

Criminal law protection of state symbols in the countries of Central Europe: Common features and differences

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ABSTRACT

The paper deals with criminal law protection of state and national symbols in five Central European countries. It aims at reviewing the regulation of these symbols concerning the penal law level, and compare the characteristics of the legal systems analyzed. The paper concludes that there is no significant difference in the protection of state or national symbols at the level of legal regulation between the geographically eastern and western countries of Europe. The state and national symbols (flags, coats of arms or anthems) are symbols of state identity and of the unity of citizens, whose ideological role in forming identity justifies even their protection under criminal law.

KEYWORDS

state symbols, protection of state flag, coat of arms and anthem, desecration of state or national symbols, criminal law, comparative analysis in Central Europe

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1. INTRODUCTION

The 21st century has been referred to as the century of globalisation, with the role of international relations and supranational decision-making increasing and the importance of the nation state decreasing. The economic, political and social problems caused by the Covid epidemic and the war situation have reassessed the role of nation states, which have shown that they are not only capable of pursuing independent policies, but also that their role as sovereign actors of international cooperation is inescapable. Whether or not nation-state functioning and national identity is, or has been, in fact disappearing in recent decades can be relatively well judged from the current (recent) state of national self-reflection on so-called identity symbols. The social and political dimensions of this are very difficult to measure empirically, but the level of legal regulation can be examined without problems and general trends can be identified on this basis.

In 2022, an international research group was formed to investigate this level of legal regulation within the framework of the Central European Academy Professors' Research Network, maintained by the University of Miskolc (Hungary), with the aim of conducting a comparative legal analysis of state, national and other community symbols in seven Central and Eastern European countries (Croatia, Czechia, Hungary, Poland, Serbia, Slovakia, Slovenia) participating in the research, and, more broadly, to assess the role of these symbols in Europe. The latter provides an insight into the constitutional regulation of state and national symbols and the need for the protection of symbols expressing national identity under the law, the most notable aspect of which is the existence (or lack thereof) of a level of protection under criminal law.

2. CRIMINAL LAW PROTECTION OF STATE AND NATIONAL SYMBOLS ACROSS EUROPE

As far as the constitutional situation is concerned, the states which can be regarded as part of Europe (either geographically, politically or culturally), and which are recognised as such by a large part of the European political community (including all those which have any territory in Europe and are members of the Council of Europe), largely regulate their state and/or national symbols in their own constitutions. With the exception of the United Kingdom (which has neither a written constitution nor a separate criminal code and is therefore not suitable for a legal comparison with all other European countries for the present purposes), an analysis of 53 countries shows that the protection of state and national symbols is a fundamental European principle and part of a common European tradition.

The range of these symbols is also quite similar: all European countries have flags or (less often) 'national colours', as well as anthems and coats of arms. Turkey is an exception, as it has neither an official coat of arms nor an official emblem, but in international relations the 'star and crescent' motif of the Turkish flag is de facto used as a symbol.¹ In addition,

¹Turkey is also interesting in that it is the only European state whose constitution declares the state symbols, together with Ankara's status as capital and republican form of government, to be immutable, in a so-called 'national emblem'.



the 'state seal' is unique to Central Europe and is constitutionally enshrined in seven countries: Albania, Austria, Bulgaria, the Czech Republic, Kosovo, Romania and Slovakia. There are special constitutionally recognized symbols in the Czech Republic (the flag of the head of state); in Romania (the 'national day', i.e., 1 December); in Malta (a historical emblem, the cross of St George, which is also on the flag); and in France (the motto of 'Liberty, Equality, Fraternity.', and the 'principle of the Republic', i.e., 'government of the people, by the people, for the people'). In addition, three countries (Czech Republic, Serbia and Ukraine) have two official coats of arms ('large' and 'small', or, with a more adequate heraldic term, 'greater' and 'lesser').

Most of these symbols are 'state' symbols by their nature; this is true of coats of arms in all European countries (except Belarus and Estonia), and of anthems and flags in most of them, although a significant number of the latter are not 'state' symbols but 'national' ones (recognised and protected by the state). As regards the countries in which the anthem and the flag (or the 'colours' regulated instead) are more state symbols and in which they are more national ones, no correlation can be drawn between the various regions of Europe, with the exception that only in the central and eastern parts of Europe are there countries which distinguish between 'state' and 'national' symbols at constitutional level.²

However, what is most indicative of the importance of a country's own emblematic system as an identity element is the existence or absence of criminal law protection. In this respect, one might intuitively assume that the Eastern European states are much more likely to protect their national symbols, even by criminal law means. Based on data from previous research on the criminalisation of defamation and libel and the restriction of freedom of expression in order to protect human dignity and honour (which shows that Eastern European states have a much higher rate of non-criminalisation of defamation and libel, than Western European states), we had to assume that the central and eastern half of Europe, the former Soviet sphere of interest, is less restrictive of freedom of expression and thus perhaps more permissive of offences against community symbols. However, in fact, there are no significant differences in the protection of state and national symbols between different parts of Europe. On the contrary, three quarters of the 53 countries surveyed (40 countries) have criminal codes that punish violations of state symbols. We cannot distinguish between those countries that penalize the violation of state symbols and those that do not penalize it on the basis of their relevant characteristics. Among the 13 States which do not sanction any acts against the reputation of these symbols (with the United Kingdom as the 14th, not having a criminal code), there are small states (Andorra, Malta, Monaco) and larger ones; northern (Finland, Sweden), southern (Portugal, Cyprus), and western countries (Netherlands, Belgium, Ireland), as well as those from the former Eastern Bloc (Romania, Czech Republic) and former Yugoslavia (Bosnia and Herzegovina).

