# Jogi Iránytű

**Az MTA TK Jogtudományi Intézetének tájékoztató kiadványa - 2011/különszám** **2011. március 16.**

Az akadémiai intézeteknek nem kizárólag csak az alapkutatások terén vannak közfeladatai. A kutatási területén felmerülő aktuális kérdések – szakmai és hiteles – elemzése ugyanúgy a feladatkörébe tartozik. Különösen igaz lehet ez napjainkra, amikor az információs források megsokszorozódása nagyon gyakran félreértések és pontatlanságok széleskörű elterjedésével is együtt jár.

A Jogi Iránytű című elektronikus folyóirat elsődleges célja az előbbiekkel összhangban a hiteles tájékoztatás. A Jogtudományi Intézet kutatói által készített rövid írások aktuális jogi problémák elemzésére törekszenek, felhasználva az akadémiai kutatások során felhalmozott szaktudást és ismereteket. Amennyiben ez lehetséges, a cikkek egy adott kérdés külföldi és nemzetközi dimenzióit is bemutatják, mivel az összehasonlítás segítségével a problémák olyan vonatkozásai is láthatóvá válhatnak, melyek kizárólag a nemzeti jogrend irányából elemezve nem biztos, hogy rögtön szembetűnnek.

Bízunk abban, hogy a Jogi Iránytű a jogi kérdések iránt érdeklődők számára az ismeretek alapvető és hiteles forrásává válik hamarosan!

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March 16, 2011

The on-line periodical of the Institute for Legal Studies of the Hungarian Academy of Sciences - 2011/Special Issue

# Statehood and Symbolics in Central Europe after 1989

Under the coordination of the Institute for Legal Studies of the Hungarian Academy of Sciences, three Central-European workshops participated in the implementation of a research project entitled *Statehood and Symbolics in Central Europe after 1989*: the Faculty of Law, West Bohemian University - Pilsen, the Faculty of Law, University of Rzeszow, and the Institute of Law and State (SAV) – Bratislava. As part of the research, sponsored by the International Visegrad Fund (No. 20910178), we have organized several international conferences at the Institute for Legal Studies of the Hungarian Academy of Sciences.

At one of our events, entitled *Statehood and Symbolism in Central Europe after 1989,* held in Budapest, Hungary on October 2-3, 2009, we discussed the historic development of the system of national and state symbols, including their relevance with respect to the changes of constitutional law. The papers were subsequently published in the Hungarian and English languages in *Vol. 2010/1 of Nemzetközi Közlöny – International Journal*. At another conference, entitled *Symbolical Aspects of the Continuity and Discontinuity of State and Law in Central Europe* held in Budapest, Hungary on September 21, 2010, the topic of discussion were symbolic elements relevant with respect to the continuity of the state.

As a summary of the findings of the research, a monograph was published, entitled *Szimbolika és közjog. Az állami és nemzeti jelképek helye a magyar alkotmányos rendszerben* (Symbolism and common law. State and national symbols in the Hungarian constitutional system), reviewing state and national symbols of Central-European States, including also the symbols of the Hungarian state and ethnic minorities (authors: Iván Halász – Gábor Schweitzer. Bratislava, Kalligram Publisher, 2010, 215 pages).

The excerpts to follow show the changes after 1989 of the state and national symbols of the so-called Visegrad countries (V-4). The unabridged text of the papers was published in Vol. 2010/1 of the International Journal.

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Legal Compass

March 16, 2011

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# National and State Symbols in the Hungarian Legal System[1]

## (Excerpts)

The origins of the system of modern European state and national symbols can be traced back to the Middle Ages, on the one hand, and to the era of the so-called national awakening and that of the civil revolutions. This applies to Hungary as well, of course. Since independent statehood was an important tradition in Hungarian public thinking, the Middle Ages representing national and state sovereignty and the 19th century promoting national awakening, especially as regards the National Anthem, and civil reforms played a particularly significant role in the formation of the of the system of symbol.

