the state coat of arms, i.e., the image of a White Eagle with its head turned to the right with wings outstretched, a golden crown, beak and talons on a rectangular shield in a red field.” It was pointed out that the crown should be of the closed type with a cross, and if open, it should be per the models of coats of arms. The finials of the bands on the eagle’s wings should be trefoil shaped, as the five-leaved ones are associated with the Bolshevik or Masonic star.⁹⁴

The state coat of arms introduced in 1927 is in a modified version, used until today. It was subjected to numerous changes stemming from political transformations.

During World War II, Polish territory was occupied, but the legal authorities of the Republic of Poland functioned in exile. Their existence after 1945 was symbolic, given the recognition of the People’s Republic of Poland by the Allied states. One of the actions of the authorities in exile was to establish, by the decree of the president of the Republic of Poland in Exile of 11 November 1956, a new design of the state coat of arms, which differed in the introduction of a closed crown topped with a cross and had changed proportions of the shield. It was a reaction to the repeal in

88 Górecki, 2008, p. 51.

89 Journal of Laws no. 69, item 416 as amended.

90 The act of August 1, 1919, on emblems and colors of the Republic of Poland stipulated that, until the borders of the Polish state were defined, and the Constitution specified the emblems and colors of the state, as well as titles of offices and state institutions, the offices of the Republic of Poland should use the emblems and colors according to the appended models. The Coat of Arms of the Republic of Poland designates the White Eagle with its head turned to the right with wings up, golden talons, crown and bill in a red rectangular field.

91 Górecki, 2008, p. 52; Znamierowski, 2003, p. 129.

92 Kubuj, 2016, para. 10.

93 Journal of Laws of 1927 no. 115, item. 980.

94 Znamierowski, 2003, p. 129.

1955 by the People's Republic of Poland authorities of the act of 13 December 1927 and the introduction of a new design of the state coat of arms.⁹⁵

An attempt to change the 1927 coat of arms was made in the 1950s. The state coat of arms issue was regulated by the constitution of the People's Republic of Poland. Given this, it should be noted that between 1944 and 1989, there were three models of the state coat of arms. The first was used from the 1940s until 1955, despite the lack of legal regulations introducing this design. It presented an image of a White Eagle with a deformed beak, without a crown, placed on an elongated red shield framed by a general's serpent. This coat of arms differed from the 1927 design, which symbolized a break with interwar traditions.⁹⁶

Formally, the national coat of arms from 1927 was in force, and the regulation on this issue has not been repealed. The first Polish constitution to regulate the issue of the state coat of arms was the constitution of the People's Republic of Poland of 1952, and it was placed at the end of the act in Chapter IX. The constitution described the national emblem in Art. 89(1) very briefly, specifying only that it would refer to the tradition of the White Eagle. Detailed regulations were left to legal acts of a lower rank.

The 1927 design of the Second Republic of Poland's coat of arms was repealed by the Decree of the Council of state of December 7, 1955, on the emblem and colors of the Polish People's Republic and state seals.⁹⁷ The design of the state coat of arms, since 1952 referred to in Polish legal acts as the emblem, is set out in the graphic appendix. A nomenclatural error in using the term "emblem" in the state coat of arms description has become a permanent element of Polish legal norms.⁹⁸ The design of the coat of arms from 1955 was a slightly modified version of the design from 1927. The eagle was deprived of the crown, manifesting political changes, and breaking with tradition. The crown—the symbol of the sovereignty of the Polish state—was removed. The coat of arms was also modified by removing the border placed in the state coat of arms in 1927, which was criticized by heraldists in the interwar period.

Another change in the state coat of arms design took place in 1980. At that time, a law was passed that comprehensively regulated state symbols, including the entitled entities and the rules of their use. The provisions of the act of January 31, 1980, on the emblem, colors and national anthem of the People's Republic of Poland were preceded by a preamble, which in a very solemn way defined the meaning of Polish national symbols for the nation.⁹⁹ Art. 2(1) of the act of 1980 described the national emblem as almost identical to the one used in the regulation of 1955. Starting

⁹⁵ Ibid.

⁹⁶ Górecki, 2009, p. 164.

⁹⁷ According to Art. 1. para. 1. of the Decree, "The emblem of the People's Republic of Poland shall be the image of a white eagle with its head turned to the right and its wings unfurled, and with golden beak and talons in a red field of a rectangular shield with the lower edge extended in the middle."

⁹⁸ Kubuj, 2016, para. 15.

⁹⁹ Journal of Laws of 1980 no 7, item 18.

from 1927, finials had a five-leaved shape, and in 1980 their shape was changed to resemble five-pointed stars with sharp ends.