There are very different reasons for the criminal policy of these countries, which has a common outcome. Some of them are classical 'liberal', pro-free speech countries (e.g., Sweden and Finland; but the Netherlands is also included). Some also show the influence of another country that is geographically close and/or politically and culturally dominant

²Serbia and Slovenia distinguish between the official national and state flag, Ukraine between the national and state anthem, and Kosovo between national and state symbols in general.



(e.g., the English common law's pro-freedom of expression approach in Ireland or in its former colony Malta). And there are also countries where, for social and/or historical reasons, the expression of a unitary statehood is not very strong and internal tensions between nationalities are high, and therefore the criminal law protection of state symbols does not seem to be justified (this is the case in Belgium, which does not have a very strong 'Belgian' identity, or Cyprus, and the criminal law protection of the – octroyed – state symbols of Bosnia and Herzegovina). However, none of these effects is exclusive; this is the reason why other Scandinavian or Nordic countries (e.g., Norway and, to some extent, Denmark and Iceland) punish the desecration or misuse of state symbols; nor can one draw conclusions merely from the form of government or the size of the country (Monaco and Andorra do not have criminal legislation, San Marino and Liechtenstein do) or from cultural similarities (Portugal does not punish the violation of symbols, but Spain does), beyond the fact that the countries' membership of one or other group cannot be attributed to a single common cause with a similar motive.

What is interesting is that some of the states (21 countries) protect not only their own symbols, but also those of other states and sometimes (11 countries) of international organisations. In these countries, respect for the symbols of the expression of statehood or of the self-identification of a given (even international) community is so strong that it has been considered justified – sometimes on the basis of reciprocity, sometimes even in the absence thereof – to threaten with criminal sanctions the desecration of the state symbols of other countries (or even of the symbols of international organisations). However, nowhere does this protection extend to mere national symbols of other nations, except where these are state symbols as well. In addition, the symbols of provinces, member states or autonomous regions are protected by the criminal codes of five countries (state-wide or federal), including Germany, Spain, Austria, Switzerland and (in the case of Karakalpakstan, which has autonomous territorial status) Uzbekistan. Lastly, only one state (Luxembourg) allows the misuse of the symbols of other state bodies and even of local authorities to be punished.

There is no doubt about the constitutionality of the criminal defence. In the few countries where it has been decided by the Constitutional Court, the criminalisation of violations of state/national symbols has been recognised as a legitimate limit to freedom of expression everywhere in Europe. While in the United States, for example, since the cases of *Texas v. Johnson*³ in 1989 and *Eichman*⁴ in 1990, desecration of state symbols, including the burning of the American flag, has been part of public freedom of expression, which cannot be restricted by law, Europe has a more conservative approach. The German Federal Constitutional Court (*Bundesverfassungsgericht*), for example, in two rulings (*German National Flag Case*⁵ and *German National Anthem Case*⁶) in 1990, handed down on the same day as the US decisions, stated that the desecration of the national flag or the national anthem is constitutionally punishable, and only disproportionate restrictions on freedom of expression (e.g. in the interests of artistic freedom of

³491 U.S. 397 (1989).

⁴496 U.S. 310 (1990).

⁵104, BverfGE 81 (1990).

⁶105, BverfGE 81 (1990).



expression, not resulting in desecration as an end in itself) are not permitted.⁷ In a relatively recent decision in 2020, the Spanish Constitutional Court ruled that threatening to punish a mockery of the Spanish flag is also not unconstitutional.⁸ The Hungarian Constitutional Court, as will be elaborated later in this paper, has taken a similar position since the CC Decision 13/2000 (12 May), in which – referring to the European constitutional practice already existing and still in force – the Constitutional Court found the offence of ‘desecration of a national symbol’ not unconstitutional, since national symbols are ‘constitutional symbols of the external and internal integrity of the country, and therefore there are constitutional arguments in favour of their protection under criminal law’.

3. THE CRIMINAL LAW PROTECTION IN SLOVENIA

In Slovenia, the protection of state symbols by criminal law seems satisfactory, which does not mean that it has no shortcomings. The Criminal Code⁹ (hereinafter the CC-1) contains several provisions which relate either explicitly or indirectly to the state symbols. These can be found in Chapter Eighteen on *Criminal Offences Against Honour and Reputation* and Chapter Twenty-Nine on *Criminal Offences Against Public Order and Peace*.

The provisions of the CC-1 on *Insult to the Republic of Slovenia* stipulate, *inter alia*, that whoever publicly desecrates the flag, coat-of-arms or national anthem of the Republic of Slovenia shall be punished by a fine or sentenced to imprisonment for not more than one year.¹⁰ According to the commentary of the CC-1, the state symbols are subject to penal legal protection only to the extent to which they basically define and symbolize the Republic of Slovenia.¹¹ While the CC-1 does not explicitly describe physical or verbal acts which could represent desecration, the offence can be committed with a direct or with an eventual intent by a publicly expressed insulting statement or insulting physical act (e.g. destruction, damaging or painting of a flag or removal of a hoisted flag). Such acts should be directed towards the object

⁷According to the *Bundesverfassungsgericht*, freedom of speech cannot be exercised without limits, and these limits are set by the federal constitution (specifically by Art. 5 para. (2) and (3) thereof), even though it found that the sanctions imposed by the criminal courts in the specific cases for the conducts at issue (the act of a manager of a publisher, who displayed, on a cover of a book, a collage of a human torso urinating on a flag held aloft during a military oath ceremony, and the act of an editor who parodied the German anthem for sociopolitical reasons in a Nuremberg city magazine) were disproportionate for the protection of the freedom of expression and the right to artistic expression included in it as an independent partial right, and annulled those specific criminal court judgements. Cf. e.g., *Krüdewagen* (2002) 689–98; *Bleise* (1992) 471–77; *Saunders* (2017) 177–80.