## National Symbols in the Hungarian Constitution

Hungarian regulation of national symbols is going to be presented here according to the 1989/1990 revision of the Constitution. Symbols of the Republic are defined in Chapter XIV. (Articles 74 to 76) of the Constitution in force, entitled "Capital and national symbols of the Republic of Hungary", which precedes the final provisions.

Article 74. The Capital of the Republic of Hungary is Budapest.

(The text is from Article 36 of Act XXXI of 1989.)

Article 75. The anthem of the Republic of Hungary is Ferenc Kölcsey's verse entitled Himnus; [Hymnl with music by Ferenc Erkel.

(The text is from Article 36 of Act XXXI of 1989.)

Article 76. (1) The flag of the Republic of Hungary consists of theee horizontal stripes of equal width, th colours of which are red, white, and green, respectively.

(The text is from Article 50 of Act XL of 1990.)

(2) The arms of the Republic of Hungary is a shield with a pointed bottom and with divisions. Its first di vision is a barry of seven gules and argent stripes. In its second, gules division, there is an argent doubl cross on the elevated middle part with an or crown c a vert triple hill. The Hungarian Holy Crown is placed on the top of the shield.

(The text is from Article 1 of Act XLIV of 1990.)

(3) Passing a law on the arms, flag and their use of the Republic of Hungary requires votes in favour cast by two-third of the Members of the Parliament.

(The text is from Article 1 of Act XLIV of 1990.)

## The Era of the Change of Regime and National Symbols

We could see that the regulation of national symbols became part of the Constitution in several steps and not simultaneously. However, we can consider the regulation linking the capital and the anthem, the flag and the arms defined as national symbols coherent since the capital actually has a symbolic role in state life. Major institutions of state power and people's representation and foreign representations are seated in the capital. Still, the legal status and the public administration system of the capital is regulated by an Act and not by the Constitution.[2]

However, the Constitution went further then simply defining national symbols and it accurately described them. It is a frequent solution, however, there are fundamental laws which are limited to the mere listing of state and national symbols and the details are set forth by special acts. Temporarily, this solution used to be supported by the Hungarian Constitution-making power, too. Article 36 of Act XXXI of 1989 on the amendment of the Constitution ordered that the arms and the flag of the Republic of Hungary and their use should be provided for in an Act of constitutional effect. Moreover, it was raised in 1989 that the issue of the arms which seemed to bear the most problems should be decided by a referendum. As it is going to be discussed later, the national fiag was defined in Article 50 of Act XI of 1989 on the amendment of the Constitution while the arms in Article 1 of Act XLVI of 1990 on the amendment of the Constitution. The latter Act justified the necessity of a provision in the Constitution about this symbol with reference to the "special significance and emotional connotation of state symbols". Therefore the Hungarian Constitution developed after 1989 in a way that the national symbols themselves were subject to regulation by the Constitution, their usage was provided for in a special Act (Act LXXXIII of 1995).

The order of national symbols is not incidental, again, and in this context we should indicate that several changes were introduced into the order of national symbols since the adoption of the first chartered Constitution, that is, the adoption of Act XX of 1949 which definitely is a sign of the changed hierarchy of the values of the national symbols. Although the most frequently used symbols are the Anthem[3] and the state flag[4], the

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[1] Originally published in International Journal of Public Administration in Central and Easter Europe. No. 2010/1. 60-66.

[2] KÜPPER, H.: Az alkotmány 74. §-ának jogi jelentősége és tartalma [Legal significance and contents of Article 74 of the Constitution]. In: Jogtudományi Közlöny, Issue 2007/3.

[3] SZÖRÉNYI, L.: A Himnusz helye a magyar és a nemzetközi világirodalomban [The place of the verse Hymnus in Hungarian and international literature]. In: A Himnusz költője. Tanulmányok Kölcseyről (ed. Lukácsy, S.). Szabolcs-Szatmár Megyei Tanács, Nyíregyháza, 1974. p. 13.

[4] CS. KOTTRA, Gy.: Magyarország zászlaja és a magyarországi zászlók [Hungary's flag and Hungarian flags]. In: A magyar Szent Korona.

