

## CHAPTER VI

# LEGAL PROTECTION OF STATE, NATIONAL AND COMMUNITY SYMBOLS IN SERBIA



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### 1. Introduction

The topic of this chapter is primarily the legal protection of state, national and community symbols in the public order of the Republic of Serbia. The first part of the book chapter contains the brief overview of the legal protection of state, national and community symbols in these periods: in the principality and kingdom of Serbia, in the Yugoslav kingdom and in the communist Yugoslavia. The 2<sup>nd</sup> part of the book chapter scrutinizes the constitutional regulation of state, national and community symbols in the Republic of Serbia. The other parts are thematic and dedicated to the protection of state symbols, national symbols, and symbols of different kind of communities at the level of criminal, civil, and administrative law.

“Symbols are signs, but not every sign is a symbol.”<sup>1</sup> The exact definition of the symbol is hard to formulate. “Symbol” is a Greek word originating from the verb *symvallo* which referred to putting together parts that had been divided.<sup>2</sup>

In classical times Greek and Latin words related to symbol had a variety of meanings, arranged round a notion of matching entities: a sign or mark whereby one person gave another to understand something; a token; a contribution of money to a feast; a share of a reckoning; a commercial treaty between a pair of contracting cities

1 Mønnesland, 2013, p. 7.

2 Firth, 1973, p. 47.

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guaranteeing security and protection to their respective merchants. The meaning of symbol ultimately developed into that of a concrete indication of abstract values. In particular, the term became associated in early Christianity with the set of beliefs forming the Creed, in the canon known as the “Symbol of the Apostles.”<sup>3</sup>

Symbols play an extremely important role in modern societies. They are present in almost every kind of human activity. “Words are the Signs and Symbols of Things.”<sup>4</sup> In mathematics and natural sciences are used symbols (artificial language) because they allow certain kinds of operation to be performed.<sup>5</sup> Expression through symbols and symbolization is essential, also, in art, politics, religion, communication etc. Emerson wrote in his essay on *The Poet* that “Things admit of being used as symbols, because nature is a symbol, in the whole, and in every part,” and he continues “We are symbols, and inhabit symbols.”<sup>6</sup> Cassirer goes further proposing that a man should be defined as an *animal symbolicum*, instead of defining him as an *animal rationale*.<sup>7</sup>

This book is dedicated to a relatively small group of symbols, which impose an extremely strong influence on broad masses and specific communities. Those are state, national, and generally community symbols which are closely connected to the identity of the groups that those symbols represent. In this book chapter the terms nation and national will be used in the ethnic sense, and not in a sense of the state. That is because the identical use of those terms can be found in the countries of Central and Eastern Europe.<sup>8</sup> National symbols usually have been appeared before the national states were established.<sup>9</sup> Therefore, in this book chapter the legal protection of state and national (in the sense of ethnic) symbols will be distinguished, although sometimes they do not differ.

There are plenty of signs that different types of communities have used and still are using to express their identity, to unite their members and to distinguish themselves from other similar groups or communities. It would be extremely complicated, or even impossible, to identify and examine the legal protection of symbols of each type of different communities that exist in a particular state. Therefore, in this book chapter will be investigated the legal protection of symbols of religious communities and symbols of national or ethnic minorities in Serbia. The chapter also considers the rules that regulate the use and display of the symbols and traditional symbols of the Serbian Autonomous Province of Vojvodina. Thus, the legal protection of state, national and community symbols will be scrutinized, considering specifics of different

3 Firth, 1973, p. 54.

4 Oxford English Dictionary, 1686.

5 Firth, 1973, p. 56.

6 Emerson, 1950, pp. 325, 328.

7 Cassirer, 1954, p. 44.

8 E.g., Slavic word “*nacija*” or Hungarian “*nemzet*.”

9 Mønnesland, 2013, p. 7.

communities whose values, identity, history, and uniqueness those symbols express and convey.

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## 2. Brief historical introduction

The creating of the modern Serbian state relied in many aspects on elements of medieval Serbian statehood. Already during the First Serbian Uprising, which began in 1804, there was a need for war flags and other symbols that would cleverly mark the emerging new state. “Because it is of special importance for every nation that is forming its own state to acquire a specific coat of arms. It is the most distinctive feature of the spiritual community made up of the people or the state. Like the flag, the state coat of arms is a sacred symbol: it is the embodiment of the sublime idea of the fatherland, the idea for which an individual should live, and for which that individual is prepared to die.”<sup>10</sup> At the beginning of the 19th century, during the struggle for liberation, the Serbian people did not create new coats of arms, but renewed the use of old coats of arms, reminiscent of the medieval glory of the Serbian state. During the 19th century, the struggle for liberation from the Ottoman rule in Serbia was fought at the level of the struggle for the free use of Serbian national symbols. The parallel processes of nation building and struggle for the autonomy could be found in the 19<sup>th</sup> century history of other central European nations.<sup>11</sup>

Shortly after the Principality of Serbia gained independence, pursuant to the provisions of the Berlin Peace Treaty (1878), preparations for the proclamation of the kingdom began. The idea of improving the appearance of the state coat of arms emerged then. The new design of the coat of arms was based on detailed historical and heraldic research conducted by famous Serbian historian *Stojan Novaković*. He published the results of his work in a special study,<sup>12</sup> which is one of the fundamental works of Serbian heraldry (science on coats of arms). The Law on the Coat of Arms of the Kingdom of Serbia was passed in 1882.<sup>13</sup> The appearance of the coat of arms is regulated in Art. 1: “The coat of arms of the Kingdom of Serbia is a two-headed white eagle on a red shield with a royal crown. On top of both heads of the two-headed white eagle stands the royal crown and one fleur-de-lys is under each claw. On the chest of the eagle is the coat of arms of the Principality of Serbia, a white cross on a red shield with one furison in each corner of the cross.” The next article reads: “The coat of arms is covered with a purple ermine cloak, with the royal crown on top.”

10 Solovjev, 2000, p. 21.

11 E.g., Croatians. Čepulo, 2010, p. 144.

12 Novaković, 1884.

13 Law on the Coat of Arms of the Kingdom of Serbia, *Srpske novine*, Official Gazette of the Kingdom of Serbia, no. 135/1882.

The law envisages the drafting of the coat of arms, which will be determined by the decision of the Council of Ministers and which is planned to be kept in the Ministry of Justice. The draft was established on October 7, 1882, and was published in the Official Gazette.<sup>14</sup> This is how the cleverest combination in the history of Serbian heraldry was created: the coat of arms of the Principality of Serbia (a cross with four furisons), merged with the coat of arms of medieval Nemanjić Serbia (double-headed eagle) and fleur-de-lys, which are often found on Serbian medieval coins.<sup>15</sup> The Law did not prescribe the manner of use of the Serbian coat of arms and flag, nor sanctions for possible misuse of state symbols.

### *2.1. The period of a multinational state*

In the vast majority of modern states, there are several ethnic groups, among which there may be significant differences. These differences may include ethnic origin, history, language, religion, etc. However, there are states in which more ethnic groups are of considerable size and such states are called multinational. There is no consensus on what percentage of minority groups should be in the total population of a country for it to be considered multinational.<sup>16</sup> States with smaller national minorities, or migrants, cannot be considered multinational. It can be argued with certainty that multinational states are those states in which no ethnic group exceeds half of the total population, i.e., those states in which there is no absolute national majority. An example of such a state was the Kingdom of Yugoslavia, which was founded in 1918 under the name Kingdom of Serbs, Croats, and Slovenes. At the moment the joint state of Serbs, Croats and Slovenes was formed, the Kingdom of Serbia lost its statehood.

As it has already been said, the state symbols of the Kingdom of Serbia were defined in the tradition of medieval Serbian heraldry. However, in the newly created state, it was necessary to start creating new state symbols. The Corfu Declaration of 1917 foresaw that the future common state would have one state flag and one crown. It was envisaged that the new state emblems be composed of the existing particular emblems. The same declaration stipulated that Serbian, Croatian and Slovenian coats of arms and flags could be displayed and used freely. The exceptions are the state authorities, for which the display of the state flag as a symbol of unity was prescribed.<sup>17</sup>

After the constitution of the Kingdom of Serbs, Croats, and Slovenes on December 1, 1918, the coat of arms of the Kingdom of Serbia was used in the first days of the new state's existence.<sup>18</sup> At the very beginning of its activities, the first government

14 Srpske novine, Official Gazette of the Kingdom of Serbia, no. 229/1882.

15 Soloviev, 2000, p. 204.

16 Mønnesland, 2013, p. 12.

17 Corfu Declaration, Krkljuš, 2003, p. 306.

18 Kostić, 1934, p. 8.

of the new state took measures with the aim of creating a project of a new coat of arms. As early as December 22, 1918, the Council of Ministers passed a decision determining the provisional appearance of the flag and coat of arms.<sup>19</sup> At the session held on February 28, 1919, the Council of Ministers adopted the final appearance of the coat of arms. In accordance with that decision, the state flag was a tricolor with horizontally laid colors in blue, white and red. The same decision determined the appearance of the coat of arms, which was in fact a symbolic representation of the then accepted theory of the three-tribe nation. The state coat of arms is represented in the form of a white double-headed eagle with a shield on its chest. The shield was divided into three fields. On the right field was the Serbian coat of arms (a *crux quadrata* with furisons), on the left field was the Croatian coat of arms (“checkerboard” with 20 red and white fields), while on the lower part was the coat of arms of Illyria to represent Slovenia (white crescent turned upward, a white star with five feathers between its arms).<sup>20</sup>

With minor changes, the provisions of the government decree of December 22, 1918, on the state coat of arms and flag, were transposed to Art. 2 of the first Constitution of the Kingdom of Serbs, Croats, and Slovenes, which was adopted on June 28, 1921.<sup>21</sup> The most significant change concerned the “Slovenian” field of the coat of arms, which in accordance with the Constitution, instead of a single silver five-pointed star above a white crescent, has three six-pointed golden stars.<sup>22</sup> Although it is not mentioned in the Constitution, the coat of arms had a purple ermine cloak on its sides, with a royal crown on top, similar to the coat of arms of the Kingdom of Serbia. The crown and the cloak were a feature of the state system, which signifies monarchies of the kingdom type.<sup>23</sup> In accordance with the practice in the Kingdom of Serbia, the Council of Ministers determined the source, i.e., the original coat of arms at a session held on May 3, 1922. The decision of the Council of Ministers, together with the picture of the coat of arms, was published in the official gazette.<sup>24</sup>

After the enactment of the 1931 Constitution, which implemented the ideology of integral Yugoslavism,<sup>25</sup> the state symbols were not changed.<sup>26</sup> However, in the spirit of national unity, Art. 2 of the Constitution does not explicitly note that the state coat of arms contains the Serbian, Croatian and Slovenian coats of arms, yet it gives only a description of the coats of arms that make up the common state coat of arms.