⁸Case 190/2020.

⁹The Criminal Code (Kazenski zakonik [CC-1]), Official Gazette of the Republic of Slovenia, nos. 50/12 – officially consolidated text, 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21.

¹⁰CC-1, art. 163, para. 2. Pursuant to the paragraph 1 of the same article, the same punishment shall be imposed on anyone who publicly commits any of the offences under arts. 158 to 162 (i.e. the Assault, Slander, Defamation, Calumny and Malicious False Accusation of Crime) against the Republic of Slovenia or against the President of the Republic with respect to the exercising of his duties. Only physically destroying state symbols (coat-of-arms or flag) as tangible property shall be considered a minor offence against public order.

¹¹This means that, on the one hand, the flag of the Republic of Slovenia which is printed on the package of a commercial product (to convey its geographical origin), is not protected by this provision, and that only physically destroying state symbols as tangible property shall be considered a minor offence against public order.



which is being implied by the state symbols (i.e., the state itself or the state authority) in order to constitute desecration. Cooperation of two or more offenders and other forms of participating in and abetting the crime are subject to the rules from the general part of the CC-1. Under art. 90 of the CC-1, the statute of limitation for prosecution is six years from the commission of the criminal offense.¹²

For any of the acts which represent a desecration of state symbols, committed verbally by publication in newspapers and magazines, radio and television programmes, electronic publications, on teletext or in other forms of daily or periodical publications, or on websites, the responsible editor or the person acting in his place shall also be punished. According to the CC-1, under explicitly prescribed conditions, the editor or the person acting in his place shall be punished within the limits of the penalty prescribed for the original offense. Equal conditions apply to punishing a publisher or a printer if the public dissemination of criminal offences was committed by a non-periodical printed publication (i.e., by CD, film, DVD or by other visual media, sound media and similar media, intended for wider consumption by a larger number of people).¹³

In Slovenia, the criminal law protection is also guaranteed to state symbols of foreign countries and insignia of international organizations, as well as their leaders and diplomatic representatives. Criminalising *Insult to Foreign Country or International Organisation*, the CC-1 stipulates, *inter alia*, that whoever publicly desecrates the flag, coat-of-arms or anthem of a foreign country shall be punished by a fine or sentenced to imprisonment for not more than one year. The same punishment shall be imposed on anyone who has committed a criminal offence against the insignia of an international organisation recognised by the Republic of Slovenia.¹⁴

Relevant criminal law related to national (as well as ethnic or religious) symbols can be also found in the provisions on *Public Incitement to Hatred, Violence or Intolerance*. The CC-1 stipulates that if acts of publicly spreading ideas about the superiority of one race over another or giving help in racist activities or denying, diminishing, approving, justifying, ridiculing or defending genocide, the Holocaust, crimes against humanity, war crimes, aggression or other crimes against humanity are committed by desecrating national, ethnic or religious symbols, the perpetrator shall be punished by imprisonment for up to three years. Taking into account the fact that the coat of arms, flag and anthem of the Republic of Slovenia are not only state but also national symbols, there can be no doubt that this provision also applies to them. This criminal offence is the so-called *delictum proprium* compared to the basic version of the crime.¹⁵

¹²Korošec et al. (2018) 890–93.

¹³The editor or the person acting in his place shall be punished if the author remained unknown until the end of the main hearing before the court of first instance. They shall be also punished if the information was published without the author's consent, and if, at the time the information was published, there were factual or legal obstacles to prosecuting the author that are still ongoing (see CC-1, art. 166, para. 1). In contrast, the responsible editor-in-chief or his/her deputy cannot be punished if an emission was broadcast live and he or she was unable to stop or prevent a punishable dissemination. The responsible editor-in-chief or his/her deputy also cannot be punished if the offence was committed online on an internet site which allows the users to publish content in real time without preliminary approval and control (see CC-1, art. 166, paras. 2, 3).

¹⁴CC-1, art. 164.

¹⁵CC-1, art. 297.



The official statistics show that the Slovenian police investigated the suspicion of committing the crime of desecrating the state symbols several times, but subsequently no final convictions followed.¹⁶ One such case happened when a citizen burned the flag of the Republic of Slovenia on the Square of the Republic near the parliament. He explained to the public that gathered there and the police that arrested him that with his act he intended to raise awareness about corruption in the Slovenian government. A similar event happened in Ljubljana when a young man attached to the exterior fence of the US Embassy the American flag painted with swastika. He explained that he wanted to express his opposition to the politics of so-called ‘Bushism’ as American foreign policy reminded him of the period before WW2 and of the military aggressiveness of the Nazi regime. The question that arises here is why there was no conviction in either of these two cases. Perhaps, when weighing constitutional values, the courts gave priority to freedom of expression (as a touchstone of a democracy and the legitimacy of the political and legal regime) over the physical integrity of state symbols. Although certain acts of an expressive nature cannot enjoy the constitutional protection of freedom of expression, in a democratic state the protection given by the legal system to state symbols cannot isolate the state from criticism of its actions and policies.¹⁷

4. THE CRIMINAL LAW PROTECTION OF STATE SYMBOLS IN POLAND

Art. 28 sec. 5 of the Republic of Poland’s Constitution¹⁸ stipulates that the emblem, colours and anthem details are determined by law. The basic regulation is the Act of 31 January 1980 on the emblem, colours and anthem of the Republic of Poland and on the national seals.¹⁹ Art. 1 sec. 3 of this law indicates that the symbols of the Republic of Poland remain under the law’s special protection, provided for in separate provisions. While the Act on the Emblem, Colours and Anthem of the Republic of Poland and National Seals defines in detail the symbols in question (emblem, state colours and flag and anthem) and the manner of their use, protective guarantees, especially those of a criminal or criminal-administrative nature, are regulated by separate provisions.