Anthem was first elevated into the Constitution by Act XXXI of 1989 on the amendment of the Constitution in the history of Hungary. However, their justification and utility is accepted more widely than that of the arcos which gave rise to ideologically inspired arguments in the years following the change of regime[5]. Moreover, the arms which is to be considered the "business card of the nation"[6] is the state symbol which changed the most during the 20th century, together with the economic and social system. Nevertheless, this is not true for the colours of the fiag or the Anthem. The latter symbols, however, are able to express affiliation with the community of the nation, while the arms is primarily related to the state of Hungary and its statehood.

Therefore, apart from the symbolic importance of the capital, the Constitution determined three symbols, that is, the Anthem, the flag and the arms. The Republic of Hungary considers all the three its national symbols. However, no further symbols like a state seal, a presidential flag, or a state motto were suggested to be recognised as state symbols in Hungary.[7]

The representatives of the parties and political organisations participating at the national round table negotiations preparing for the change of regime did not resolve the issue of the system of symbols of the new "third" Republic of Hungary which was organised along democratic principles. Therefore the Constitution entering into force on 23 October 1989 incorporated first only those things which had been subject to agreement. Article 36 of Act XXXI of 1989 introducing fundamental amendments to Act XX of 1949 incorporated provisions on the capital and the national symbols in its Chapter XIV, that is, preceding the final provisions and not among those on sovereignty. This is a quite awkward solution regarding Constitutions adopted in Central and Eastern Europe after 1989. Article 76 defined the capital and the Anthem of the country that time, and stipulated that the arms, flag of the Republic of Hungary and their usage should be provided for in an Act of constitutional force. The text of Article 76 of the Constitution set forth by Article 36 of Act XXXI of 1989 was first amended and supplemented in two aspects by the legislation after the first free elections, in the spring of 1990 (see Article 50 of Act XL of 1990). Ön the one hand, it incorporated the provision on the Hungarian fiag into Article 76 of the Constitution and, on the other, it changed the text of the earlier provision. Accordingly, the flag of the Republic of Hungary consists of three horizontal stripes of equal width, one red, one white and one green. With this decision, the constitution-making power made the flag without the arms official, as supported by the text in force of the Constitution, however, the latter fifteen years saw the spreading of the use of the flag with the so-called small crown arms in public institutions, by way of custom.

The above amendment of the Constitution was part of a large-scale amendment of the Constitution during which Acts of constitutional force were replaced by the category of the so-called Acts requiring a majority of two-third of the votes. Although Act XL of 1990 was intended to settle the issue of the arms at first, this could not succeed. None of the parliamentary parties had a single opinion regarding which arms should be supported by them. Opinions were diverse since there were arguments for the so-called Kossuth arms representing ideas of Hungarian independence and republicanism, including especially that of the era of the 1848-1849 revolution and independence war and for the so-called crown arms representing the millennium of Hungarian statehood in every party[8]. The issue of the arms was decided later in Act XLIV of 1990 amending the Constitution Article 1 of which recognised the so-called small crown arms as the arms of the Republic of Hungary.

## Further Dilemmas on National Symbols

In what follows, we are going to discuss the background of disputes related to the usage of the two most important symbols of Hungarian statehood, that is, the arms and the fiag of the Republic of Hungary. The specialty of these symbols is that these are not only symbols of Hungarian statehood but those of the Hungarian nation as well. This double significance was perceived by the guardians of the Constitution as well. Therefore, it is worth for us to recall the related interpretation of the Constitutional court. In its Decision No. 13/2000. (V. 12.) AB, the Constitutional Court defined the relationship of nation, state and symbols as follows: "The notion of the nation as a community has a historical importance and it is relative both ín time and space. Nation and state power became intermingled notions during the historical process of the creation of the nation-state. National symbols represent this historical process thus becoming symbols of statehood. National symbols had a force to preserve and keep the idea of sovereignty in times when independent statehood was lost or limited." Therefore these symbols are those of state sovereignty and independence while giving the means for the individual to express his affiliation to the nation as a community as well. Due to this latter circumstance, these symbols cannot be viewed solely as state insignia but the members of the national community, including natural and legal persons, may use them subject to statutory conditions.