19 [http://www.arhivyu.gov.rs/active/en/home/glavna\\_navigacija/leksikon\\_jugoslavije/drzavni\\_simboli/grb.html](http://www.arhivyu.gov.rs/active/en/home/glavna_navigacija/leksikon_jugoslavije/drzavni_simboli/grb.html).

20 The new coat of arms appears in the Official Gazette for the first time on the 3<sup>rd</sup> April 1919. Official Gazette of the Kingdom of Serbs, Croats, and Slovenes, no. 27/1919.

21 Constitution of the Kingdom of Serbs, Croats, and Slovenes, Krkljuš, 2003, pp. 328–359.

22 Art. 2 para. 1 of the 1921 Constitution.

23 Kostić, 1934, p. 9.

24 Official Gazette of the Kingdom of Serbs, Croats, and Slovenes, no. 229/1919, annex XXXI.

25 Mirković, 2017, p. 231.

26 Constitution of the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, no. 200/1931.

This is also the only difference between the provisions of this and the previous 1921 Constitution regarding the state symbols.

## ***2.2. The period of the socialist state***

The political actors resort to different strategies when designing symbols. The first strategy is to adopt the existing religious symbols to “place their ideological beliefs in a broader framework, and give them a generally acceptable character.” Another strategy is to take over the traditional political–historical and national symbols, which is typical for newly established regimes. The third option is to create completely new symbols and give a different meaning to the existing symbols, which usually happens after revolutions that have been carried out successfully.<sup>27</sup> This last strategy was applied by the communist authorities in the period after the Second World War. The coat of arms of the then Yugoslavia was designed in November 1943, during the preparations for the second session of the Anti-Fascist Council of National Liberation of Yugoslavia.<sup>28</sup> The 1946 Constitution of the Federal People’s Republic of Yugoslavia prescribed the appearance of the coat of arms and the flag (Articles 3 and 4): “The state coat of arms of the Federative People’s Republic of Yugoslavia represents a field encircled by ears of corn. At the base the ears are tied with a ribbon on which is inscribed the date 29-XI-1943. Between the tops of the ears is a five-pointed star. In the center of the field five torches are laid obliquely, their several flames merging into one single flame. The state flag of the Federative People’s Republic of Yugoslavia consists of three colors: blue, white, and red, with a red five-pointed star in the middle. The ratio of the width to the length of the flag is as one to two. The colors of the flag are placed horizontally in the following order from above: blue, white and red. Each color covers one-third of the flag’s width. The star has a regular five-pointed shape and a gold (yellow) border. The central point of the star coincides with the intersection point of the diagonals of the flag. The upmost point of the star reaches half way up the blue field of the flag, so that the lower points of the star occupy corresponding positions in the red field of the flag.”<sup>29</sup>

The coat of arms reflected the new socialist reality,<sup>30</sup> representing the symbolic unification of the five Yugoslav peoples (Serbs, Croats, Slovenes, Montenegrins and Macedonians).<sup>31</sup> With the Constitution of 1963, the state coat of arms was changed by adding another torch, which expressed the unity of all six federal republics.<sup>32</sup> The state coat of arms had the same appearance in accordance with the 1974 Constitution

27 Đorđević, 1993, p. 1040; Naumović, 1995, p. 116.

28 Popović and Jovanović, 1979, p. 28.

29 Constitution of the Federal People’s Republic of Yugoslavia, Official Gazette of the Federal People’s Republic of Yugoslavia, no. 10/1946.

30 Mønnesland, 2013, p. 82.

31 Popović and Jovanović, 1979, p. 29.

32 Constitution of the Socialist Federal Republic of Yugoslavia, Official Gazette of the Socialist Federal Republic of Yugoslavia, no. 14/1963.

of SFRY.<sup>33</sup> Unlike the coat of arms, which completely broke the continuity with the centuries-old heraldic tradition of the South Slavic peoples, the colors of the flag remained identical to the colors of the Kingdom of Yugoslavia. The aim was to point out the state's continuity, and the Yugoslav tricolor was connected with the Pan-Slav flag adopted at the congress in Prague in 1848.<sup>34</sup> Of course, a red five-pointed star was placed on the Yugoslav tricolor. Apart from the Federation, the "socialist republics" also had their coats of arms and flags, and they regulated their appearance with their own constitutions.<sup>35</sup> Following the example of the Soviet republics, the coats of arms featured mantlings of leaves or ears of wheat, with a five-pointed star at the top and an emblem in the middle. The coat of arms of Serbia and Croatia shows a connection with the earlier heraldic tradition.<sup>36</sup> In accordance with Art. 4 of the Constitution of the People's Republic of Serbia, the coat of arms has a red shield with evenly positioned four furisons,<sup>37</sup> which have been a symbol of Serbia since the Middle Ages. However, in accordance with the ideology of the time, the cross was removed, around the arms of which the furisons were always placed. Regarding flags, the flags of Slovenia, Croatia, and Serbia were actually their traditional tricolors with a five-pointed star in the middle.<sup>38</sup> In this respect, the republic emblems were largely inspired by the history and traditions of the federal republics.

The use, detailed appearance, and protection of the coat of arms, flag, anthem, and other state symbols of the federation were regulated in detail by federal laws and other regulations, by international treaties, as well as by laws and regulations of the republics and provinces. Among them, the most important was certainly the Law on the Use of Coats of Arms, Flags and Anthems from 1977.<sup>39</sup> The analysis of all the mentioned regulations would go beyond the framework of a shorter historical analysis, adequate for the needs of this paper.

The first constitutions of socialist Yugoslavia did not regulate the issue of the national anthem. Its last Constitution of 1974 contains a short provision stating that the SFRY has an anthem,<sup>40</sup> which is determined by the federation through federal bodies.<sup>41</sup> The Law on the Use of the Coat of Arms, Flag and Anthem from 1977 stipu-

33 Constitution of the Socialist Federal Republic of Yugoslavia, Official Gazette of the Socialist Federal Republic of Yugoslavia, no 9/1974.

34 Mønnesland, 2013, p. 82.

35 Đorđević, 1967, p. 669.

36 Soloviev, 2000, p. 96. According to J. Đorđević, it was a consequence of the fact that the Yugoslav peoples had their own special history, and the existence of historical, state-legal and symbolic elements in the construction of republics, which came to the fore in republic coats of arms and flags, is consequentially understandable (Đorđević, 1967, p. 669).

37 Constitution of the People's Republic of Serbia, 1947, Art. 4.

38 Mønnesland, 2013, p. 83.

39 Law on the Use of the Coat of Arms, Flag and Anthem of the Socialist Federal Republic of Yugoslavia and on the Use of the Face and Name of the president of the Republic Josip Broz Tito, Official Gazette of the SFRY, no. 21/77.

40 Constitution of SFRY, 1974, Art. 8.

41 Constitution of SFRY, 1974, Art. 281, para. 1.

lates that only a melody and a text determined by the Assembly of the SFRY can be performed as an anthem. The same law stipulates that, until the Assembly of the SFRY determines the national anthem in accordance with the Law, “*Hej Sloveni*” will be performed as the anthem, the unofficial anthem of the SFRY until then.<sup>42</sup> This solution was reached after a series of failed competitions and attempts to come up with a new national anthem that would be in line with the social order at the time.

The dissolution of the SFRY led to the forming of independent states that have independently regulated their state symbols. Serbia remained part of the Federal Republic of Yugoslavia, which consisted of two republics: Serbia and Montenegro. The 1992 Constitution of the Federal Republic of Yugoslavia prescribed the appearance of the flag, with a color scheme that was the same as that of the flag of socialist Yugoslavia and the Kingdom of Yugoslavia. The aim was to emphasize continuity with the previous states. For the first time, the Constitution stipulated that the national anthem was the solemn song “*Hej Sloveni*.” However, the appearance of the coat of arms was not regulated by the Constitution; it was left to be regulated by the federal laws.<sup>43</sup> The 1993 Law on the Coat of Arms of the Federal Republic of Yugoslavia stipulates that the coat of arms of the FRY is a red shield with a double-headed silver eagle, with a quartered shield on its chest. In the first and fourth quarters, there is a silver cross with four furisons on a red field, and in the second and third quarters, there is a lion on a red field “in the passing” (*en passant*).<sup>44</sup> It is a somewhat successful fusion of symbols of the two republics that made up the FRY. The Law on the Use of the Flag, Anthem and Coat of Arms of the Federal Republic of Yugoslavia regulated in detail the appearance, use and legal protection of state symbols.<sup>45</sup> These state symbols remained in use until the end of the state Union of Serbia and Montenegro in 2006. The 1990 Constitution of the Republic of Serbia did not prescribe the coat of arms, flag and anthem of the Republic of Serbia, but only provided that these state symbols be determined “according to the procedure for amending the Constitution,” which means that citizens would vote on them in a referendum.<sup>46</sup>

The first practical steps to re-establish the state symbols of Serbia on the Serbian heraldic tradition were made in 2004, after decades of using symbols from the period of socialist constitutionalism. At the extraordinary session on August 17, the National Assembly adopted the Recommendation on the use of the coat of arms, flag, and anthem of the Republic of Serbia.<sup>47</sup> In accordance with that act, the Coat of Arms of the Kingdom of Serbia from 1882 was reinstated, and a distinction was made

42 Law on the Use of Coats of Arms, Flag and Anthem, Art. 4, para. 4; Art. 40.

43 Constitution of FRY, Art. 4.

44 Law on the Coat of Arms of the Federal Republic of Yugoslavia, Official Gazette of the FRY, no. 66/1993.

45 Law on the Use of the Flag, Anthem and Coat of Arms of the Federal Republic of Yugoslavia, Official Gazette of the Federal Republic of Yugoslavia, nos. 66/93, 24/94.