Political transformations in Poland since 1989 have influenced the shape of the coat of arms. The revision of the constitution, among other things, covered the name of the state and the sphere of symbols, including the emblem and the state coat of arms. Despite suggestions to design a new coat of arms, it was decided that Poles would treat the 1927 design and its numerous versions as a symbol of the state, which should be respected.

Under the provisions of Art. 1, point 19 of the Act on amending the constitution of the People's Republic of Poland of 29 December 1989, Art. 103(1) of the constitution was amended to read: "The emblem of the Republic of Poland is the image of a White Eagle with a crown in a red field." Art. 3 of the amending act established transitional periods regarding the emblem used until 1989. The regulations concerning the coat of arms were also changed in the existing act on the symbol, colors, and anthem of the Republic of Poland of 1980.¹⁰⁰ Art. 2(1) was amended to read: "The emblem of the Republic of Poland is the image of a White Eagle with a golden crown on its head facing right, with outstretched wings, with a golden beak and talons, placed in a red field of a shield."¹⁰¹

The amendments to the act concerned only selected provisions relating to the emblem and the flag. In the title of the act and the unchanged provisions, the name of the People's Republic of Poland was retained. In the amended Art. 2(1), the state's name appears as the Republic of Poland, while in the unamended Art. 2(2), the name People's Republic of Poland was retained. This error was not rectified until 1997, with the reform of the government administration.¹⁰²

The Act on the emblem, colors and anthem of the Republic of Poland and national seals of January 31, 1980, is still in force today. It has been amended many times. Appendix No. 1 to this act contains a model of the emblem of the Republic of Poland. In the graphic appendix, there is an image of the White Eagle with a golden beak and talons on the background of a red French heraldic shield, according to the 18th-century design. A golden crown on its head symbolizes the state's sovereignty in the Polish heraldic tradition.¹⁰³ The postulate of restoring the crown on the eagle's head was widely expressed during the political breakthrough period and supported by experts. It related to a desire to return to the traditional image of the White Eagle. The restoration of the crown was also symbolic—it meant a break with the ideology of the People's Republic of Poland. The 1990 national coat of arms design refers to

100 Art. 43, para. 1 of the Act on the emblem, colors, and anthem of the Polish People's Republic.

101 Art. 1 para. 2 of the act of February 9, 1990, amending the provisions on the emblem, colors and anthem of the Republic of Poland (Journal of Laws no. 10, item 60).

102 Act of 4 September 1997 on divisions of government administration, Journal of Laws no. 141, item 943.

103 Znamierowski, 2003, p. 6.

the symbolism of the Second Republic of Poland period.¹⁰⁴ The eagle is depicted in a fighting position, with the bill spread apart and wings spread.

A band with trefoil-shaped ends on its wings has two additional vestigial petals, and such a shape of the ends of the surmounting band was not previously found in Polish emblems and coats of arms. It should be remembered that, under the act, the Council of Ministers, by way of regulation, determines the designs and dimensions of official boards with the emblem and the manner of their placement on the indicated objects and sportswear of the national team.

The state coat of arms issue is regulated in the Constitution.¹⁰⁵ Art. 28(1) states: "The emblem of the Republic of Poland is the image of a White Eagle with a crown on a red field." Provisions of the new Constitution repeat norms from 1989, and detailed regulation of the state symbolism has been left to statutory provisions.

Using the Polish coat of arms has been questionable for several decades. Low legal awareness of Poles caused that already in the period of the People's Republic of Poland, there was a high degree of freedom when it came to the coat of arms designs used. The turn of the political system did not bring about any changes in this respect. The problem is even more severe because it does not concern only the deviation from the legally binding design of a state coat of arms when it comes to using this symbolism by natural persons. It may even be assumed that the way of decorating private space, even with the symbol of the White Eagle, is an individual matter. However, the Polish national emblem is subjected to a kind of characterization in public space. Coats of arms which do not conform to the model may be found in public administration offices.¹⁰⁶

Deviations from the design of the state coat of arms usually concern the shape of the crown or its lack; the use of a design of a coat of arms from the communist period modified to make it similar to the current pattern; the use of a band around the shield, the wrong color of the shield, an inappropriate color of the emblem. Another category includes coats of arms adjusted to the décor of a room or building. Such practice is common in many courts of law, which contain brass or copper (metalwork), wood, and other eagles. An analysis of this phenomenon carried out by the Supreme Audit Office showed that employees of public administration offices have little knowledge of Polish state symbols. In most of the audited offices, the emblem of the Republic of Poland placed in the official premises did not comply with the specimen included in Annex No. 1 to the act. Discrepancies concerned mainly the lack of a shield, changes in the image of the eagle, but also colors and details in the image itself.¹⁰⁷

104 Opinion of the Polish Historical Association and the Polish Heraldic Society on the Polish national emblem, "Mówią Wieki" 1989, no. 6, p. 26.