¹⁶Korošec et al. (2018) 890–93. The only decision of the criminal courts we were able to trace in the publicly available case law was Judgement no. I Ips 129/97 issued by the Supreme Court of the Republic of Slovenia on 23 March 2000. The judgement concerns events that happened more than seventy years ago. The defendant was charged for mocking the flag of the People’s Republic of Slovenia by carrying it to a road, dirtying it on the ground and throwing it into a brook nearby. Due to his actions, the court of first instance sentenced him for committing a criminal offence against public order. Agreeing with the request for the protection of legality filed by the defendant against the final judgement issued by the appellate court in 1950, the Supreme Court overturned the challenged decision and acquitted the defendant. The Supreme Court agreed with the defendant who claimed that his acts did not constitute a criminal offence at the time when they were carried out, and that they could only be qualified as a minor offence.

¹⁷See Teršek (2003); Teršek (2018).

¹⁸Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 as amended).

¹⁹Journal Laws of 2024, item 155 as amended.



Criminal liability for violating the principle of respect for state symbols is regulated by art. 137 of the Criminal Code²⁰ and art. 49 § 2 of the Petty Offenses Code.²¹ It follows from the latter provision that anyone who violates the provisions on the emblem, colours and anthem of the Republic of Poland is liable to arrest or a fine. This protection is also evident in other branches of the law.²²

Pursuant to the art. 137 § 1 of the Criminal Code, ‘Whoever publicly insults, destroys, damages or removes an emblem, flag, ensign, banner, flagpole, flag or other state sign shall be subject to a fine, the penalty of restriction of liberty or imprisonment for up to one year.’ The legislator also penalizes violations of national and state symbols of other countries. In the light of 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, flag, ensign, banner, flag or other sign of a foreign state, displayed publicly by a representation of that state or by order of a Polish authority.

The offence defined in art. 137 of the Criminal Code is universal and intentional. In order for criminal liability to be imputed for insulting a state symbol, the act must have been committed in public. With regard to conduct in the form of destruction, damage or disposal, the intention to perform this act may be in the form of direct or consequential intention. However, in the case of an insult, the intentionality of the act is identified only with the direct intention.²³

The subjects of protection are state symbols, which in the Code are recognized as state marks, as indicated by the linguistic interpretation. Indirectly, the good protected by the provision is also the citizens’ sense of dignity. It is understood that the insult referred to in art. 137 of the Criminal Code refers to the objects included within the framework of this provision; in fact, this action deals with the feelings of people who show respect towards 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 therefore be any insulting, disgraceful, ridiculing or disgusting action. Therefore, it will be such an action of the perpetrator, which – unambiguously – will be a negative attitude by the perpetrator, showing his contempt or depreciation of this symbol. At the same time, it will be made in an offensive form.²⁴

In addition to taking insulting action, it can be found in art. 137 of the Criminal Code that activities punished include destruction, damage and removal. Also, in relation to these forms of behaviour, it is necessary to punish these activities publicly.

The legislator did not specify in art. 137 of the Criminal Code the definition of the term ‘destruction’. Art. 288 of the Criminal Code concerning destruction of movable property is useful in this respect. Destruction, within the meaning of the provisions of the Criminal Code, is an act of making physical changes to a given thing. The destruction of a thing is understood as its complete annihilation or far-reaching damage resulting in the fact that it no longer belongs to the type to which it belonged at that time, i.e., before the prohibited act was committed. Damage,

²⁰Act of 6 June 1997 – Criminal Code (Journal of Laws of 2024, item 17, as amended).

²¹Act of 20 May 1971 – Code of Petty Offenses (Journal of Laws of 2023, item 2119).

²²See e.i., Pokojowa (2018).

²³See: Hoc (2023); see also decision of the Court of Appeal in Katowice of 9 October 2008., ref. II AKz 777/08.

²⁴See: Hoc (2023) sec. 4 i 6.



on the other hand, is a violation of the shape of a thing but without its destruction. Removal, on the other hand, consists in removing the state symbol from the place of its establishment.

Currently, the protection of the symbols of the Republic of Poland in the Criminal Code is limited to the prohibition of insulting, destroying, damaging or removing them. It is, therefore, similar to that known from earlier criminal regulations.²⁵ However, it should be emphasized that the legislator, in the provision's wording, also introduced elements other than those listed in the Constitution as part of criminal law protection. The Constitution of the Republic of Poland mentions the emblem, colours and anthem. The term 'state mark' used in art. 137 § 1 of the Criminal Code covers the emblem, flag, ensign, banner, flag and 'other state signs'. Not all of these signs have legal definitions because the legislator did not specify, for example, the pattern of flags. This means that this concept functions only on the level of colloquial language. The Criminal Code does not use the concept of symbols. It uses the term 'other State marks'. This reinforces doubts about the object of protection. Through art. 137 § 1 of the Criminal Code, marks of a material nature are protected. Therefore, it does not cover colours and the national anthem.²⁶ The sign is undoubtedly the emblem, i.e., the symbol and the flag, as a material substrate of colours. The colours themselves are, therefore, outside the protection of art. 137 § 1 of the Criminal Code.

In the doctrine, one can find the position that insulting the national anthem will be subject to criminal law assessment through the prism of art. 133 of the Criminal Code.²⁷ However, this view is debatable, as is the recognition of the anthem as an 'other state sign' within the meaning of art. 137 § 1 of the Criminal Code.