46 Constitution of the Republic of Serbia, 1990, Arts. 5, 132–134.

47 Recommendation on the use of the coat of arms, the flag and the anthem of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 93/2004.

between the Large Coat of Arms and the Small Coat of Arms. Also, the appearance of the National and state flags and the flags of the president of the Republic and the Speaker of the National Assembly are regulated. The solemn song “*Bože pravde*” was chosen to be the anthem,<sup>48</sup> the text of which was modified and adapted to the republican form of government.<sup>49</sup> In the same year, the government of the Republic of Serbia adopted the Conclusion on the use of the coat of arms, flag, and anthem of the Republic of Serbia, which regulates in detail the circumstances and manner in which the coat of arms, flag and anthem of the Republic of Serbia are used.<sup>50</sup> The state symbols were changed by the Recommendation of the National Assembly, which was not binding. This was done to avoid the complicated procedure of determining state symbols, which was envisaged by the 1990 Constitution of the Republic of Serbia. After almost a century, the state insignia of Serbia was returned to use at a solemn ceremony held on August 30, 2004. The national anthem was sung by the Guard Orchestra, and the new national flag was ceremoniously raised on the National Assembly building. On that occasion, the speaker of the National Assembly, *Predrag Marković*, stated, among other things: “Wherever you see a Serbian coat of arms like this, there is the home of the state of Serbia. I would like to take this opportunity to thank everyone who has kept alive the memory of the insignia that have today been restored.”<sup>51</sup>

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### 3. Constitutional regulation of state, national, and community symbols

The Constitution of the Republic of Serbia was adopted in 2006.<sup>52</sup> In accordance with the tradition that existed in the Kingdom of Serbia, the Constitution determines state symbols. The coat of arms, flag and anthem are state symbols that formally symbolize state subjectivity, sovereignty, and identity.<sup>53</sup> The Constitution in Art. 7 stipulates that the Republic of Serbia has its own coat of arms, flag, and anthem. In regard to the coat of arms, the Constitution stipulates that the coat of arms be used as the Large Coat of Arms and the Small Coat of Arms.<sup>54</sup> This constitutional provision confirms the existence of small and large coats of arms, which were introduced by

48 The original text can be found in: Pavlović, 1986, pp. 194–195.

49 It is an anthem in the form of a prayer. Đukić, 2022, p. 67.

50 Conclusion on the use of the coat of arms, the flag and the anthem of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 95/2004.

51 Serbia: Adoption of the new flag, 2004, see <https://www.crwflags.com/fotw/flags/rs-2004.html>.

52 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, nos. 98/2006, 16/2022.

53 Pajvančić, 2009, p. 20.

54 Constitution of the Republic of Serbia, Art. 7, para. 2. See: Appendix, p. 357.

the 2004 Recommendation of the National Assembly on the Use of the Coat of Arms, Flag and Anthem of the Republic of Serbia.<sup>55</sup> Thus, one of the provisions of the non-binding Recommendation of the National Assembly became binding, and it became part of the text of the highest legal act in the country. The same applies to the flag of the Republic of Serbia. The Constitution stipulates that the flag of Serbia be used as the National Flag and as the state flag.<sup>56</sup> This constitutional regulation also includes provisions in the constitutional text that originate from the Recommendation of the National Assembly from 2004, which for the first time specifically regulates the use of the National and state flags. Unlike the previous Serbian constitutions, the actual Constitution only prescribed that the Republic of Serbia shall have coat of arms and flag, while leaving the more detailed regulation of their appearance and use to the legislator. In that way, the procedure for determining the appearance of state symbols has been simplified in relation to the previous Constitution from 1990.

Although the Serbian Constitution does not prescribe the appearance of the coat of arms and the flag, it stipulates that the anthem of the Republic of Serbia is the official song “*Bože pravde*” (God of Justice).<sup>57</sup> In this case, too, the Constitution relies on the 2004 Recommendation of the National Assembly. It is interesting that the previous constitutions of Serbia mostly regulated the appearance of the coat of arms and the flag in detail, slipping the issue of the anthem, while the current Constitution prescribed the anthem, and skipped the issue of the appearance of the flag and coat of arms. The text of the anthem itself is not stated in the Constitution and is left to the legislator to prescribe it. Having in mind all the constitutional provisions on state symbols, it can be concluded that the constitution-maker has only partially established the continuity with the practice originating from the Serbian constitutionalism of the 19th century. The Constitution stipulates that there are state symbols, but determining their appearance and regulating their use and legal protection is left to the legislator. There is no special procedure for passing the law on state symbols. The reason, among other things, could be that the reintroduction of Serbian state symbols enjoyed great support from public opinion and the citizens of the Republic of Serbia. The reinstated state symbols were enthusiastically accepted, as part of the renewal of Serbian statehood, which ended in 1918.

State territory is also mentioned in the literature as one of the state symbols.<sup>58</sup> In accordance with the Constitution, the territory of the Republic of Serbia is “unique and indivisible.” The Constitution is somewhat contradictory, because it prescribes the inviolability of borders, but also envisages the possibility of their changing in

55 Recommendation on the use of the coat of arms, the flag and the anthem of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 93/2004.

56 Constitution of the Republic of Serbia, Art. 7, para. 3. See: Appendix, p. 357.

57 Constitution of the Republic of Serbia, Art. 7, para. 4.

58 Popović and Jovanović, 1979, p. 39.

accordance with the complicated procedure of amending the Constitution.<sup>59</sup> Also, the capital is mentioned as one of the state symbols. Although the name of the capital does not have to be determined by the constitution, as was the case with the Serbian constitutions of the 19th century, the Constitution of the Republic of Serbia stipulates that the capital of the Republic of Serbia is Belgrade.<sup>60</sup> The part of the Constitution which regulates local self-government, regulates in more detail the legal position of the City of Belgrade, which in accordance with the Constitution has competencies entrusted to municipalities and cities, and it provides that the law on the capital may entrust it with other competencies.<sup>61</sup> The constitutional regulation on the capital has its historical foundation, since it is a city that was the capital during most of the 19th century, as well as throughout the 20th century. State symbols include state holidays, decorations, and seals, as well as citizenship, on which the Constitution of the Republic of Serbia does not contain significant provisions.<sup>62</sup>

The Constitution of the Republic of Serbia guarantees the right to provincial autonomy and local self-government.<sup>63</sup> The Constitution stipulates that there are two autonomous provinces in the Republic of Serbia: the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. Since the territory of the Autonomous Province of Kosovo and Metohija is under the United Nations Interim Civil and Military Administration,<sup>64</sup> the Constitution stipulates that the essential autonomy of that area would be regulated by a special law, which is prescribed to be adopted in the procedure envisaged for amending the Constitution.<sup>65</sup> In accordance with the principle of subsidiarity, which is the primary criterion for the delimitation of competencies between the Republic and the autonomous provinces, the Constitution only outlined the competencies of the autonomous provinces.<sup>66</sup> The only right that the autonomous provinces exercise directly pursuant to the Constitution, without reference to the legal regulation of the quality and scope of the rights of the provinces, is to determine their symbols and regulate the manner of their use.<sup>67</sup> The Autonomous Province of Vojvodina regulated the appearance and use of its symbols in the Statute, which will be discussed later. The fact that the Constitution completely left this matter to the autonomous provinces indicates the importance that this issue has for these forms of territorial autonomy.

In addition to the autonomous provinces, local self-government units have the right to independently determine their symbols and regulate the manner of their

59 Constitution of the Republic of Serbia, Art. 8. The problem also appears in connection with the procedure of changing the borders, since Art. 99, para. 1 stipulates that the National Assembly decides on the change of borders.

60 Constitution of the Republic of Serbia, Art. 9.

61 Constitution of the Republic of Serbia, Art. 189.

62 Popović, and Jovanović, 1979, pp. 38–41; Constitution of the Republic of Serbia, Art. 97.

63 Constitution of the Republic of Serbia, Art. 12.

64 Marković, 2019, p. 458.

65 Constitution of the Republic of Serbia, Art. 182.

66 Pajvančić, 2009, p. 235.

67 Constitution of the Republic of Serbia, Art. 183, para. 4; Pajvančić, 2009, p. 236.

use. The Constitution stipulates that local self-government units are municipalities, towns, and the city of Belgrade. Given that cities (including the city of Belgrade) have the same competencies as municipalities,<sup>68</sup> and that the Constitution guarantees municipalities the right to determine their symbols and their use,<sup>69</sup> it can be concluded that all local self-government units have this right. However, unlike the autonomous provinces, which exercise this right directly, based on the Constitution, local self-government units are instructed to exercise this right in accordance with the law and within the framework prescribed by the Law on Local Self-Government. However, it is about the original competence of the municipality, which has the instruments for its exercise.

The Constitution regulates the protection not only of state symbols, but also of symbols that express the national identity of the citizens of the Republic of Serbia. The preamble of the Constitution already states that the Constitution is adopted starting from the state tradition of the Serbian people and the equality of all citizens and ethnic communities. This expresses the continuity with Serbian statehood from the past. At the same time, the equality of all citizens and ethnic communities is placed on the same level with the state tradition of the Serbian people. Also, the preamble states that the Constitution is adopted because the Province of Kosovo and Metohija is an integral part of the territory of Serbia. The memory of the Battle of Kosovo is deeply engraved in the Serbian national identity and it has become a kind of symbol of the struggle for Serbian statehood.<sup>70</sup> The question of the legal nature of the preamble was left open by the constitution-maker, and conflicting opinions can be found in the literature in this regard.<sup>71</sup>

Significant elements of national identity are language and script. The Constitution stipulates that the Serbian language and the Cyrillic alphabet are in official use in the Republic of Serbia, while the use of other languages and scripts is regulated by law “based on the Constitution.” Although the Roman script is also used in Serbia, the Constitution stipulates that only the Cyrillic script is in official use. Thus, the script, which undoubtedly represents one of the symbols of Serbian identity, was declared an official script by the Constitution. To encourage the use of this script, which is inextricably linked with Serbian culture and literature, a special law has been passed, which will be discussed in more detail in the following chapters. Although the Serbian language and the Cyrillic script are in official use, the Constitution provides for the possibility of regulating the official use of other languages and scripts by law. The right to participate in decision-making in accordance with the law or to decide on issues related to the official use of their language and script is among the collective rights, guaranteed by the Constitution to national minorities.<sup>72</sup>

68 Constitution of the Republic of Serbia, Art. 189.

69 Constitution of the Republic of Serbia, Art. 190.

70 Mønnesland, 2013, pp. 39–44; Đukić, 2022, p. 61.

71 Marković, 2006, p. 43; Simović, 2020, p. 191.

72 Constitution of the Republic of Serbia, Art. 75.

Therefore, although the Serbian language and the Cyrillic script have the status of the official language and script, this does not mean that the use of other languages and scripts is restricted or prohibited, leaving the legislator to regulate this area, in accordance with constitutional regulations on collective rights of national minorities.