105 Constitution of the Republic of Poland of April 2, 1997. Journal of Laws of 1997 no. 78, item 483, as amended (Constitution RP).

106 This practice led the president of the Supreme Audit Office to order an audit of the use of state symbols in 2004.

107 Sułkowska, 2006, p. 117.

6. Legal grounds for the protection of the national anthem

The national anthem and its tradition are part of the intangible national heritage.¹⁰⁸ Its protection is justified by the normative content of Art. 5 of the Constitution RP, which states that the programmatic principle of state activity is, *inter alia*, guarding the national heritage and Art. 6 of the Constitution, which confirms the existence of the state's obligation to provide access to cultural assets that are the source of identity of the Polish nation. Thus, as Bogusław Banaszak notes, the state authorities “have the task of creating legal regulations favoring the dissemination of culture”¹⁰⁹. The consequence of granting the national anthem special legal protection is the possibility for an individual to realize a cultural right, which is the right to cultural identity. In this sense, the anthem is the cultural element on which the individual builds their identity.¹¹⁰

The national anthem is undoubtedly an element of intangible national heritage. Intangible heritage is defined in the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. According to Art. 2 of this Convention, “Intangible cultural heritage means the practices, ideas, messages, knowledge and skills—as well as the instruments, objects, artefacts and cultural spaces associated with them—that communities, groups and, in some cases, individuals acknowledge as part of their cultural heritage.” The article further stresses that communities build a sense of their own identity through participation in intangible heritage.¹¹¹

In this context, the anthem is related to cultural rights, understood as human rights, concerning the area of realization by an individual or group of needs within the culture. Cultural human rights are most often classified as the so-called second generation of rights,¹¹² but a complete catalogue has not been developed. Most commonly, cultural rights are understood as the right to participate in cultural life, the right of access to cultural goods and the freedom of artistic creativity. A separate cultural right is a human right to cultural identity.¹¹³ As Piotr Andrzejewski notes, the human right to cultivate a chosen cultural option is his fundamental subjective right. This right consists of “freedom of thought, conscience, religion, teaching, worship, and observance.”¹¹⁴

108 “The values that make up the heritage of Polish culture also include songs with patriotic content, which, also on a legal level, do not have the same rank as the national anthem. These include, for example, Bogurodzica and Rota” (Zeidler, 2007, p. 31).

109 Banaszak, 2009, p. 55.

110 Kosińska, 2014, p. 121.

111 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage drawn up in Paris on 17 October 2003 (Journal of Laws 2011, no. 172, item 1018). Pursuant to Art. 9 of the Constitution, “the Republic of Poland shall observe international law binding upon it,” and therefore the definition of intangible heritage included in the aforementioned Convention may be deemed binding.

112 Hołda, Hołda and Ostrowska, 2008, p. 53.

113 Kosińska, 2014, p. 122.

114 Andrzejewski, 1993, p. 142.

Therefore, using the anthem and its heritage is a cultural right. The function of this right is to build the national and cultural identity of both the individual and the social group—the nation. The conscious exercise of this right also shapes the collective memory of society. As Marcin Michał Wiszowaty rightly notes, the special protection of symbols of the Republic of Poland has been limited to the prohibition of insulting, destroying, or removing them (Art. 137 of the Criminal Code). Such acts may be committed only with direct intent.¹¹⁵ Moreover, under Art. 49(2) of the Code of Petty Offenses, anyone who contravenes the act's provisions on the emblem, colors and anthem of the Republic of Poland shall be subject to a penalty of arrest or fine.¹¹⁶

In the history of Poland, the role of the anthem has been played in many songs. The oldest, dating from the 13th century, “*Gaude Mater Polonia*,” was the anthem of the Piast dynasty.¹¹⁷ The first Polish anthem was the song “*Bogurodzica*,” whose oldest text was written down in 1407. It is also the oldest hymn written and performed in Polish.¹¹⁸

Most hymn songs were written from 1795 to 1918, i.e., when the Polish state did not exist. It was also then that the song *Dąbrowski's Mazurka*, which is now the anthem of the Republic of Poland, was written. It is also known as the Song of the Polish Legions in Italy or the song “*Poland is not lost yet [Jeszcze Polska nie zginęła...]*.” The song was written in Italy in 1797, and its author was Józef Wybicki.¹¹⁹ The song, which was written to commemorate the departure of the Polish Legions from Reggio, quickly became popular among Poles. The popularity of *Dąbrowski's Mazurka* was so great that in the period of the Warsaw Duchy, it was treated as the unofficial Polish national anthem. In the 19th century, *Dąbrowski's Mazurka* was one of the most famous liberation songs in Europe. It had a powerful impact on other Slavic nations, becoming the prototype for many anthemic songs¹²⁰.