The national character of symbols was reinforced, just like indicated above, following the change of regime. Until that time, the state character predominated the notion of symbols as expressed by the title of Chapter X of Act XX of 1949, "Arms, flag and capital of the People's

Magyarország címere és zászlaja (ed. Bertényi, I.). Kossuth, Budapest, 1996.

[5] TÓTH, Z. J.: Magyar közjogi hagyományok és nemzeti öntudat a 19. század végétől napjainkig. Adalékok a Szent Korona történetéhez. [Traditions of Hungarian public law and national self-consciousness from the end of the 19w century up to now. Some data of the history of the Holy Crown] Szent István Társulat, Budapest, 2007. pp. 212-299.

[6] BERTÉNYI, I.: Magyarország címere [The arms of Hungary]. In: A magyar Szent Korona. Magyarország címere és zászlaja. (ed. Bertényi, I.). Kossuth, Budapest, 1996. p. 183.

[7] KUKORELLI, I.: Nemzeti jelképek, állami felségjelvények [National symbols and state insignia]. In: Kukorelli, I.: Tradíció és modernizáció a magyar alkotmányjogban. Századvég, Budapest, 2006. p. 23.

[8] SZALAY, P.: Rendszerváltás és alkotmánymódosítás 1990 [Change of regime and amendment of the Constitution in 1990]. In: Magyarország politikai évkönyve (eds. Kurtán, S., Sándor, P., Vass, L.). Ökonómia Alapítvány-Exonomix Rt., Budapest, 1991. pp. 433-434.

Republic of Hungary". The chapter which consisted of three Articles had not a single reference to the national character. The justification of Article 3 of Act II of 1957 on the amendment of the Constitution of the Peoplé s Republic of Hungary also stated the following: "The arms should be consistent with the political ideas of the state and has to express the characteristics of the state." This regulation also was predominated by the state character. Even the justification of Act XLIV of 1990 incorporating the so-called small crown arms into the Constitution uses the expression "state symbol" although this chapter expressly provided for national symbols. However, the actual provisions of Chapter XIV of the Constitution are not about the Hungarian national fiag or arms but the national symbols of the Republic of Hungary.[9] Still, we cannot disregard the interpretation of national symbols as Hungarian community symbols, either.

The general justification of Act LXXXIII of 1995 on the usage of the national symbols of the Republic of Hungary and the name of the Republic of Hungary approached this issue in the followingway: "Under the Constitution, however, our national symbols have, a double function which the fundamental Act itself defines. Ön the one hand, it gives a detailed description on symbols as related to Hungarian statehood in its Article 76. Ön the other, it indicates with the definition in the title of Chapter XIV that these symbols are the means for expressing national sentiments, national affiliation, too. Accordingly, the Proposal recognises the possibility to express the national feeling by way of national symbols and, besides keeping the respect of the symbols, it allows that individuals use them to express their national affiliation and, eventually, at certain national holidays and social events."

The detailed justification provided for a sophisticated order of "national intensity" as regards the usage of the symbols. That is, it stated in the justification of the usage of the flag that "The underlying principle of the regulation is that the usage of the flag is generally permitted as opposed to that of the arcos. The reason is that the flag is rather a way of expressing the national affiliation while the arcos rather represent the official context and the exercising of public power. " This argumentation seems logical, however, neither the Constitution nor the Act on the usage of symbols provides for it expressis verbis. The difficulties surrounding the distinction between Hungarian national and state symbols were perceived by the government as well. The Hungarian government, in its Decision No. 2296/2002. (X. 1.) set up an expert committee, the so-called national symbol committee, for examining the system of institutionalised national and state symbols and for the preparation of related proposals. This committee was conferred upon the power to "prepare proposals reinforcing historical traditions, Hungarian culture, the affiliation of the Hungarian nation within and beyond the state boundaries, and the non-Hungarian minorities living in Hungary, integrating the related efforts of social groups and civil organisations which fit the system of European customs as well"[10]. The summary report of the "symbol committeé" suggests that the committee itself argued about whether a distinction should have been made between state and nation on the level of symbols. The majority decided to make the distinction which, naturally, is not a legal measure. The "symbol committee" suggested that the state flag (with the arms) and the national one (without arms) should be distinguished. This, among others, would be beneficial since in this way hungarus (Hungarian citizen) and Hungarian (ethnicity, nationality) could be symbolically distinguished. Apart from these, it would benefit the flag usage of Hungarians beyond the boundaries, too, since a national flag without the arms could escape the charge "flag of a foreign country". However, a minority opinion in the "symbol committee" did not consider any distinction between national and state flags justified[11].