Art. 49 § 2 of the Offences Code provides for a custodial sentence or a fine for violating the provisions on the emblem, colours and anthem of the Republic of Poland. This act can be committed both intentionally and unintentionally. It seems that it is on the level of this provision that one can now look for criminal law protection of the national anthem.

It should be emphasized that the protection provided by the Act on the Emblem, Colours and Anthem of the Republic of Poland, the State Seals, and the criminal law protection are not mutually exclusive. The axiology preferred by the legislature has been consistently incorporated in the provisions of the 1980 Act and art. 137 of the Criminal Code. Therefore, a violation of the standard under art. 1 sec. 2 of the Act may be a sufficient condition for the application of sanctions (e.g., on the broadcaster of a television programme), 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 which requires that 'the emblem and colours 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 honour and respect'. Art. 16 prohibits affixing national symbols to objects intended for trade. Penalties for violations of the Act are set out in the Offences Code.

²⁵Regulation of the President of the Republic of Poland of 11 July 1932 – Criminal Code (Journal of Laws No. 60, item 571) and Act of 19 April 1969 – Criminal Code (Journal of Laws No. 13, item. 94).

²⁶Hoc (2023) sec. 7.

²⁷It is an offense to insult the Polish nation or the Polish state. Article 133 provides that 'Whoever publicly insults the Nation, or the Republic of Poland is liable to imprisonment for up to 3 years'.



The standards quoted above show that state and national symbolism is a value respected by the Polish legislator, who, in addition to the criminal sanctions discussed below, has introduced specific regulations aimed at affecting the attitude of individuals to the emblem, flag and national anthem, as well as other state symbols.

5. CRIMINAL LAW PROTECTION OF STATE SYMBOLS IN HUNGARY

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

A person who verbally insults or humiliates or otherwise dishonours the national anthem, flag or coat of arms of Hungary or the Holy Crown in front of a large audience is guilty of a misdemeanour and shall be punished by imprisonment for up to one year unless a criminal offense of greater gravity is established.²⁸

The state symbols of Hungary,²⁹ such as the national anthem, the flag, and the Hungarian coat of arms, are defined in Article I) of the Fundamental Law.³⁰ It is these symbols which are primarily protected by criminal law. However, it should be noted that the Hungarian Criminal Code also protects the Hungarian Holy Crown.³¹ The offense is committed through the use by the person committing the offense of insulting or degrading expressions or other forms of desecration of national symbols protected by law. However, the offense can only be established if committed in public and only if a more serious offense is not committed. The offense may be committed by any person but may only be committed intentionally.

The offence is committed by using abusive or degrading language or by other forms of defamation. The use of an insulting or degrading term shall be understood to be a verbal denigrating, contemptuous or degrading expression which offends the socially established feeling of the dignity of a national symbol. Defamation by other means covers any conduct capable of replacing the offensive or degrading expression, and of offending the national self-esteem attached to a national symbol (e.g., burning a flag). The conduct must relate directly and unambiguously in content to the protected symbols. Naturally, opinions with negative content, scientific views, artistic expressions are not subject to criminal sanctions, but are part of freedom of expression.³²

The offence can only be committed with intent, which can be either direct or implied. The perpetrator must be aware that the expression or other conduct he/she uses is directed at and insulting or degrading to a national symbol as defined in the Fundamental Law. In the case of persons of Hungarian nationality or persons who have been living in Hungary for a longer period of time, knowledge of national symbols shall be treated as a matter of common knowledge. It is also a matter of common knowledge for a foreign national residing in Hungary what

²⁸Act C of 2012 on the Criminal Code, is available in English, [link1](#).

²⁹Smuk (2015).

³⁰On the function of national symbols see: Halász and Schweitzer (2020).

³¹Péter (2000) 421–510.

³²Cf. Karsai (2019) 759.



the flag and coat of arms of the country look like, and therefore the only grounds for invoking error are ignorance of the national anthem and the Holy Crown.³³

One of the most important decisions of the Hungarian Constitutional Court (HCC) concerning the criminal law protection of state symbols is Decision 13/2000. (V. 12.) AB. In this case, the HCC examined the provisions of the former Hungarian Criminal Code, Act IV of 1978, concerning the desecration of national symbols. According to the petitions of the case, Section 269/A³⁴ of the Criminal Code then in force violated the freedom of expression as a fundamental right under Article 61 (1)³⁵ of the former Hungarian Constitution.

According to the petitioners, the Criminal Code placed too much value on and used the wrong instrument to ensure respect for national symbols through legal means, and they also argued that insulting national symbols was a specific aspect of expressing an unusual opinion in Hungary.³⁶ Based on the petition, it was discriminative that the Criminal Code protected only the national symbols of Hungary.

The HCC rejected the petitions. The HCC conducted extensive comparative analysis and reviewed the constitutional and criminal law rules of certain European countries in relation to national symbols and the case law of the European Court of Human Rights. The HCC examined the nature of the constitutional regulation of national symbols in the practice of European countries. In this context, it noted that the vast majority of European constitutions contain rules on specific state symbols, which are generally placed at the beginning of the constitutions, in the context of sovereignty, among the fundamental provisions. According to the HCC, the European constitutions most often specify the national colours; some include the national anthem, the capital, the official language, the oath, and the use of slogans or mottos as national symbols. Central and Eastern European constitutions are coat-of-arms oriented. Almost without exception, the flag, the anthem, and the capital are included in all constitutions alongside the coat of arms. In addition, the official language and the state seal are common.

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

The German, Italian, Portuguese, and Polish criminal laws give the same protection to national symbols of foreign countries as they do to national symbols at home. The criminal codes of each state have structurally placed this offense among the offenses against the state.

³³Karsai (2019) 759.