The popularity of *Dąbrowski's Mazurka* did not lead to its recognition as the national anthem. After Poland regained independence in 1918, the second song aspiring to the role of the official anthem was “*Boże, coś Polskę*.”¹²¹ The first years of independence did not bring a solution to the anthem issue. The adoption of the March Constitution in 1921 was accompanied by the singing of “*Boże, coś Polskę*.”¹²² This constitution omitted the point of national and state symbols, including the anthem. Official Polish delegations were then greeted with the sounds of such songs

115 Wiszowaty, 2011, p. 42.

116 Kijowski, 2004, p. 137.

117 Panek, 1996, p. 5.

118 Panek, 1996, p. 16.

119 On the circumstances of the hymn's creation see more: Borucki, 2013, pp. 25–32.

120 E.g., the Pan-Slavic anthem, the Sorbian anthem, the Croatian anthem, the Ukrainian anthem or even the Bulgarian anthem (Grabowski, 2011, pp. 47–48).

121 Rosner, 2003, p. 195.

122 Kijowski, 2004, p. 122.

as “*Rota*,” “*Warszawianka*,” “*Mazurek Dąbrowskiego*” or “*Boże, coś Polskę*.”¹²³ Several relatively low-ranking documents contributed to recognizing the *Dąbrowski’s Mazurka* as the official anthem. In his order of March 22, 1921, the Minister of Military Affairs ordered that military honors be rendered during the performance of this piece and the anthems of the allied countries, thus making them equal in terms of military ceremonial.¹²⁴

Dąbrowski’s Mazurka was for the first time specified as the Polish national anthem in the order of the Minister of Military Affairs on November 2, 1921, concerning the performance of the national anthem during military ceremonies.¹²⁵ On October 15, 1926, the Ministry of Religious Denominations and Public Education issued a circular concerning the national anthem being obligatory during school ceremonies. This act included the text of *Dąbrowski’s Mazurka*, consisting of four stanzas.¹²⁶ In a circular of February 26, 1927, the Ministry of the Interior announced the exact text as the only binding national anthem.¹²⁷ This date is considered the moment of official recognition of *Dąbrowski’s Mazurka* as the national anthem of the Republic of Poland. The literature assumes that the anthem issue was treated as an element of common law. Until 1939, the anthem was not regulated by higher-ranking legal acts.¹²⁸

The anthem was, for the first time after 1945, regulated by a low-ranking legal act. On April 20, 1948, the Ministry of Education introduced *Dąbrowski’s Mazurka* to be used as an anthem among students.¹²⁹ The constitution of the Polish People’s Republic did not regulate the anthem issue, and it was considered that these issues belonged to the sphere of customary law.¹³⁰

The regulations concerning the national anthem were elevated in the 1970s under the Resolution of the Council of state of March 8, 1973, on the principles of national and local celebrations of state occasions.

The national anthem was regulated in the revised constitution of the People’s Republic of Poland in 1976.¹³¹ In Art. 89 of the constitution, a third section was added, on the strength of which *Dąbrowski’s Mazurka* became the anthem of the People’s Republic of Poland. Immediately after the amendment of the constitution in 1976, a consolidated text was promulgated, because of which the numbering of some articles changed. The provision regulating the anthem issue was included in Art. 103(38).

Detailed regulation of national and state symbols was made by the act of January 31, 1980, on the Emblem, Colors and Anthem of the People’s Republic of Poland.

123 Panek, 1996, p. 31.

124 Kijowski, 2004, p. 123.

125 Ibid.

126 Panek, 1996, p. 31.

127 Kijowski, 2004, p. 124.

128 Ibid.; Górecki, 2008, p. 53.

129 Panek, 1996, p. 32.

130 Kijowski, 2004, p. 131.

131 Act of February 10, 1976, on amending the constitution of the Polish People’s Republic, Journal of Laws no. 5, item 29.

The issues indicated in the title of the act were put in order. Art. 12 of the act reiterated, following the constitution, that *Dąbrowski's Mazurka* is the national anthem, established the literary text of the anthem and its musical notation, and entrusted the Minister of Culture and Art with supervision over the musical interpretation of the anthem. Art. 13 of the act defined the circumstances in which the anthem would be performed. Art. 14 introduced precise rules regulating the behavior of persons during the performance or playing of the anthem.

The revision of the constitution made on 30 December 1989 did not refer to the national anthem. Neither did the amendments to the Act on emblem, colors and anthem of 1980, which took place immediately after the political transformation, introduce any changes in this respect. After 1989, the Act on emblem, colors and anthem was repeatedly amended without significant changes relating to the national anthem. Confirmation of stability in this respect is the Constitution RP.