## Role of The Holy Crown among the National Symbols

In times of the change of regime, the most controversial issue regarding the system of national symbols was that of the Holy Crown. This is well supported by the dispute on the arms of the country in 1989-1990 which was referred to above. That time, the dispute had a strong ideological background just like the other one ten years later when Act I of 2000 on the commemoration of the founding of the state by King St. Stephen and on the Holy Crown was adopted. Naturally, the Holy Crown do not and cannot have a dedicated role in the Hungarian Constitution and thus in the actual Hungarian system of public law, either. However, the place and role in public law of the Holy Crown was raised with regard to the Constitution-related efforts of the government between 1994 and 1998 and it was incorporated into the Annex of Resolution No. 119/1996. (XII. 21.) of the Parliament on the "regulatory principles of the Constitution of the Republic of Hungary". Accordingly, the preamble of the Constitution to be created can refer to the Holy Crown according to what follows.

"The new Constitution should contain a preamble which should shortly and expressively refer to the subject of the Constitution, the Parliament and the community of the citizens of the Republic of Hungary, the historical traditions of Hungary, including the Holy Crown, the thousand-year legal continuity of the Hungarian state, the universal values enshrined by the Constitution, human and citizen's rights in the spinit of freedom, equality and brotherhood, their protection and the respect of the rule of law and people's sovereignty".[12] Although the last

[9] As regards the idea of the nation as represented in the Hungarian Constitution in force, see more details in HALÁSZ, I.: A magyar alkotmányos rendszerben használt nemzetfelfogás a XXI. század elején [The idea of the nation in the Hungarian constitutional system at the beginning of the 21st century]. In: A magyar jogrendszer átalakulása 1985/1990-2005. Volume II, Jog, rendszerváltás, EU-csatlakozás. Eds. Jakab, A. and Takács, P. Gondolat-ELTE AJK. Budapest 2007. pp. 984-992.

[10] GLATZ, F.: Rendszerváltásról, konszolidációról, állami-nemzeti szimbólumainkról [On the change of regime, the consolidation and our state and national symbols]. In: História, Issue 2002/9-10.

[11] A Jelképbizottság összefoglaló jelentése [Summary report of the Symbol Committee]. (Manuscript, first version) Without place and year, pp. 6-7.

[12] Quoted by SZIGETI, P.: Legitimációs viták Magyarországon (1990-1999) a köztársasági eszme és a Szent Korona-tan alkotmányosságáról [Legitimation disputes in Hungary from 1990 to 1999 on the

sentence of the paragraph describing the arms is "The Hungarian Holy Crown is placed on the top of the shield", this sentence suggests a heraldic role for the Holy Crown only.

However, the legal regulation in force provides two kinds of interpretation for the Holy Crown. On the one hand, it is a heraldic element of the state arms, in line with the Constitution and Decision No. 26/2000. (VII. 6.) AB of the Constitutional Court, and, on the other, it is named as a relic representing the continuity and independence of the Hungarian state, being a part of the natiori s conscience and the traditions of Hungarian public law (according to the preamble of Act I of 2000 on the commemoration of the founding of the state by King St. Stephen and on the Holy Crown)[13]. Nevertheless, the legislator put a special emphasis on the Holy Crown and the related coronation symbols, the royal sceptre, the coronation robe, the national globe and the coronation sword and, taking them out of the collection of "usual" museum and church relics (in this case, from that of the Hungarian National Museum), put them under the protection of the Parliament embodying national sovereignty. The Parliament, with regard to the founding of the state by King St. Stephen and the outstanding historical importance borne by the Holy Crown, adopted the so-called Crown Act, referred to several times above.