The Constitution of the Republic of Serbia prescribes in principle that the Republic of Serbia protects the rights of national minorities, whereby “The state shall guarantee special protection to national minorities for the purpose of exercising full equality and preserving their identity.”<sup>73</sup> The constitution-maker included the protection of minority rights in the basic provisions of the Constitution. The rights of national minorities are additionally regulated within the framework of constitutional guarantees of human and minority rights. The constitutional provision regulating the right to preserve the specifics of national minorities is important for the topic of this paper. The list of special rights that preserve the identity of persons belonging to national minorities includes the right to public use of symbols of national minorities, as well as to the use of their language and script.<sup>74</sup> The scope of rights of persons belonging to national minorities may be extended, but only by the regulations of the autonomous provinces and provided a legal basis for it.<sup>75</sup>

Apart from national minorities, there are other entities that enjoy certain collective rights. These include churches and religious communities.<sup>76</sup> The Constitution of the Republic of Serbia guarantees freedom of thought, conscience, and religion.<sup>77</sup> The freedom of religion or belief includes the freedom to perform religious rites as well as freedom of private and public expression of religious beliefs. Freedom of expression of religious beliefs usually implies the use of various religious symbols, often in public space.<sup>78</sup> Therefore, the Constitution indirectly

73 Constitution of the Republic of Serbia, Art. 14.

74 “Members of national minorities shall have a right to: expression, preservation, fostering, developing and public expression of national, ethnic, cultural, religious specificity; use of their symbols in public places; use of their language and script; have proceedings also conducted in their languages before state bodies, organizations with delegated public powers, bodies of autonomous provinces and local self-government units, in areas where they make a significant majority of population; education in their languages in public institutions and institutions of autonomous provinces; founding private educational institutions; use of their name and family name in their language; traditional local names, names of streets, settlements and topographic names also written in their languages, in areas where they make a significant majority of population; complete, timely and objective information in their language, including the right to expression, receiving, sending and exchange of information and ideas; establishing their own mass media, in accordance with the Law. Under the Law and in accordance with the Constitution, additional rights of members of national minorities may be determined by provincial regulations.” Constitution of the Republic of Serbia, Art. 79. The 2006 Constitution of Serbia guarantees the linguistic rights of minorities based on territorial and personal principles (Bakić, 2010, p. 385).

75 Pajvančić, 2009, p. 102.

76 Avramović and Rakitić, 2009, pp. 95–96.

77 Constitution of the Republic of Serbia, Arts. 43, 44.

78 Đukić, 2021, p. 155.

guarantees the freedom of religious organizations to display their symbols and to use them publicly.

The 2006 Constitution of the Republic of Serbia very summarily regulates the appearance and use of state symbols. The constitution regulates the protection of national symbols to some extent. Special attention was paid to the protection of the use of symbols of national minorities, which is related to the preservation of their identity. The right of autonomous provinces and local self-government units to determine and regulate the appearance and use of their symbols is also guaranteed. The Constitution, albeit indirectly, protects the right of religious organizations to use their symbols within the right to manifest religious beliefs.

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## 4. Legal protection of state symbols

The legal order of the Republic of Serbia envisages the protection of state symbols from improper use, display in an inadequate form or in a manner contrary to positive legal regulations. The legal protection of state symbols takes several forms. Administrative, misdemeanor, and criminal protection of state symbols is most often mentioned in the literature.<sup>79</sup>

The basic law that regulates the appearance, use, display and legal protection of state symbols is the law on the appearance and use of the coat of arms, flag and anthem of the Republic of Serbia from 2009.<sup>80</sup> Based on the authorizations from that Law, the Government of the Republic of Serbia has adopted in 2010 the decree on establishing the archetype of the large and small coats of arms, archetype of the flag and musical notes of the anthem of the Republic of Serbia.<sup>81</sup> Thus, the practice from the time of the Kingdom of Serbia continued, that the Government determined the original coat of arms and flag. In the Republic of Serbia, substantive issues in the field of misdemeanors are regulated by the Law on Misdemeanors.<sup>82</sup> That Law does not list misdemeanor offenses, but various types of offenses are prescribed by other laws. Regarding state symbols, a small number of regulations contain violations in that area, among which the most important are the Law on the Appearance and Use of the Coat of Arms, Flags and Anthems of the Republic of Serbia and the Law on Decorations of the Republic of Serbia.

79 Popović and Jovanović, 1979, p. 100.

80 Law on the design and use of the coat of arms, flag, and anthem of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 36/2009.

81 Decree on establishing the archetype of the large and small coats of arms, archetype of the flag and musical notes of the anthem of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 85/2010.

82 Law on Misdemeanors, Official Gazette of the Republic of Serbia, nos. 65/2013, 13/2016, 98/2016, 91/2019, 91/2019.

The Law on the Appearance and Use of the Coat of Arms, Flag, and Anthem of the Republic of Serbia from 2009 stipulates that state symbols may be used only in the form and with the content determined by the Constitution and the law. A legal entity that uses the mentioned state symbols in a form or with a content or melody not provided for by the Constitution or the law, shall be punished by a fine for a misdemeanor.<sup>83</sup> The same law prohibits the use of the coat of arms and the flag “as merchant or trade mark, pattern or model, or any other kind of symbols to mark merchandise or services.”<sup>84</sup> Acting contrary to this provision of the Law is also punishable by a fine. Regarding displaying the coat of arms or flag of foreign countries in the Republic of Serbia, the law stipulates that they can be displayed only with the coat of arms or flag of the Republic of Serbia. An exception to this rule is allowed if provided for by an international agreement.<sup>85</sup> A legal entity that acts contrary to this shall be fined. A smaller fine is prescribed for the responsible person in the legal entity. The law also stipulates that the coat of arms and the flag may not be used when they are damaged or are unsuitable for use due to their appearance, and in that case, they shall be withdrawn from use. A legal entity that displays a flag or coat of arms that is not suitable for use will be fined for the offense, while a smaller fine is prescribed for the responsible person in the legal entity. Apart from legal entities, this offense can also be committed by natural persons, who in that case are fined the same amount as the responsible person in a legal entity.<sup>86</sup> The legislator also envisaged a protective measure that can be imposed in addition to the fine, which consists in confiscating the object with which the misdemeanor was committed.<sup>87</sup>

The Law on Decorations regulates the names and grades of decorations in the Republic of Serbia, as well as the procedures for their bestowing and revoking.<sup>88</sup> This law stipulates that a company will be punished for an economic offense, and an entrepreneur for a misdemeanor, if it puts on the market a sign or object that has the appearance of a decoration of the Republic of Serbia. Along with the penalty, a protective measure of confiscation of the object is imposed, and in the case of a company, confiscation of the earned profit. In the case of natural persons, fines for misdemeanors are envisaged for persons who wear a foreign decoration without the consent of the ministry responsible for foreign affairs, then for persons who wear or use an object that looks like a decoration, as well as for persons who wear a decoration that was not awarded to them, or in a manner contrary to applicable regulations.<sup>89</sup>

83 Law on the Design and Use of the Coat of Arms, Flag, and Anthem of the Republic of Serbia, Arts. 2, 41.

84 *Ibid.*, Arts. 5, 41.

85 *Ibid.*, Arts. 8, 41.

86 *Ibid.*, Arts. 6, 42.

87 *Ibid.*, Art. 43.

88 Law on Decorations, Official Gazette of the Republic of Serbia, nos. 88/2009–43, 36/2010.

89 Law on Decorations, Arts. 27–29.

Regarding the criminal protection of state symbols, it should be emphasized that criminal acts related to state symbols are classified in the group of criminal acts against honor and reputation. The Criminal Code of Serbia prescribes the criminal offense of defamation of Serbia, which consists of public exposure to the desecration of Serbia, its flag, coat of arms, or anthem. A fine or imprisonment for up to three months is prescribed for this criminal offense.<sup>90</sup> The subject of criminal protection is the reputation of the state, while the activity is exposure to desecration that can be verbal (oral or in writing) or an act, i.e., by certain actions. The Code stipulates that exposure to desecration must be public, which means that it must be done in such a way that an indefinite number of persons can learn about the act. The subject of the act is Serbia and its state symbols: the flag, the coat of arms, and the anthem. Exposure to desecration needs to be direct, which means that exposing state bodies or the highest state representatives to desecration is not part of this criminal offense. Unlike some countries in which exposure to the destruction of state symbols has been decriminalized, or reduced to the level of a misdemeanor, the Criminal Code of Serbia prescribes the criminal protection for state symbols. It is considered that this criminal offense is committed when one person learns about it and can be carried out only with premeditation, where it should include all the essential features of this criminal offense.<sup>91</sup>

The Criminal Code prescribes a fine or imprisonment of up to three months for a person who exposes to desecration a foreign state, its flag, coat of arms, or anthem.<sup>92</sup> Therefore, the criminal legislation of Serbia does not make a major difference between exposing Serbia and its symbols to desecration and exposing other states and their symbols to desecration of. The only controversial question that arises here is whether any state can be a passive subject. In principle, all states and their symbols enjoy criminal protection, provided that the Republic of Serbia recognizes those states either *de jure* or *de facto*.<sup>93</sup> Prosecution for the criminal offense of defamation of a foreign state is undertaken with the approval of the Republic Public Prosecutor.<sup>94</sup> Although this issue is of a procedural nature by its nature, it is still regulated by the Criminal Code. When deciding on approving the prosecution, the Republic Public Prosecutor assesses if conducting criminal proceedings would be purposeful.<sup>95</sup>

The Criminal Code provides a special defense, which applies to the criminal offense of defamation of Serbia, as well as the criminal offense of defamation of a foreign state. In accordance with Art. 176 of the Criminal Code, there will be no criminal offense if at least two conditions are cumulatively met. The first is that the criminal offense was committed while performing a certain activity (if the public exposure to the desecration was made within the framework of serious criticism

90 Criminal Code, Art. 173.

91 Stojanović, 2021, pp. 582–583.

92 Criminal Code, Art. 175.

93 Stojanović, 2021, p. 585.

94 Criminal Code, Art. 177.

95 Stojanović, 2021, p. 587.

in scientific, literary, or artistic work, in the performance of official duties, journalistic or political activity, defense of a right or protection of legitimate interests). The second condition is set alternatively. It is necessary that the perpetrator did not commit the act with the intention of belittling or proving the truth of his claim or “that he had a founded reason to believe in the truth of what he stated.” This defense greatly restricts the criminality of that behavior.<sup>96</sup>

Administrative protection of state symbols includes numerous activities undertaken by state and self-governing bodies, which derive from the powers given to them by various laws and bylaws. These are activities that are not a misdemeanor or a criminal act in their nature, but they enable some type of legal protection of state symbols. This type of legal protection, among other things, includes inspection supervision, adoption of individual legal acts, taking various measures, performing certain actions in administrative proceedings, etc.