In work on the new Constitution, over a dozen drafts were submitted. In most of them, the regulation concerning national symbols was included in Chapter I.¹³² An exception was the project signed by President Lech Wałęsa, which included a chapter on “symbols and the capital of the Republic of Poland,¹³³ and a civic project, which included Chapter XIII, “Symbols and the capital of the state.”¹³⁴

Work on Art. 28 of the Constitution and the drafting of Chapter I was done by the Subcommittee on the Foundations of the Political and Socioeconomic System. When starting the drafting of the future Art. 28, the members of the Commission drew attention to the European tradition of placing regulations concerning national symbols in Chapter I of the Constitution, even though there were proposals to move this regulation to the end of the Constitution in the detailed rules.¹³⁵

The original linguistic formulation of Section 4 also caused some editorial problems. According to this, “the emblem, colors, and anthem shall be honored and protected.” At the suggestion of Jerzy Ciemniewski, this passage was amended because “reverence” is not a legal but an emotional category.¹³⁶ The final version of art 28 was adopted during the deliberations on December 11, 1996.¹³⁷

The Constitution RP regulates the anthem issue in Art. 28(3), including the issues of the coat of arms, colors, and the capital. The content of Art. 28(3) is consistent with previous constitutional regulations, and leaving detailed regulations to the law (Art. 28(5) of the Constitution) does not constitute a deviation from the previous

132 This was the case with the draft submitted by the Democratic Left Alliance (Art. 19 in the “Basic Articles” chapter), the draft submitted by the Constitutional Committee of the Senate of the first term (Art. 9 in the “General Principles” chapter), or the draft submitted by members of the Democratic Union Parliamentary Club (Art. 11 in the “Republic” chapter); Chruściak, 1997, pp. 94, 141, 266.

133 This chapter was placed in the draft as the third in order—after the chapters “The Republic” and “The Constitutional System of the Republic”; Chruściak, 1997, p. 72.

134 Chruściak, 1997, p. 327.

135 Bulletin of the Constitution Committee of the National Assembly 1995, no. XIV, p. 17.

136 Bulletin of the Constitution Committee of the National Assembly 1995, no. XI, p. 210.

137 Bulletin of the Constitution Committee of the National Assembly 1997, no. XLII, p. 3

regulations. Under Appendix No. 4 to the act of 31 January 1980 on the emblem, colors and anthem of the Republic of Poland and national seals, as amended, the anthem of the Republic of Poland is *Dąbrowski's Mazurka*.

The national anthem enjoys special legal protection. This protection is not only constitutional but also statutory.¹³⁸ Specification of the legal protection of the national anthem in Art. 28(4) of the Constitution RP has found expression in the act of January 31, 1980, on the emblem, colors and anthem of the Republic of Poland and on state seals, which has been amended many times. Complex issues relating to the anthem are contained in Art. 12 *et seq.* of the act. Under Art. 12 of the act, “*Dąbrowski's Mazurka*” is the national anthem of the Republic of Poland, and its literary and musical texts constitute an appendix to the act. Under Art. 12(4) of the act, the Minister responsible for culture approves the musical text of the national anthem in arrangements for choral, instrumental, and instrumental–vocal ensembles. In the light of Art. 14(1) of the act, persons present during the public performance or playing the anthem shall stand in a respectful posture; moreover, men in civilian clothes shall remove their headgear, while persons in uniforms with headgear, not being in an organized group, shall salute. During the performance or playing of the anthem, flag posts shall salute by dipping the flag.” Furthermore, proof of the legislator’s special care for the anthem is expressed in Art. 16 of the act, according to which: “The symbols of the Republic of Poland may not be placed on objects intended for commercial circulation.” Under Art. 13, the national anthem is played publicly in the arrangements provided in the act (Art. 12), particularly during anniversaries and holidays of a state nature. Art. 14 of the act requires the recipients of the anthem to maintain solemnity and calm during its playing. This protection is also confirmed by Art. 15 of the act, which stipulates that the anthem of the Republic of Poland shall be performed or played in a manner ensuring due reverence and respect.

Evidence of the unique role played by the national anthem in the life of contemporary Polish society was the adoption by the Sejm of the resolution of March 1, 2007, to commemorate the 80th anniversary of the proclamation of *Dąbrowski's Mazurka* as the national anthem. This resolution emphasizes the historical role played by the Mazurka in the life of the nation.¹³⁹ The broad legal protection afforded to the

138 Skrzydło, 2013. As the author of the commentary emphasizes: “The symbols of the Republic listed in Art. 28 are legally protected both in the sphere of criminal law, as well as in the administrative and civil law spheres.” It is also worth adding that the special meaning of Art. 28 has been confirmed in Art. 1 of the Act on the emblem, colors and anthem of the Republic of Poland and on state seals.” Kosińska, 2014, p. 112; Rychlik, 2016, pp. 125–139; Szeleszczuk, 2020, pp. 147–164.