For the protection and keeping of the above-mentioned relics and for the taking of the related measures, the Parliament established the Holy Crown Committee under Act I of 2000 consisting of the major public dignitaries, the President of the Republic, the Prime Minister, the President of the Parliament, the President of the Constitutional Court, the President of the Hungarian Academy of Sciences and, later, the President of the Supreme Court, under Act LXII of 2004. Despite that they are major leaders of the country, the Committee meeting at least once a year with the President of the Republic as a Chair is engaged in issues of minor importance only: regulation of the guarding of the Crown, the protection or restoration of its status, respecting the related rules, and authorising authentic copies and scientific examinations. It is not the powers but the composition of the Committee which is of outstanding significance. Thus the legislator evidently wished to express the respect felt towards these important symbols of the Hungarian statehood and nation.

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constitutionality of the idea of the repulplic and the Holy Crown ideology]. In: Köztársaság a modern kori történelemben (ed. Feitl, I.). Napvilág Kiadó, Budapest, 2007. p. 358.

[13] See MÁTHÉ, Gábor: A Szent Korona-eszme - parafrázis [The idea of the Holy Crown: a paraphrase]. In: Eckhart Ferenc emlékkönyv. Ed. Mezey, B. Budapest, Gondolat Kiadó, 2004. pp. 281-295.

Legal Compass

March 16, 2011

The on-line periodical of the Institute for Legal Studies of the Hungarian Academy of Sciences - 2011/Special Issue

# The Flag and the Anthem of the Republic of Poland after 1989 in Historical Perspective[1]

## (Excerpts)

Each state uses at least one flag as its distinguishing mark. Frequently, two flags: national and official, are used simultaneously. The national flag is used commonly, whilst the official flag with the coat of arms in the middle is used only by state offices indicated in special regulations[2].

Problems connected with the national flag are strictly associated with the issue of the coat of arms. Colors presented on the flag correspond with the coloring of the coat of arms. The Polish flag combines the whiteness of the eagle and the redness of the shield. Historical Polish state banners, used between the XII and the XVIII century, usually presented a white eagle on the red field The dark redness of the field, obtained during fabric dyeing, referred to as the crimson or the carmine, was typical for the Polish coat of arms and banners for a long time[3].

## Flag of the People's Republic of Poland

First legal act adopted in Poland after the II World War which regulated national symbols was The Constitution of the People's Republic of Poland of 22nd July, 1952.[4] It was also the first Polish constitution which has ever regulated the abovementioned issue. Article 89 (2) of the Constitution Chapter IX – "The Emblem, Colors and Capital of the People's Republic of Poland", stipulated that "The colors of the People's Republic of Poland shall be white and red. Details concerning the colors shall be specified by other legal acts." [5].

Legal act specifying the constitutional regulations was the State Council's decree on the Emblem and Colors of the People's Republic of Poland and the State Seals of the 7th December 1955[6]. According to the Article 2 of the decree "The colors of Poland are white and red, in two horizontal, parallel stripes of equal width and length, of which the top one is white and the bottom one is red, corresponding to a cinnabar color (Illustration 10). The Article 3(1) stipulated that the state flag is a rectangular piece of cloth in the national colors: white and red. In Article 3(2), the Constitution incorrectly determined proportions of the flag, introducing the proportion of 3:8 which extended the flag's length in relation to the former patterns. However, the proportion was restored to 5:8, i.e. traditionally used proportions of the national and state flags, less than one year later[7]. The decree of 1955 did not restricted the usage of the national flag, but in the Article 13 it introduced penal responsibility for illegal usage of the coat of arms, the flag with the coat of arms and special flags.

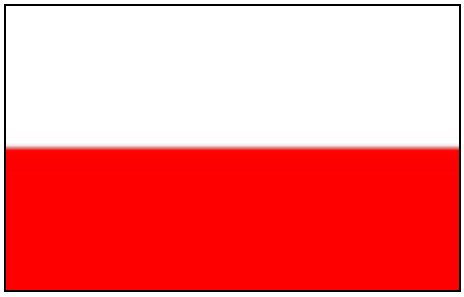

Illustration 10. Flag of the People's Republic of Poland.