The Law on the Appearance and Use of the Coat of Arms, Flag, and Anthem of the Republic of Serbia protects the dignity of state symbols by provisions that do not contain any sanctions. Such are the provisions which stipulate that the flag and coat of arms of Serbia are always placed in a place of honor if they are displayed together with the national symbols of other countries, then the provisions which prohibit writing on state symbols and which allow the use of state symbols for artistic, teaching, and educational purposes “in a way that does not insult the public moral, reputation and dignity of the Republic of Serbia.” Precisely, to protect the dignity of the state, the Law stipulates that the flag may not be displayed during the night (unless it is lit) and in bad weather conditions. The raising and lowering of the flag is done with the usual honors. Prohibited methods of displaying the flag are prescribed: the flag may not touch the ground, nor may it be in the form of a base, mat, rug, curtain, or drapery, nor may it cover vehicles or other objects. Regarding the anthem, the Law prohibits any changes to the anthem during its performance, and it prescribes the obligation of all persons present to pay the usual honor in the form of standing up, greeting and the like.<sup>97</sup> The Law on state Administration stipulates that the coat of arms and the flag of the Republic of Serbia must be displayed on buildings in which state administration bodies are located.<sup>98</sup>

Several regulations regulate the use of state symbols in the field of economy. The Law on Companies stipulates that “a company may use the coat of arms, flag, emblem, mark or other symbol of the Republic of Serbia or a foreign state, domestic territorial units and autonomous provinces, international organizations, with the consent of the competent authority of that state, domestic territorial units and

96 Stojanović, 2021, p. 586.

97 Law on the design and use of the coat of arms, flag and anthem of the Republic of Serbia, Arts. 3, 4, 7, 32, 33, 37 and 38.

98 Law on state Administration, Official Gazette of the Republic of Serbia, nos. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018, 30/2018, Art. 83.

autonomous provinces or international organizations.”<sup>99</sup> The same law stipulates that the company’s business name may contain the word “Serbia,” including all its forms, and the internationally recognized abbreviation “SRB,” provided that it obtains the prior consent of the competent authority. The same rules apply to other countries and international organizations.<sup>100</sup> The consent is not required when the business name of the founder of the company contains in its name the name of the state or international organization. Also, the Law stipulates that at the request of the state competent authority, the name of the state may be deleted from the business name of the company.<sup>101</sup> Generally, the choice of a business name is free, but the use of the names of states and international organizations, as well as the use of the name of natural persons, is conditioned by their consent.<sup>102</sup> In accordance with the Law on Ministries, the Ministry of Economy performs state administration tasks related to the use of the name of the Republic of Serbia in the business name of companies.<sup>103</sup> The ministry is preparing a draft decision, based on which the government of the Republic of Serbia will issue a decision giving prior consent for entering the name of the Republic of Serbia in the business name of the company.<sup>104</sup>

The Law on Trademarks stipulates that a trademark may not protect a sign “containing or imitating a name, abbreviation, state coat of arms, flag or other official sign of the Republic of Serbia, except with the approval of the competent authority.”<sup>105</sup> In accordance with the Methodology Applied by the Intellectual Property Office to the Procedure Relating to the Registration of Trade Marks and the Procedures Based on Registered Trade Marks, state coats of arms, flags, abbreviations and symbols of all states and international organizations are excluded from trademark protection. Apart from the symbols of states and international organizations, signs imitating their official emblems are also excluded. A sign that imitates a symbol is a sign that is perceived as a symbol, which is excluded from trademark protection in accordance with the regulation. A mitigating circumstance is that when considering the application, the sign is considered in its overall appearance, and not just an element that can be related to the state symbol.<sup>106</sup> The intention of the legislator was to prevent the commercialization of certain terms and signs and to protect the authority of states and international organizations.<sup>107</sup>

99 Companies Law, Official Gazette of the Republic of Serbia, nos. 36/11, 99/11, 83/14, 5/15, 44/18, 95/18, 91/19 109/21, Art. 25, para. 2.

100 Companies Law, Art. 29, paras. 1, 2.

101 Companies Law, Art. 29, paras. 3, 4.

102 Vasiljević, 2006, p. 103.

103 Law on Ministries, Official Gazette of the Republic of Serbia, no. 128/2020, Art. 4.

104 Unošenje naziva “Srbija” u ime privrednog društva, <https://www.privreda.gov.rs/lat/usluge/unosenje-naziva-srbija-u-ime-privrednog-drustva>.

105 Law on Trade Marks, Official Gazette of the Republic of Serbia, no. 6/2020. Art. 5.

106 The Methodology Applied by the Intellectual Property Office to the Procedure Relating to the Registration of Trade Marks and the Procedures Based on Registered Trade Marks, [https://www.zis.gov.rs/upload/documents/pdf\\_en/pdf\\_zigovi/methodology.pdf](https://www.zis.gov.rs/upload/documents/pdf_en/pdf_zigovi/methodology.pdf), p. 66.

107 Marković and Popović, 2013, p. 146.

The Law on Legal Protection of Industrial Designs stipulates that protection may not be granted to industrial designs containing the state coat of arms, flag or symbol, including the name or abbreviation of the name of a state, unless the approval of the competent authority is obtained.<sup>108</sup> In the decision on the appeal, the government of Serbia “may recognize the industrial design in a modified form, if in that form the industrial design meets the conditions for protection and if the individual character of the industrial design is retained.”<sup>109</sup> The Law also stipulates that a registered industrial design may be annulled, and a proposal for the annulment may be filed by the public prosecutor, if the reason for announcing it null and void is based on the use of the state or other public coat of arms, flags or symbols.<sup>110</sup>

Regarding the use of state symbols in the media, the Law on Advertising stipulates that the use of state symbols of the Republic of Serbia (coat of arms, flag, and anthem) must be in accordance with the law governing the use of these symbols.<sup>111</sup> This is the previously mentioned Law on the appearance and use of the coat of arms, flag, and anthem of the Republic of Serbia. According to the Law on Advertising, legal protection is also provided to state symbols of foreign states and international organizations: “The use of flags, coats of arms, anthems and other symbols of foreign states and international organizations may not be undignified, and especially to be such as to expose them to desecration, or to insult the dignity of a foreign state or its citizens or an international organization.”<sup>112</sup> The laws governing the field of media do not provide for special protection of state symbols.<sup>113</sup> The reason is that the legal framework set by the Law on the Appearance and Use of the Coat of Arms, Flag, and Anthem of the Republic of Serbia, as well as the relevant provisions of the Criminal Code, sufficiently guarantee legal protection of state symbols in the field of media and information.

The Serbian Government established a new state holiday in September 2020, with the aim of promoting national and state symbols. The Day of Serb Unity, Freedom and the National Flag is celebrated on the 15th of September, the day when the breakthrough of the Macedonian Front is celebrated.<sup>114</sup> The promotion and legal protection of state symbols is extremely important in modern states which are simultaneously national and liberal. “The cultural essence of the state comes to the fore

108 Law on Legal Protection of Industrial Design, Official Gazette of the Republic of Serbia, nos. 104/2009, 45/2015, 44/2018.

109 Law on Legal Protection of Industrial Design, Art. 12.

110 Law on Legal Protection of Industrial Design, Art. 58, para. 5.

111 Law on Advertising, Official Gazette of the Republic of Serbia, nos. 6/2016 and 52/2019, Art. 18.

112 Law on Advertising, Official Gazette of the Republic of Serbia, nos. 6/2016 and 52/2019, Art. 18, para. 3.

113 Law on Electronic Media, Official Gazette of the Republic of Serbia, nos. 83/2014, 6/2016, 129/2021; Law on public information and media, Official Gazette of the Republic of Serbia, nos. 83/2014, 58/2015, 12/2016; Law on public service broadcasting, Official Gazette of the Republic of Serbia, nos. 83/2014, 103/2015, 108/2016, 161/2020, 129/2021.

114 Day of Serbian Unity, Freedom and National Flag marked, <https://www.srbija.gov.rs/vest/en/178351/day-of-serbian-unity-freedom-and-national-flag-marked.php>.

in its political institutions and in the official language, as well as in the symbolic sphere, in the selection of rituals, national heroes, and the like.”<sup>115</sup>

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## 5. Legal protection of national symbols

Unlike the state symbols that are explicitly listed in the Constitution of the Republic of Serbia and relevant legislation, the list of national symbols that can enjoy legal protection is much longer. “National symbols are thus linked to national identity, collective memory and rites.”<sup>116</sup> National symbols include almost everything connected to a specific nation: signs, monuments, language, religion, traditions, songs, folklore, architecture, literature, national myths and commemorations, food, sites and even flora and fauna (e.g., national flower) etc. In this part of the paper, the regulations governing the legal protection of national symbols in general will be presented, while in the next part of the paper, special attention will be paid to the protection of national symbols of national and ethnic minorities.