139 Resolution of the Sejm of the Republic of Poland of 1 March 2007 on the celebration of the 80th anniversary of the proclamation of the *Dąbrowski's Mazurka* as the Polish national anthem (The Polish Monitor no. 16, item 178). The historical role of the *Dąbrowski's Mazurka* in the life of the nation is particularly emphasized by the passage: “For eighty years the *Dąbrowski's Mazurka*—a song close to the heart of every Pole—has been the official anthem of the Polish state. For more than two hundred years it has accompanied our struggle for freedom and independence, encouraged us to have faith and perseverance in our nation despite the lack of its own state.”

Dąbrowski's Mazurka in the form of a specific law finds its justification precisely in this song's significant role in building national identity.

These findings confirm that the *Dąbrowski Mazurka* enjoys special legal protection. The regulations specify how the anthem is to be sung and how the listeners are to behave. It is also indicated that men are obliged to remove their headgear. It is forbidden to modify the contents of the anthem of the Republic of Poland.

Education has a major role in fostering respect for the anthem. In the Polish legal system, in this aspect, the school fulfills its task by devoting a lot of space to the anthem. The anthem is performed during school and academic ceremonies and is an inseparable element in education. This causes the attitude of respect for the anthem to be shaped in students, which translates into respecting the law connected with the protection of this national symbol.

7. Legal protection of other signs and symbols significant for the Polish nation—the most important examples

Although formally, the national symbols are the national colors, the national emblem, and the anthem, in Poland, there are also other symbols of national identity that have impacted the formation of Polish society and Polish statehood. Some of them are under legal protection.

The identity of a nation is determined, among other things, by its language. The Constitution RP states in Art. 27 that the Polish language is the official language of the Republic of Poland. This provision does not violate the rights of national minorities under ratified international agreements. Art. 35 of the Constitution develops the issue of protecting the rights of national minorities and recognizes that the Republic of Poland provides Polish citizens belonging to national and ethnic minorities with the freedom to maintain and develop their own language, preserve customs and traditions and develop their own culture. National and ethnic minorities have the right to establish their own educational, cultural and institutions for the protection of religious identity and to participate in the settlement of matters concerning their cultural identity.¹⁴⁰

The Polish language's legal protection principles are regulated by the Act on the Polish Language of October 7, 1999.¹⁴¹ The preamble to this act follows that this act was enacted because the Polish language constitutes a fundamental element of national identity and is an asset of national culture. The legislator also considered the experience of history when the fight of the partitioners and occupants against

140 See more: on national minorities rights in the act of January 6 2005 on national and ethnic minorities and on the regional language (Journal of Laws of 2017 item 823).

141 Journal of Laws of 2021 item 672.

the Polish language was a tool of deprivation. The aim of issuing the act became the necessity of protecting national identity in the process of globalization. It is an expression of the conviction that Polish culture is a contribution to the construction of a common, culturally diverse Europe, and the preservation of this culture and its development is possible only through the protection of the Polish language.

This act regulates the principles of the protection of the Polish language, the use of the Polish language in the performance of public tasks and the use of the Polish language in trade and in the performance of the provisions of the labor law in the territory of the Republic of Poland.

The opinion-giving and advisory institution in matters related to the use of the Polish language is the Council for the Polish Language (Art. 12(1) of the act).

According to Art. 15 of the act, anyone who in the territory of the Republic of Poland, contrary to the provisions of Art. 7a,¹⁴² in trade with consumers uses only foreign-language naming of goods or services or prepares offers, warnings and consumer information required under other regulations, operating instructions, information about the properties of goods or services, warranty conditions, invoices, bills or receipts exclusively in a foreign language, shall be subject to a fine. The same punishment shall be imposed on anyone who, on the territory of the Republic of Poland, contrary to the provisions of Arts. 7 and 8 of the act, in the course of trade or in the performance of labor law regulations, draws up a contract or another document exclusively in a foreign language.

An important element shaping national identity, in which national symbols are used, is national days. The concept of national days in Poland has not been legally regulated in any normative act, nor has the manner of celebrating them been specified, which the Supreme Audit Office recognized in 2005 as a “legislative mistake.”¹⁴³ Only the Act on the Emblem, Colors and Anthem of the Republic of Poland and on state Seals imposes, in Art. 7, the obligation to hoist the state flag on the buildings of government administration bodies and other state bodies and state organizational units, as well as local government bodies and local government organizational units during national/state days. The current list of state and national holidays includes: February 19—Polish Science Day (established in 2020 as a public holiday);¹⁴⁴ March 1—National Day of Remembrance of “Cursed Soldiers” (established in 2011

142 The provision refers to the obligation to use the Polish language in trade with consumers and in the performance of labor law provisions, the Polish language shall be used if: 1) the consumer or the person performing the work has his/her residence in the territory of the Republic of Poland at the time of the conclusion of the contract and 2) the contract is to be performed or carried out in the territory of the Republic of Poland. In particular, the naming of goods and services, offers, warranty terms and conditions, invoices, bills, and receipts, as well as warnings and information for consumers required under other regulations, operating instructions, and information about the properties of goods and services, must be made in Polish.