³⁴Section 269/A – Violation of National Symbol:

A person who – before great publicity – uses an expression outraging or humiliating the national anthem, the flag or the coat of arms of the Republic of Hungary, or commits any other similar act, unless a graver crime is realized, shall be punishable for a misdemeanour with imprisonment of up to one year, labour in the public interest, or fine.

³⁵There is no substantive difference between Hungary's current Fundamental Law and the relevant provisions of the former Constitution. The Articles IX of the Fundamental Law contains the provisions relating to freedom of expression. The Fundamental Law of Hungary is available in English, [link2](#).

³⁶There are no significant differences between the previous and current rules in this aspect.



The criminal laws of the listed states contained similar punishments to the (former) Hungarian Criminal Code. Based on all the above, the HCC concluded that the protection of state symbols under criminal law could not be considered a Hungarian specificity.

To sum up, the HCC's decision has shown that many European countries have criminal law rules restricting freedom of expression in relation to state symbols. In these democratic countries, it is therefore considered necessary to prevent the expression of opinions that are offensive to the symbols of the state, and to prevent the expression of opinions that are offensive to those who profess a sense of belonging to that state.

6. THE REGULATION ON PROTECTION OF STATE SYMBOLS IN THE CZECH REPUBLIC

Since the state symbols represent one of the most important features of the Czech Republic's existence and its sovereignty,³⁷ these symbols are protected by the Czech legal system, not only in the sphere of private law (copyright), but especially in the sphere of public law. Here, we find the means of legal protection in constitutional law,³⁸ as well as in administrative law (criminal administrative law) and criminal law in particular. The primary protection of the Czech state symbols derives primarily from constitutional and administrative law norms. This is where the basic rules associated with the use of state symbols (by state authorities, public institutions, and citizens), as well as the obligations associated with their use, are enshrined. If these rules or obligations are violated, the liability for tortious conduct arises. This can be given either in the criminal law sphere, in the form of liability for a criminal offence, or in the administrative law sphere, where liability for an administrative offence is involved.

Criminal offences and their facts are codified in the Czech Republic in the Criminal Code.³⁹ If we look into this code, we find that only a few criminal offences concern the protection of the state symbols of the Czech Republic. Moreover, this criminal protection does not even apply to all the state symbols that the Czech Republic has. It is therefore obvious at first sight that the protection provided under criminal law is only partial. The reasons for this are not presented anywhere in the literature. However, it is probably the result of the social need to punish these crimes, which is minimal in the Czech Republic. This is due to the fact that in Czech society crimes related to state symbols are not committed, and there are no known cases in practice in which these symbols have been deliberately destroyed, damaged or otherwise abused. This situation is probably reflected in the limited form of criminal law protection of state symbols.

In fact, the only state symbol that is explicitly protected by the Criminal Code is the state seal. The Criminal Code contains the offence of Illegal Production and Possession of the State Seal and Official Stamp (Section 349 of the Criminal Code). Anyone who unlawfully produces, obtains for himself or another or possesses a state seal or a stamp with the depiction of a state

³⁷Filip (2003) 155.

³⁸Article 14 of the Czech Constitution stipulates that the state symbols are large and small state coats of arms, state colours, the state flag, the flag of the President of the Republic, the state seal and the state anthem. The order of the state symbols reflects their importance. Filip et al. (2010) 269.

³⁹Act No. 40/2009 Coll., Criminal Code.



coat of arms or a stamp, the imprint of which is a mandatory part of public documents, or an object capable of fulfilling their function, is criminally liable. Protection is therefore afforded here to the State Seal carried by the President of the Czech Republic. Although another state symbol, the small state coat of arms, is not mentioned in the context of this criminal offence, it is also protected under this offence. It is a part of the official stamp, which is used to stamp important public documents (decisions of administrative authorities, court judgments, etc.).⁴⁰ It is a deliberate offence and can be punishable by up to one year's imprisonment or a ban on the activity.⁴¹

In addition, some state symbols are protected from misuse in wartime. These are two war crimes that are related to state symbols: the crime of Abuse of Internationally Recognized and State Symbols and Abuse of Flags and Armistice (Section 416 and Section 416 of the Criminal Code). The first of these offences punishes, *inter alia*, conduct in which the flag or symbol of a neutral State or of a State which is not a party to the conflict is misused in time of war.⁴² The second offence, on the other hand, punishes the misuse of the flag or coat of arms of a state that is a party to an armed conflict.⁴³

Compared to the protection under criminal law, the protection provided by administrative law, specifically administrative criminal law, clearly occupies a more important position. The legal norms of administrative law (in particular the Act on the Use of State Symbols of the Czech Republic) contain rules and obligations related to the use of state symbols. This Act specifies exactly which institutions, authorities or persons may use state symbols, in which situations and under which conditions. In general, all users without distinction are bound by the obligation to use state symbols in an appropriate and dignified manner.⁴⁴ If any of these legal rules are violated, the offender is liable for an administrative offence and an administrative penalty is imposed. This situation is not new or special for Czech or Czechoslovak law. Ever since the establishment of the Czechoslovak Republic in 1918, the use of state symbols has been regulated by administrative law and the penalties for violation of these norms have been established in the same way.

The basis for the legal regulation of the administrative liability is the Act on the Use of State Symbols.⁴⁵ The Act on the Use of State Symbols sets out several administrative offences in Section 13. If we generalise them, we can identify two groups of these offences. The first group consists of the misuse, gross disrespect towards, destruction, damage or theft of the state symbol of the Czech Republic. Thus, a person who, for example, steals the state flag or the state coat of arms which are placed on the building of an office, or a person who tears the state flag or the flag of the President or burns it, etc., may be punished. The second group of offences will be covered by an act which consists in the use of a state symbol in violation of the rules established by law. This will be a situation where, for example, the Czech national anthem is sung in a completely

⁴⁰See the judgment of the Supreme Court of the Czech Republic of 23 October 2001, No. 7 Tz 252/2001.