The Criminal Code prescribes several criminal offenses whose subject of protection is freedom of expression of national affiliation. The Constitution of the Republic of Serbia guarantees every citizen the right to express their national affiliation.<sup>117</sup> The Criminal Code prescribes a fine, or imprisonment of up to one year, for a person who prevents another person from expressing his or her national or ethnic affiliation and culture.<sup>118</sup> A qualified form of this criminal offense may be committed by an official in the performance of his or her duties. In that case, no fine is envisaged, only imprisonment for up to three years. Since national affiliation is often expressed using national symbols, it can be argued that the Criminal Code provides protection for the use of national symbols. Although the protection of the right to express one’s nationality is very broad, there is one limitation of that right. It must not be done in a way that violates positive legal regulations (e.g., on the use of state symbols) or insults the feelings of members of other nations.<sup>119</sup>

The Criminal Code criminalizes incitement to national, racial, or religious hatred or intolerance. Six months to five years of imprisonment for is prescribed for this criminal offense. The qualified form of this criminal offense consists of exposing national and ethnic symbols to desecration, or desecrating monuments, memorials, or graves. The qualified form of this criminal offense is punishable by imprisonment for a term of one to eight years. The most serious forms of this criminal offense occur

115 Tamir, 1993, p. 148.

116 Mønnesland, 2013, p. 9.

117 Constitution of the Republic of Serbia, Art. 47.

118 Criminal Code, Art. 130.

119 Stojanović, 2021, p. 503.

through abuse of position or authority, or when they produce severe consequences for the lives of people and national and ethnic groups living in Serbia, such as riots, violence, and the like.<sup>120</sup> Exposing the national symbols to desecration is associated with inciting national hatred and intolerance. This provision applies equally to the national symbols of the majority nation and to the national symbols of national minorities. Although several verdicts can be found in court practice for inciting national, racial, or religious hatred or intolerance, none of them were passed for exposing national symbols to desecration.<sup>121</sup>

The Law on Trademarks stipulates that a trademark cannot protect a sign which represents or simulates a national symbol.<sup>122</sup> The reason is the fact that national symbols are part of the national cultural heritage, over which no one can establish a monopoly. The second reason is that the trademark has a commercial function, which is contrary to the nature of national symbols, and it therefore prevents their use for commercial purposes.<sup>123</sup> The Law on Legal Protection of Industrial Designs stipulates that protection cannot be granted to industrial design that contains national symbols. In this case, too, the government of the Republic of Serbia in its decision on an appeal “may recognize industrial design in a modified form, if in that form the industrial design meets the conditions for protection and if the individual character of the industrial design is retained.” The Law also stipulates that a registered industrial design may be declared null and void, and that the proposal for the annulment can be filed by the public prosecutor, in regard to industrial design that contains and imitates national symbols.<sup>124</sup>

The laws governing the field of media regulate the protection of national identity and the affirmation of interethnic tolerance. The Law on Electronic Media states that one of the goals of the media services of the public media service is the preservation of national identity and interethnic tolerance.<sup>125</sup> The Law on Public Information and Media stipulates that the public interest in the field of information includes “preserving the cultural identity of the Serbian people and national minorities living in the territory of the Republic of Serbia.”<sup>126</sup> A similar provision is contained in the Law on Public Media Services, which regulates the activities of the public media service. One of the goals of the content produced by the public media service is the preservation of the national identity of the Serbian people and of national minorities, as well as the affirmation of the cultural values of the Serbian people and national minorities living in Serbia.<sup>127</sup> As national symbols are an expression of national identity,

120 Criminal Code, Art. 317.

121 Stojanović, 2021, p. 985.

122 Law on Trade Marks, Art. 5.

123 The Methodology Applied by the Intellectual Property Office to the Procedure Relating to the Registration of Trade Marks and the Procedures Based on Registered Trade Marks, p. 67.

124 Law on Legal Protection of Industrial Design, Arts. 9; 58, para. 5.

125 Law on Electronic Media, Art. 4.

126 Law on public information and media, Art. 15.

127 Law on Public Service Broadcasting, Arts. 3, 7.

it can be concluded that the laws governing the field of media in the Republic of Serbia, affirming the preservation of national and cultural identity of the Serbian people, allow the use of various national symbols in the media space. The same applies to national minorities, whose rights will be discussed in more detail in the next chapter.

Language and script have a special place among the symbols of national identity. The use of the official language and script is regulated by a special Law, which implements the constitutional regulation on the official language and script. In accordance with the Law on the Official Use of Languages and Scripts, the Serbian language and the Cyrillic script are in official use in the Republic of Serbia. The law also regulates the official use of the Roman script, as well as the languages and scripts of national minorities. The provisions of this Law which regulates the official use of the Roman script have been repealed. Since the Law was passed in 1991, a remnant of earlier Yugoslav understandings remained in the form of a provision stipulating that “Serbo-Croatian language is in official use in the Republic of Serbia, which is also called the Serbian language, when representing the Serbian language expression in its variants.”<sup>128</sup> When the name of the language was changed, the provisions governing the official use of the Roman script were repealed. In any case, municipalities can determine by their statutes the official use of the Roman script, which must be in accordance with the law. The official use of the Roman script was the cause for several lawsuits, mainly due to the lack of clear rules on the official use of that script.

The use of the official language is regulated in most countries in the world. The Serbian legislator went a step further and regulated the use of the Serbian language in public life and measures to protect the Cyrillic script. The Law on the Use of the Serbian Language in Public Life and the Protection and Preservation of the Cyrillic Alphabet declared the Serbian language a “means and a public good of national culture,” while the Cyrillic alphabet was declared the “mother script” of the Serbian language.<sup>129</sup> This Law prescribes the obligatory use of the Serbian language and the Cyrillic script in the work of state bodies and all other organizations that exercise public authority, public companies, public services and all educational institutions of all levels. Also, the Serbian language and the Cyrillic script must be used in the work and business of companies with a majority share of public capital (including companies in the field of scientific research), in professional and vocational associations representing their field, and in public media institutions of Serbia and Vojvodina. Also, cultural events that are fully or partially financed from public funds must have a logo written in Cyrillic alphabet, except for events of national minorities. The Law stipulates that the use of the Serbian language and the mother script applies to legal transactions and includes the display of business names, address of the seat, names

128 Law on Official Use of Languages and Scripts, Official Gazette of the Republic of Serbia, no. 45/91.

129 Law on the Use of the Serbian Language in Public Life and the Protection and Preservation of the Cyrillic Script, Official Gazette of the Republic of Serbia, no. 89/2021.

of goods and services and their characteristics, user manuals, warranty conditions, offers, bills (invoices) and certificates.<sup>130</sup>

The law envisages the establishment of the Council for the Serbian Language, which would monitor the status of the use of the Serbian language in public life and the implementation of measures for the protection of the mother script, and give recommendations for improving that status.<sup>131</sup> It is also envisaged that the regulations may establish tax and administrative reliefs for business and other entities that use the Cyrillic script. The same applies to the use of languages and scripts of national minorities. The law establishes the system of protection and preservation of the Serbian language and the Cyrillic alphabet, and it defines what reflects the social care for the protection and preservation of the Serbian language and its mother script. Supervision over the implementation of the law is entrusted to the ministry responsible for culture. There is also a misdemeanor liability for non-compliance with the provisions of the law, and the amount of fines for legal entities and the responsible natural persons in legal entities.<sup>132</sup> One of the peculiarities of the Serbian language is the equal use of two alphabets: Cyrillic and Roman. The Cyrillic script is the symbol of Serbian national identity, which was neglected during the Yugoslav state. The use of the Roman alphabet in everyday life has prevailed primarily for practical reasons. After the restoration of Serbian statehood, there was a need to renew the use of the Cyrillic script and take measures to protect it. It is with this goal that the mentioned Law was passed, which does not affect the rights of national minorities and their freedom to use their language and script.

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## **6. Legal protection of symbols of communities with the same identity**

In this part of the paper, the legal protection of the symbols of the Autonomous Province of Vojvodina, local self-government units, then the symbols of national and ethnic minorities and finally the legal protection of religious symbols and symbols of religious organizations will be analyzed.

Autonomous provinces are autonomous territorial communities established by the Constitution, in which citizens exercise the right to provincial autonomy. As already mentioned, the Constitution of the Republic of Serbia prescribes that both

130 Law on the Use of the Serbian Language in Public Life and the Protection and Preservation of the Cyrillic Script, Arts. 6, 3.

131 Law on the Use of the Serbian Language in Public Life and the Protection and Preservation of the Cyrillic Script, Art. 4.

132 Law on the Use of the Serbian Language in Public Life and the Protection and Preservation of the Cyrillic Script, Arts. 5–11.

autonomous provinces determine their symbols and the manner of their use.<sup>133</sup> The highest legal act of the Autonomous Province is the statute, which is passed by the Assembly of the Autonomous Province with the prior consent of the National Assembly.<sup>134</sup> The Law on Establishing the Competences of the Autonomous Province of Vojvodina stipulates that the Autonomous Province of Vojvodina determines its symbols, and the manner of their use, in compliance with its Constitution and the Statute.<sup>135</sup>

The previous Statute of the Autonomous Province (AP) of Vojvodina stipulated that the Autonomous Province has its own symbols and that they are the flag and the coat of arms. The Statute also prescribed that the appearance and use of symbols be regulated by the Assembly of AP Vojvodina by the decision of the provincial assembly, which must be in compliance with the Constitution and the Statute.<sup>136</sup> Regarding the initiative to assess the constitutionality of certain provisions of the Statute of AP Vojvodina, the Constitutional Court of the Republic of Serbia ruled that the mentioned provision is not in conformity with the Constitution because “basic standards of determination and clarity of legal norms, as a precondition for exercising the rule of law, have not been met.” The reason is the fact that this statutory provision stipulated that the appearance and use of the flag and coat of arms of AP Vojvodina will be regulated in compliance with the Constitution and the Statute, while neither the Constitution nor the Statute determine the appearance or manner of using these symbols. In any case, the Constitutional Court ruled that the issue of symbols is one of the issues that the province regulates independently, exclusively based on the Constitution, and which belongs to the matter regulated by the provincial statute.<sup>137</sup>

To harmonize with the ruling of the Constitutional Court, a new Statute of the Autonomous Province of Vojvodina was adopted in 2014; it contains a detailed description of the symbols of that province.<sup>138</sup> The statute prescribes the existence of symbols and traditional symbols of AP Vojvodina. The symbols are the flag and the coat of arms. The flag consists of three colors: red, blue, and white, placed horizontally in relation to the spear and which are in the ratio 1:8:1. In the middle of the central and largest blue field, there are three yellow stars arranged in a circle, which mark three historical regions: Bačka, Banat, and Srem. The coat of arms is also a combination of the coats of arms of those regions placed on a shield that is divided into three fields. The traditional symbols are the traditional Serbian tricolor (red,

133 Constitution of the Republic of Serbia, Art. 183, para. 4.

134 Constitution of the Republic of Serbia, Art. 185.

135 Law on Establishing the Competences of the Autonomous Province of Vojvodina, Official Gazette of the Republic of Serbia, nos. 99/2009, 67/2012, 18/2020, 111/2021.