143 Information on the results of control of the use of state symbols by public administration bodies—Department of Control Strategy of the Supreme Audit Office, reg. no. 76/2005/D/04/505/WSK, Warsaw, April 2005.

144 Journal of Laws of 2020, item 181.

as a public holiday),¹⁴⁵ March 24—National Day of Remembrance of Poles saving Jews under German occupation (established in 2018 as a public holiday),¹⁴⁶ April 14—Polish Baptism Day (established in 2019 as a public holiday),¹⁴⁷ May 1—public holiday, informally known as Labour Day (established in 1950),¹⁴⁸ May 3—May 3rd National Day (established in 1919,¹⁴⁹ again in 1990),¹⁵⁰ May 8—National Victory Day (established on April 24, 2015 “to commemorate the victory over Nazi Germany”);¹⁵¹ July 12—Day of the Struggle and Martyrdom of the Polish Village (established on September 29, 2017, as a public holiday in “tribute to the inhabitants of Polish villages for their patriotic attitude during World War II”);¹⁵² August 1—National Day of Remembrance of the Warsaw Uprising (established in 2009 as a public holiday);¹⁵³ August 31—Day of Solidarity and Freedom (established in 2005 as a public holiday);¹⁵⁴ October 19—National Day of Remembrance of the Steadfast Clergy (established in 2018 as a public holiday);¹⁵⁵ November 11—National Independence Day (established in 1937,¹⁵⁶ again in 1989),¹⁵⁷ December 27—National Day of the Victorious Greater Poland Uprising (established in 2021 as a public holiday).¹⁵⁸

The organs of public authority, by means of normative acts (laws and resolutions), establish public or national days (in the past these terms were used interchangeably). There are also laws or parliamentary resolutions establishing holidays that are not state or national days (despite the occurrence of the word “national” in the name of some days).

National holidays are an opportunity to manifest national values. Unfortunately, it seems that legal awareness of the use of national symbols is still quite low, with the result that legal violations of these symbols can occur.

Noteworthy is also the symbol of Fighting Poland, which appeared on Warsaw walls in 1942 during World War II. This symbol combined Poland—the letter “P” with fighting—the letter “W.” The letters joined together in the shape of an anchor symbolized hope. The sign resulted from clandestine activities coordinated by the Bureau of Information and Propaganda of the Main Headquarters of the Union for Armed

145 Journal of Laws of 2011 no. 32, item. 160.

146 Journal of Laws of 2018 item 589.

147 Journal of Laws of 2019 item 656.

148 Journal of Laws of 1950 no. 19, item 157.

149 Act of 29 April 1919 on the National Holiday of the Third of May, Dz.Pr.P.P. 1919 no. 38 item 281.

150 Journal of Laws of 1990 no. 28, item 160.

151 Journal of Laws of 2015, item 622.

152 Journal of Laws of 2017, item 1953.

153 Journal of Laws of 2009 no. 206, item 1588.

154 Journal of Laws of 2005 no. 155, item 1295.

155 Journal of Laws of 2018, item 2156.

156 Journal of Laws of 1937 no. 33, item 255.

157 Journal of Laws of 1989 no. 6, item 34.

158 Journal of Laws of 2021, item 2156.

Struggle—Home Army, which focused on implementing armed actions, diversion and distribution of leaflets and newspapers by *Szare Szeregi* (Grey Regiments).¹⁵⁹

In 2014, the Law on the Protection of the Fighting Poland Emblem came into force.¹⁶⁰ Art. 1 indicates that the symbol is an asset of the general members of the nation and is an attribute of the Poles' fight against the German aggressor during the Second World War. Art. 2 mentions the obligation of Polish citizens to surround the given symbol with reverence and respect. According to Art. 3 of the act, a person who publicly insults the symbol in question shall be punished with a fine per the Code of Conduct in Petty Offenses Cases.

An important national symbol, albeit not formalized, but important from the point of view of identity is the image of Our Lady of Częstochowa. It is protected as a religious symbol, but also for non-believers it is an element of Polish tradition and culture.¹⁶¹

The symbols that allow individuals to identify with a given community or nation are not only formalized symbols, but also those that have developed traditionally in history and are linked to values that are important for a given nation. It seems that the law does not fully appreciate the importance of these symbols. At the same time, it can be considered that they can be protected under other laws, including those concerning the protection of cultural heritage, the protection of language, or the protection of religious values.