⁴¹Šámal (2012) 3262–65.

⁴²Implementation of Articles 38 and 39 of the Additional Protocol to the Geneva Conventions – Protocol I.

⁴³This criminal offense reflects the Article 8 of the Rome Statute of the International Criminal Court.

⁴⁴Judgment of the Supreme Court of the Czech Republic of 17. 12. 2019, No. 23 Cdo 184/2019.

⁴⁵Act No. 352/2001 Coll. On the use of state symbols of the Czech Republic.



undignified, disrespectful situation, or the state coat of arms is depicted on a document or object on which the law does not allow it, etc.

The perpetrator of all the above offences may be a natural person, a legal person or a natural person engaged in business. Even the state, municipality or region is liable if, for example, it uses the state symbol in an illegal way. The difference between the different groups of offenders is, among other things, that for natural persons, fault is always examined, whereas for legal persons and natural persons engaged in business, the liability is objective, regardless of fault. An offence procedure is always and exclusively initiated *ex officio*. Offences in the field of protection of state symbols are dealt with by municipal authorities with extended competence. The typical administrative penalty that can be imposed for these offences is a fine. Depending on the specific type of offence, a fine of up to CZK 10,000 or up to CZK 30,000 may be imposed. Instead of a fine, a sanction of a moral nature, namely a warning, may also be imposed.

As mentioned above, tort actions related to the defacement of Czech state symbols do not occur much in the Czech Republic. Perhaps the best known and most widely reported case was the case of the ‘hanging of the red shorts at Prague Castle’ (i.e., the official residence of the President of the Republic). Several members of the art group ‘Ztohoven’ climbed to the roof of Prague Castle and exchanged the presidential flag (one of the state symbols) for huge red shorts. The group wanted to protest against the behaviour of then Czech President Miloš Zeman. The members of the group were charged in criminal proceedings with the crimes of theft, rioting and damaging foreign property. However, the court acquitted them in the first instance and interpreted their actions as an exercise of political rights (the exercise of freedom of expression as a constitutionally guaranteed right). However, the Court of Appeal overturned this decision and, in view of the property damage caused (the roof was damaged and the presidential flag was taken away during the flag exchange), punished the members of the group (suspended prison sentences were imposed – six months’ imprisonment suspended for one year). Furthermore, the court ordered them to pay the damage caused of approximately 60,000 CZK (for the stolen flag and for the damage to the roof). However, as we can see, in this case, the ordinary facts of criminal offences were used, without any connection to the state symbols and their protection).

As far as administrative offences related to state symbols are concerned, they do not occur very often in Czech society either. There are two known cases from the past that were dealt with in this context and they were similar in nature. Both cases involved the ‘combining’ of the Czech state flag with the Romani flag. These actions were meant to symbolize the coexistence of the Czech nation and the Romani minority in the Czech Republic. However, these actions violated the legal rules governing the treatment of the Czech state flag. In one case, the offence was punished with a symbolic fine of 1000 CZK,⁴⁶ and in the other case, the proceedings were discontinued.⁴⁷ The matter was assessed as an expression of freedom of art and freedom of expression, not as an illegal act. One can identify with such a solution; moreover, in our opinion, the material aspect of the offence, i.e. the social harmfulness of this conduct to society, was completely lacking here. Furthermore, misconduct in relation to the national flag at sports matches (especially football and hockey matches) is still relatively common in the Czech

⁴⁶Link3.

⁴⁷Link4.



Republic. Fans often write the name of their city or club on the national flag. Although in these cases they are also committing an offence, these actions are not sanctioned or penalised.

7. CRIMINAL LAW PROTECTION IN SLOVAKIA

According to the Constitution of the Slovak Republic⁴⁸ (Article 8), the state symbols of the Slovak Republic are the coat of arms of the state, the state flag, the state seal and the state anthem. Article 9 contains a brief description of the state symbols and provides that a Law shall lay down the details and use of the state symbols.⁴⁹

In the Slovak legal system, a violation of obligations established by law regarding state symbols may result in criminal liability or liability for an administrative offence, whether it is an infringement or another administrative offence.

Criminal protection of state symbols is ensured in Slovak law by Paragraph 364 of the Criminal Code.⁵⁰ In this provision, the crime of disorderly conduct is regulated. The crime of disorderly conduct is committed, inter alia, by a person who commits, in words or physically, publicly or in a place accessible to the public, gross indecency or disorder by defamation of a state symbol.⁵¹ For this crime, the perpetrator can be sentenced to imprisonment for up to 3 years.

According to J. Ivor, the term gross indecency should be understood as a serious breach of the rules of civil coexistence and the principle of civil morality, whereas disorder is an act which seriously undermines peace and public order, and, unlike gross indecency, it is usually an act of physical or psychological violence directed against persons or against property, or actions that raise concerns about the safety of people or property, or significantly reduce the esteem of a larger number of people.⁵²

The mentioned crime is not only aimed at protection of Slovak state symbols. According to J. Ivor it could be any state symbol.⁵³ E. Burda et al. have a partly different opinion on this question, based rather on the actual impacts and the level of concern the defamation of a foreign state symbol will cause.⁵⁴

⁴⁸Constitution of the Slovak Republic No 460/1992 Coll., as amended by later constitutional acts.

⁴⁹We do not consider it expedient to include a description of the state symbols here.

⁵⁰Act No 300/2005 Coll., the Criminal Code, as amended.

⁵¹Section 364(1)(b) of the Criminal Code.