136 Statute of the Autonomous Province of Vojvodina, Official Gazette of the Autonomous Province of Vojvodina, no. 17/2009.

137 IUo-360/2009.

138 Statute of the Autonomous Province of Vojvodina, Official Gazette of the Autonomous Province of Vojvodina, no. 20/2014.

blue, and white), while the traditional coat of arms is actually the coat of arms from 1848, which contains a shield with the historical Serbian coat of arms (cross with four furisons). The statute stipulates for certain issues related to the appearance and use of symbols be regulated by a provincial assembly decision.

In 2016, the Provincial Assembly adopted the Provincial Assembly Decision on the appearance and use of symbols and traditional symbols of the Autonomous Province of Vojvodina, which repealed previous Provincial Assembly decisions on the use of the historical symbols and flag of AP Vojvodina.<sup>139</sup> This decision regulates in detail the manner of use and legal protection of symbols and traditional symbols of AP Vojvodina. In accordance with Art. 2 of the Decision, “Symbols of AP Vojvodina represent the Autonomous Province of Vojvodina as an autonomous territorial community of the Republic of Serbia.” Similar rules for displaying the flag and coat of arms of the Autonomous Province of Vojvodina are envisaged as in the republic Law that regulates the use of state symbols. Throughout the provisions on the use of symbols, the goal is to protect the reputation and dignity of the province. The flag and the traditional flag, as well as the coat of arms and the traditional coat of arms are completely equal in use. In accordance with Art. 8 of the decision, a traditional flag with a traditional coat of arms in the middle of the flag may also be used. Provincial symbols are always placed on the right side of the state symbols of the Republic of Serbia. The use of the coat of arms or the traditional coat of arms as an integral part of an emblem or a sign requires the consent of the Provincial Government. However, the decision prohibits the use of both coats of arms as “a trademark or service mark, pattern, model or other sign marking goods or services.” The originals of both coats of arms and both flags are kept in the Assembly of AP Vojvodina. The decision prescribes the violation of the responsibility of legal and natural persons for non-compliance with the rules on the use of the symbols of AP Vojvodina. Legal entities are subject to a fine for the use of symbols that violates the reputation and dignity of the province, for the use symbols of a different appearance than prescribed, for omitting to use the symbols when required, for using damaged emblems or for unauthorized use of coat of arms or traditional coat of arms as an emblem. sign, etc. The decision stipulates that the responsible person in the legal entity, entrepreneurs, and natural persons shall be fined in different amounts for the mentioned acts.<sup>140</sup> Attached to the decision, a detailed graphic presentation, and geometric constructions of the originals of both flags and both coats of arms were published.

The Provincial Assembly decision on the appearance and use of symbols and traditional symbols of the Autonomous Province of Vojvodina envisages the adoption of

139 Provincial Assembly decision on the appearance and use of symbols and traditional symbols of the Autonomous Province of Vojvodina, Official Gazette of the Autonomous Province of Vojvodina, no. 51/2016.

140 Provincial Assembly decision on the appearance and use of symbols and traditional symbols of the Autonomous Province of Vojvodina, Official Gazette of the Autonomous Province of Vojvodina, no. 51/2016, Art. 13.

the instruction on closer regulation of the use of symbols of the Autonomous Province of Vojvodina, which was also passed in 2016. This instruction regulates in more detail the use of provincial symbols in specific circumstances, such as use in official premises, at events, in correspondence of the provincial authorities, school diplomas, ID documents, etc. The procedure for obtaining consent for the use of the coat of arms by the bodies of local self-government units and organizations with public authorizations whose founder is AP Vojvodina is also regulated. The request for the use of the coat of arms of AP Vojvodina is submitted through the Provincial Secretariat for Education, Regulations, Administration and National Minorities-National Communities and should contain all relevant data including the purpose of using the coat of arms, technical description, deadline in which the consent is required.<sup>141</sup> From all the above, it can be concluded that the Constitution, the Law on Establishing the Competences of the Autonomous Province of Vojvodina and provincial regulations provide legal protection for all symbols of AP Vojvodina. All provincial regulations were harmonized with the ruling of the Constitutional Court, which also dealt with provincial symbols when determining the compliance of the provincial Statute with the relevant provisions of the Constitution of the Republic of Serbia.

In addition to the autonomous provinces, local self-government units also have their symbols, i.e., municipalities, cities, and the city of Belgrade. The Law on Local Self-Government stipulates that local self-government units independently determine their symbols and their use. The law stipulates that local self-government units can have two types of symbols: the coat of arms and the flag.<sup>142</sup> The same Law prescribes the restrictions that local self-government units should respect when standardizing the appearance and use of their symbols. Symbols of local self-government units may only be displayed with state symbols, symbols of local self-government units must differ from each other and statutory provisions governing the appearance of symbols must “correspond to historical and actual facts and these provisions may not offend general and state interests, national and religious feelings and public morals.” The competent body for determining the symbols is the assembly of the local self-government unit. The units of local self-government determined the existence of their symbols (flags and coats of arms) in their statutes, while special regulations regulated in detail the appearance and use of these symbols.<sup>143</sup> The content of these decisions does not differ much from the content of the Provincial Assembly Decision on the appearance and use of symbols and traditional symbols of the Autonomous Province of Vojvodina, which has already been discussed. The decisions also contain a provision on misdemeanor liability of legal and natural persons for violating the rules on the use of city or municipal symbols.

141 Granting approval to the use of the coat of arms of AP Vojvodina, [http://www.puma.vojvodina.gov.rs/etext.php?ID\\_mat=767](http://www.puma.vojvodina.gov.rs/etext.php?ID_mat=767).

142 Law on Local Self-Government, Official Gazette of the Republic of Serbia, no. 111/2021.

143 E.g., decision on the manner of using the symbols of the City of Valjevo, Official Gazette of the City of Valjevo, nos. 13/2010, 2-1/2014, 11/2016.

The appearance and use of the symbols of the city of Belgrade are regulated in a similar way. The statute of the city prescribes the appearance of the coat of arms and the flag.<sup>144</sup> The decision on the use of the name, coat of arms and flag of the City of Belgrade regulates in detail the use of the city symbols and the manner of conducting inspection supervision over the implementation of that decision. The communal inspection is authorized to control the use of the name of the city and in case of non-compliance with the provisions of the mentioned decision, it will order the legal entity or the entrepreneur to correct all the shortcomings. Also, the communal inspector supervises the use of city symbols and is authorized to ban the use of those symbols and order their removal if they are used contrary to the provisions of the decision on the use of the name, coat of arms and flag of the City of Belgrade.<sup>145</sup> Penal provisions provide for fines for several breaches consisting of non-compliance with the provisions of the decision on the use of the name, coat of arms and flag of the City of Belgrade. Different amounts of fines are provided for legal entities, the responsible person in the legal entity, entrepreneurs, and individuals. The misdemeanor order for the mentioned misdemeanors is issued by the communal inspector, i.e., the communal militia.<sup>146</sup> The Instruction for the use of the flag and coat of arms of the city of Belgrade regulates in detail the use of city symbols, but does not contain regulations on their legal protection.<sup>147</sup> The Law on Communal Militia stipulates that the communal militia verifies the application of the law regulating state symbols, issues warnings and submits requests for initiating misdemeanor proceedings for actions contrary to the law regulating state symbols.<sup>148</sup> With regard to conducting the mentioned control, state bodies of territorial autonomy, local self-government units, and holders of public authority are excluded from its competence.

In addition to the legal protection of the symbols of territorial autonomy units, the regulations governing the legal protection of symbols of various forms of non-territorial autonomy are of special importance. The Law on the Protection of the Rights and Freedoms of National Minorities guarantees members of national minorities the freedom to choose and use their national symbols. The legislator has also prescribed certain restrictions here. A national symbol cannot be the same as a symbol of another state, and state or national symbols of the Republic of Serbia are always to be displayed alongside the symbols of a national minority. National symbols of national minorities (including flags and holidays) are proposed by National Councils

144 Statute of the City of Belgrade, Official Gazette of the City of Belgrade, nos. 39/2008, 6/2010, 23/2013, 7/2016, 17/2016, 60/2019.

145 Decision on the use of the name, coat of arms and flag of the City of Belgrade, Official Gazette of the City of Belgrade, no. 37/2016, Art. 62.

146 Decision on the use of the name, coat of arms and flag of the City of Belgrade, Arts. 64–66.

147 Instructions for the use of the coat of arms and flag of the City of Belgrade, Official Gazette of the City of Belgrade, no. 35/2003.

148 Law on Municipal Militia, Official Gazette of the Republic of Serbia, no. 49/2019, Arts. 2, 10.

of national minorities and are approved by the Council for National Minorities.<sup>149</sup> The Law on National Councils of National Minorities stipulates that the National Council independently decides on its name and symbols and determines proposals for national symbols, flags and holidays of national minorities. The same law stipulates that each National Council has its own statute that, among other things, regulates the symbol of the National Council, which must be different from all existing symbols of National Councils, which must be entered in the appropriate Register and which must not cause confusion regarding the National Council or the national minority it signifies.<sup>150</sup> The Law on National Councils of National Minorities stipulates that a legal or natural person “who disturbs or abuses the right to the use of national symbols” will be fined for a misdemeanor.<sup>151</sup> The Council for National Minorities made several decisions confirming the national symbols and holidays of national minorities in the Republic of Serbia.<sup>152</sup>

As already mentioned, the Constitution of the Republic of Serbia guarantees freedom of thought, conscience, and religion. The Law on Churches and Religious Communities stipulates that churches and religious communities are subjects of religious freedom.<sup>153</sup> The same law stipulates the citizens have the freedom “of public assembly for the purpose of expressing religious beliefs, in accordance with the Constitution and the law.”<sup>154</sup> The right to free expression, i.e., the manifestation of religious beliefs is guaranteed by the Constitution of the Republic of Serbia and the Law on Churches and Religious Communities. Also, the same acts guarantee the autonomy of religious organizations, which includes the right to self-determination and shaping the religious identity of religious organizations.<sup>155</sup> Within their autonomy, religious organizations exercise the right to regulate the appearance and use of their own symbols.<sup>156</sup> The Constitution of the Serbian Orthodox Church prescribes the appearance of its coat of arms and flag. Unlike state symbols, for which there are clear and precise rules on the manner of use, Serbian legislation did not regulate the display of symbols of religious organizations. The Law on Churches and Religious Communities does not prescribe the obligation of religious organizations to submit data on the appearance of their symbols and flags during registration.<sup>157</sup> In practice, it has been shown that religious organizations are free to display their symbols on

149 Law on the Protection of Rights and Freedoms of National Minorities, Official Gazette of the Federal Republic of Yugoslavia, no. 11/2002, Official Gazette of the Republic of Serbia, nos. 72/2009, 97/2013, 47/2018.