8. Conclusions

The issue of national and state symbols is important in the history of Poland and the Polish nation. By referring to the beginnings of statehood and linking them to important events in the life of the state and the nation, these symbols are a lasting element of belonging to a given national community. It is part of the broader issue of a nation's right to self-determination¹⁶² and building a national identity. National or state symbols become a visible sign of the separateness that unites a given community. They make it possible to identify with it.

In Poland we speak of national symbols and state symbols, although these terms are often used interchangeably, as their designations have the same content; correctly, state symbols should be understood as those which are regulated by law and constitute the point of identification of the state among other states.

159 Gładkowski, 2017.

160 Act of 10 June 2014 on the protection of the Fighting Poland Sign (Journal of Laws, item 1062).

161 The protection of religious symbols is also linked to the protection of religious feelings, protected in Polish law by criminal law (see more: Sobczyk, 2021, pp. 145–159 and the literature and case law cited therein).

162 For more on the issue of the right to self-determination see Muszyński, 2022, 571–580.

State and national symbols in Poland are the flag, emblem, and anthem; additionally, language is an important element in building cultural and national identity. It connects community.

After Poland gained independence in 1918, shaping legal solutions concerning protection of national symbols was important in public discourse. Acts of statutory and sub-statutory rank were created in this respect. This matter was not the subject of constitutional regulations. Regardless of that, the inter-war solutions were the basis for shaping the protection of national and state symbols in Poland; therefore, the present legal solutions cannot be analyzed in isolation from those of the past; the persistence of the given arrangements is evidenced by the fact that despite the change of regime after the communist state period, no new act concerning the protection of these symbols was passed. It was not until 2021 that a new bill was presented, which is supposed to adjust the protection of symbols to the requirements of the present day (especially in the digital perspective), but it is also an attempt to verify the current symbols in the context of the values they represent (e.g., there is a discussion on the removal of certain stanzas from the anthem).

Currently, the protection of national and state symbols in Poland is shaped at the constitutional, statutory, and sub-statutory level. This testifies to the great importance that the political system and the legislator attach to this subject; however, this protection is not equal for all symbols. An additional problem is that there is no coherent conceptual grid regarding the issue. Individual acts use different formulations, which hinders uniform application of the law. And so, we have in Polish law state symbols (Criminal Code), symbols of the Republic of Poland (act on emblem, colors, and anthem of the Republic of Poland and on state seals). The Constitution lists the symbols in question generically but does not call them collectively either symbols or state signs.

Constitutionalization of the protection of state and national symbols shows the value they have in building national and cultural identity. Providing constitutional protection to national and state symbols is an expression of the realization of the state's objectives in Articles 5 and 6 of the Constitution consisting in the injunction to guard the national and cultural heritage. It is also the starting point for the realization of cultural rights by citizens.

A characteristic feature of Polish legal solutions is the fact that the protection of national and state symbols is regulated by a special act devoted to this issue; a separate act is also in place regarding the Polish language. Apart from this, some national symbols are also protected by criminal law based on the Criminal Code and the Code of Offenses (e.g., the emblem, the flag). In Polish law there are also regulations protecting given symbols in the civil context (especially when it comes to using them in business transactions), as well as in the administrative context.

Regulations concerning protection of national symbols are quite general and vague. For this reason, in practice, they leave a great deal of room for interpretation, as evidenced by the different ways in which cases involving acts against national and state symbols have been resolved.

Penalization of infringements of national symbols in Art. 137 of the Criminal Code does not include the anthem. Violations in this respect may be analyzed from the perspective of the Misdemeanors Code.

Penalization of violations of certain national symbols causes a discussion about proportionality and adequacy of state interference in the freedom of speech (and, more broadly, in the freedom of expression).

Addressing the issue of protecting national symbols should not only consider legal aspects but should go deeper. Shaping specific attitudes toward the state and the law is closely related to education, including civic education. Respect for the nation and the state, and therefore also for national symbols, should be shaped from the very beginning. If the values in question are presented as being important for the individual and society, and it is shown how to behave, then there is less risk of these values being violated. It is important to explain the use of national symbols. It is not uncommon for violations of these symbols to result from a lack of knowledge of the limits of the use of these symbols and the consequences of crossing these limits.

Doubts related to the fact that the provisions on the protection of state symbols date back to different periods of time make it reasonable to enact a new act in this respect and to verify the existing provisions contained in criminal statutes, especially from the perspective of the adequacy of regulations; in particular, it is necessary to organize the conceptual grid and to clarify what state and national symbols/signs are; it is important to formulate provisions that will strengthen the building of national and cultural identity in the Polish nation, with respect for the values on which the Constitution of the Republic of Poland is based.

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