⁵²Ivor et al. (2021) 506. According to another source, gross indecency means conduct that grossly violates the principles of civil coexistence and the principles of civil morality. It must be a more serious indecency. The gross nature of indecency cannot be assessed only on the basis of the character of the perpetrator's personality, but also from his specific expression, even in relation to the environment where it occurred. Samaš et al. (2010) 773.

⁵³Ivor et al. (2021) 507.

⁵⁴Burda et al. (2011) 1235.



The Criminal Code also regulates the qualified merits of this criminal offence [in Paragraph 364(2)], with a higher penalty (six months to three years). The said offence is only a misdemeanour,⁵⁵ which applies not only in the case of the basic merits, but also in the case of the qualified merits.

According to the Slovak Criminal Code, the boundary between criminal offences and infringements is expressed by the so-called material corrective: under Paragraph 10(2) there is no misdemeanour where, having regard to the manner in which the act was carried out and its consequences, the circumstances in which the act was committed, the degree of fault and the motivation of the offender, the seriousness of the offence is minor.

State symbols are also protected by infringements and other administrative offences.⁵⁶ According to Section 42(1)(a) of the Slovak Infringements Act, a person who intentionally damages, abuses or derogates a state symbol commits an infringement in the field of general internal administration. A fine of up to EUR 99 may be imposed on the perpetrator in respect of such an offence.

The *ne bis in idem* principle⁵⁷ and the prohibition of double punishment should prevent double punishment for the mentioned crime and the mentioned infringement, but it must be said that – even taking into account judicial practice – the border between them is unclear.

Decisive aspects to distinguish them are, for example, the place where the act was committed, the seriousness of the action and its effects, or the question of the focus of the perpetrator's will. As we have already stated, the essential factor for the distinction will be the already mentioned substantive corrective.

The perpetrator of an infringement can only be a natural person,⁵⁸ but the State symbols Act⁵⁹ also regulates in Section 14 another category of administrative offences, which can only be committed by legal persons. Pursuant to Section 14 of this Law, for breaking Section 3(3) to (6), Section 5(3), Section 6, Section 11(2) and Section 13b(2), the District authority may impose a fine on a legal person of up to EUR 7,000. Some infringements and administrative offences governed by the Act No 1/2014 Coll. on the organization of public sports events and amending certain acts also apply to the violation of obligations regarding state symbols.

8. CONCLUSION

Overall, it can be seen that respect for state and national (and sometimes other community) symbols is not considered ancient and outdated even in the birthplace of the Enlightenment, Europe, and this is expressed even in the text of constitutions and in criminal law. Although

⁵⁵In terms of types of offences, the Slovak Criminal Code divides offences into two categories – misdemeanours or felonies (Section 9 of the Criminal Code). Under Section 10(1) of the Criminal Code a misdemeanour is a
(a) an offence committed negligently; or
(b) an intentional criminal offence for which this Act provides, in its special part, for a maximum term of imprisonment not exceeding five years.

⁵⁶Hamuláková and Horvat (2019) 179., or Vrabko et al. (2012) 301.

⁵⁷Hamuláková (2017) 55.

⁵⁸For the sake of completeness – the same applies in the case of the crime of disorderly conduct.

⁵⁹Act No 63/1993 Coll. on the State symbols of the Slovak Republic and their use, as amended.



Europe is often seen as a continent that no longer has any insistence on its old culture, and in which the protection of community symbols (especially state and national symbols) has been consigned to the past and is therefore no longer of any significance, it is clear that both state constitutions and state criminal codes, typically, regard them as values to be protected and that state criminal codes also provide for criminal penalties for the desecration or violation of these symbols. This is the case even if the social danger of desecrating identity symbols does not rise to the level of, for instance, violent crimes, and therefore the typical sanction in most places is either a fine or some other minor legal consequence, while the penalty of imprisonment (which would in principle be applicable in most European countries) is indeed rarely imposed by the courts. This is typical not only of the countries of Central Europe, but of Europe as a whole, in contrast to the liberal Anglo-Saxon tradition, such as the United Kingdom, the United States, Australia,⁶⁰ etc., where the protection of freedom of expression typically includes the possibility of insults to symbols, provided that they do not constitute another, violent act against society or a direct call to do so.⁶¹

There is therefore no significant difference in the protection of state or national (and, more broadly, community) symbols at the level of legal regulation between the geographically eastern and western countries of Europe, whether they are formerly capitalist or formerly socialist in their ideological foundations, nor is there any correlation between the form of government (monarchical or republican) or the principle of state organisation (federal or unitary). What can surely be claimed is that the protection of state and national symbols is a living phenomenon: flags, coats of arms or anthems are symbols of state identity and of the unity of citizens, whose ideological role in forming identity also justifies (at least in the vast majority of European countries) their protection under criminal law, the prohibition of desecration and dishonouring of symbols, and, therefore, the explicit restriction of freedom of expression.

DISCLOSURE

This paper deals with the criminal law aspects of the comparative law research carried out in the framework of the Central European Academy in 2022, building on the findings of the book presenting the results of the research. For the original and full text of the research, see: [Tóth J. \(2023\)](#).

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⁶⁰As for the Australian legislation and judicial practice, see e.g., [Meagher \(2008\)](#) 73–102.

⁶¹The only exception is New Zealand, where desecration of the flag constitutes a criminal act under Art. 11, para. 1 of the Flags, Emblems, and Names Protection Act 1981 (Act no. 47 of 1981).



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LINKS

Link1: 'Act C of 2012 on the Criminal Code' <https://njt.hu/translation/J2012T0100P_20220401_FIN.pdf> accessed 24 March 2024.

Link2: 'The Fundamental Law of Hungary' <https://njt.hu/translation/TheFundamentalLawofHungary_20220525_FIN.PDF> accessed 24 March 2024.

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