150 Law on National Councils of National Minorities, Official Gazette of the Republic of Serbia, nos. 72/2009, 20/2014, 55/2014, 47/2018, 6, 10.

151 Law on National Councils of National Minorities, p. 126.

152 E.g., Decision on Confirmation of the National Symbol and Holiday of the Hungarian National Minority in the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 23/2006.

153 Law on Churches and Religious Communities, Art. 4.

154 Law on Churches and Religious Communities, Art. 5.

155 Đurić, 2013, p. 81.

156 Statute of the Serbian Orthodox Church, Art. 3.

157 Law on Churches and Religious Communities, Art. 18.

their religious buildings, as well as to use them during various religious ceremonies and processions.

The Criminal Code of the Republic of Serbia prescribes the criminal offense of inciting national, racial and religious hatred, which can be committed by exposing religious symbols.<sup>158</sup> This to some extent protects religious symbols from abuse and exposure to desecration.<sup>159</sup> The Law on Legal Protection of Industrial Designs stipulates that protection cannot be granted to industrial designs that contain religious symbols.<sup>160</sup> Also, the Law on Trademarks stipulates that a trademark cannot protect a sign that is a religious symbol.<sup>161</sup> All of the above regulations prohibit the commercial use of religious symbols in an identical manner, which is regulated in more detail by bylaws.<sup>162</sup>

A specific law protecting the unique symbol of Serbian national identity was passed in the second half of last year. It is about the Law on Preservation of the Cultural and Historical Heritage of the Holy Hilandar Monastery.<sup>163</sup> This Law regulates the manner the Republic of Serbia may provide assistance, in order to preserve the historical and cultural heritage of the Hilandar Monastery, which is located on Mount Athos in Greece. Hilandar Monastery is a special symbol of Serbian statehood and is considered to be “the most important Serbian religious symbol.”<sup>164</sup> The law stipulates that the Republic of Serbia undertakes activities related to “preservation and nurturing of historical, religious and cultural traditions of Hilandar Monastery”; their goal is, among other things, “the preservation, research, presentation and interpretation of the entire tangible and intangible cultural heritage of Hilandar Monastery.” The law also prescribes restrictions on the commercial use of “titles, names and characters of cultural and historical heritage and property within the Hilandar Monastery,” which may be exclusively used on the territory of the Republic of Serbia by the Hilandar Monastery or persons approved by the monastery.<sup>165</sup> The adoption of this Law created a legal framework for the authorities of the Republic of Serbia to undertake activities to protect one of the most important national and religious symbols, as well as to present the entire tangible and intangible cultural heritage of the Hilandar Monastery.

158 Criminal Code, Art. 317.

159 Đukić, 2021, p. 163.

160 Law on Legal Protection of Industrial Design, Arts. 9, 7.

161 Law on Trade Marks, Arts. 5, 9.

162 E.g., Methodology of Procedures of the Intellectual Property Office in the Procedure for Recognition of Industrial Design Rights and in Procedures According to Registered Industrial Designs.

163 Law on Preservation of Cultural and Historical Heritage of the Holy Monastery of Hilandar, Official Gazette of the Republic of Serbia, no. 94/2021.

164 Mønnesland, 2013, p. 263.

165 Law on Preservation of Cultural and Historical Heritage of the Holy Monastery of Hilandar, Arts. 3, 4, 7.

## 7. Conclusion

States have always strived to have appropriate signs of external marking that manifested their independence, sovereignty, uniqueness, as well as power and identity. Along with the struggle for the creation of an independent Serbian state, a diplomatic struggle for the freedom of use of Serbian state and national symbols in the Principality of Serbia was waged, to some extent in its shadow. All phases of creating an independent and sovereign Serbian state were marked by certain symbols which, along with the change in the status of the state, were adapted to the new circumstances. From the vassal Principality of Serbia and the internationally recognized Kingdom of Serbia, through the multinational Kingdom of Yugoslavia and the socialist federal Yugoslavia, state symbols expressed the ideas and political processes that dominated those states. Compared to other Central and Eastern European countries, Serbia started renewing its traditional state symbols relatively late. The process of regulating the legal protection of state, national and religious symbols in certain areas is still ongoing. The fact that the Law on the Fundamentals of the Education System last year introduced the rule that the school year begins with the intonation of the anthem of the Republic of Serbia illustrates this.<sup>166</sup>

The renewal of the use of the symbols of the Kingdom of Serbia began based on the non-binding Recommendation of the National Assembly from 2004, whose provisions were included in the text of the valid Constitution adopted in 2006. The Constitution does not regulate in detail the appearance of state symbols, except to specify the title of the national anthem. The Constitution guarantees the right of autonomous provinces and local self-government units to independently regulate the appearance and use of their symbols. The only right that the autonomous provinces exercise directly pursuant to the Constitution, without reference to the legal regulation of the quality and scope of the rights of the provinces, is to determine their symbols and regulate the manner of their use. In addition to state symbols and symbols of the units of territorial autonomy, the Constitution of the Republic of Serbia contains provisions that protect symbols that express the national identity of the citizens of the Republic of Serbia, with special attention paid to the protection of language and script. The Constitution establishes the rights of national minorities, and the protection of their identity is of special importance. The Constitution also indirectly protects the freedom of religious organizations to use their symbols and to display them publicly.

The laws that regulate the appearance and use of the coat of arms, flag, anthem, and decorations of the Republic of Serbia prescribe the responsibility of legal and natural persons for violations of regulations on the use of state symbols. These are offenses for which a fine is envisaged, in different amounts depending on whether it is a legal entity or a natural person. Similar provisions on misdemeanor liability are

<sup>166</sup> Law on Amendments to the Law on Fundamentals of the Education System, Official Gazette of the Republic of Serbia, no. 129/2021.

contained in the regulations of AP Vojvodina and local self-government units. The Criminal Code prescribes the criminal offense of defamation of Serbia, which can be committed directly by exposing Serbia to desecration, or indirectly by exposing state symbols to desecration. Unlike some European countries, in Serbia, exposure to the destruction of state symbols has not been decriminalized. National and religious symbols enjoy criminal protection, especially when they are exposed to desecration with the aim of inciting national, racial, or religious hatred or intolerance.

Administrative protection of state symbols includes numerous activities undertaken by state and self-governing bodies, which are not of a misdemeanor or criminal nature, but which enable some kind of legal protection of state symbols. Such activities include taking measures for the state symbols to be used in a way that protects the reputation and dignity of the Republic of Serbia, verifying the fulfillment of conditions and giving approval for the use of state symbols and state name in the field of economy and protection of state symbols of foreign countries and international organizations. The Law on Trademarks and the Law on Legal Protection of Industrial Designs stipulate that state, national and religious symbols cannot be protected as trademarks or industrial designs. The reason is that these symbols are considered part of the national and world cultural heritage over which no one can hold a monopoly and which should not be used for commercial purposes. Language and script are also important national symbols. The law regulates the use of the official language and script, while guaranteeing the use of the language and script of national minorities.

Serbian legislation contains two specific laws that, among other things, make the legal framework for the protection of two important national symbols of the Serbian people. The first law regulates the use of the Serbian language and the Cyrillic script in public life. The Serbian language was declared the “means and general good of national culture,” while the Cyrillic script was declared the “mother script” of the Serbian language, which “represents the stronghold of national identity.” The adoption of affirmative measures to encourage the use of the Cyrillic alphabet fits into the general trend of the renewed use of national symbols. Although both alphabets (Roman and Cyrillic) are used equally in the Serbian language, the legislator has taken measures to protect the Cyrillic alphabet, which has been neglected for decades and which in its specific form represents the particularity and expression of the Serbian people’s identity. The second law regulates the protection of the most important religious symbol of the Serbian people, the Hilandar Monastery. The first specificity is that it is a monastery located outside the territory of the Republic of Serbia, while the second is that it provides legal protection to the complete cultural and historical heritage preserved in that monastery. These include some of the oldest preserved symbols of Serbian statehood, like the oldest medieval Serbian charter and coats of arms and flags from different periods of Serbian history.

In regard of the legal protection of state, national and community symbols in the Republic of Serbia, a certain pattern can be observed. The Constitution prescribes the existence of state symbols and protects the use of various national and community

symbols. The appearance, use and legal protection of state symbols are regulated by special laws. The statutes of the units of territorial and non-territorial autonomy prescribe the appearance of their symbols. Their autonomous regulations regulate in detail the graphic presentation and use of national and community symbols, as well as their legal protection at the level of misdemeanors. This pattern has been consistently applied when it comes to local self-government units. In this way, a balance was achieved between the protection of autonomy and self-government of different communities, but also the unity of the legal order and the legal protection of state, national and community symbols.

The functioning of modern societies cannot be imagined without the use of various symbols. State, national, religious and community symbols in general have a special meaning because they express the deepest beliefs and identity of many people. The legal protection of these symbols ensures the preservation of the dignity and reputation of different communities. Given that in the certain countries of Central and Eastern Europe after the period of socialist identity and symbolic engineering, there was a new use of traditional and historical state and national symbols, it would be desirable in the future to pay more attention to scientific processing of legal protection of state, national and religious symbols in modern legal systems, because it is a basic and very visible indicator of fair treatment of various communities, including the majority and minority. Because, “True peace is not merely the absence of tension: it is the presence of justice” (Martin Luther King).

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