Subsequent alterations of the Polish national symbols took place in 1980 when an act regulating the national symbols issue in a complex way was passed. Regulations of The Emblem, Colors and Anthem of the People's Republic of Poland Act of 31st January 1980 were preceded by a preamble which defined the meaning of the Polish symbols for the entire nation in a momentous way[8]. Article 4 of the Act almost literally repeated phrases of the decree of 1955 which referred to the colors and the state flag. Article 15 of the Act ordered to use the national symbols with honor and respect whilst the conditions of the usage were to be determined by other legal acts. Displaying the white and red flag (e.g. on the 1st of May), alongside the red flag, was recognized by the Act as a citizen's duty (Illustration 11).

The Act of 1980 altered the graphical pattern of the flag, included in the 2nd attachment to the Act. A new, darker than a cinnabar color, hue of red was introduced. The attachment provided precise, technical coordinates for colors, white and red, instead of a former verbal prescription. "Trichromatic coordinates of the x and y colors, their component Y and tolerated color ΔE differences in the CIE 1976 (L* u* v*) color space, established according to CIELUV with the Illuminant C and measuring geometry d/0." Table attached to the Act indicated that coordinates x,y, Y and ΔE for the white

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[1] *Originally published in International Journal of Public Administration in Central and Easter Europe. No. 2010/1. p. 67-77.*

[2] A. Znamierowski, *Insygnia, symbole i herby polskie. Kompendium,* Warszawa 2003, p. 46.

[3] Ibidem, p. 158.

[4] Dz. U. z 1952 r. nr 33 poz. 232.

[5] Szerzej P. Sarnecki, *Artykuł 28*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz* tom V, red. nauk. L. Garlicki, Warszawa 2007, p. 1.

[6] Dz. U. z 1955 r. nr 47 poz. 314.

[7] Rozporządzenie Prezesa Rady Ministrów z dnia 20 marca 1956 r. o sprostowaniu błędu w dekrecie z dnia 7 grudnia 1955 r. o godle i barwach Polskiej Rzeczypospolitej Ludowej oraz o pieczęciach państwowych, Dz. U. z 1956 r. nr 7 poz. 43.

[8] Dz. U. z 1980 r. nr 7 poz. 18.

color are adequately: 0,315, 0,320, 82,0 i 4,0, and for the red color 0,570, 0,305, 16,0 i 8,0[9]. It is worth mentioning that since 1980 the issue of the red color discoloration has not been subject to any discussion. It can be hoped that the dispute over colors of the state flag has been definitely terminated.

## Alterations of the Polish flag after 1989

Revision of the Constitution of the People's Republic in Poland that took place on the December 29th 1989[10] did not affected the regulations on the state colors and the Polish flag. It was limited to the modification of the state's name. The Act introduced numerous temporary periods for using the national symbols, including flags consistent with the old pattern. The longest temporary period applied to the military symbols which were to be altered until the 31st December 1997. [11]

Detailed regulations concerning the colors and the flag of Poland were included in The Emblem, Colors and Anthem of The Republic of Poland Act[12]. Similarly as in case of the Constitution, no new legal act was adopted but slight amendments were introduced to legal acts which were in force. Structural transformation that took place in 1989 did not lead to changes of colors or the pattern of the state flag. Modifications were introduced to the flag with the coat of arms as the new pattern included the coat of arms consistent with the of pattern of 1999 (attachment no. 3 to the Act). Similar alterations affected the military flags and other special flags[13].

The modifications of the binding legal regulations unfortunately left in force those norms which referred to the colors of white and red, the white and red flag and the white and red flag with the coat of arms as to the state colors and flags (Illustrations 13, 14). Thus, the terms 'national colors' and 'national flag' were not restored. At the same time, the usage of the white and red flag with the coat of arms was strictly regimented so that the right to use it was not even granted to the President of the Republic of Poland. It was an unusual situation as in most of the states there is only one flag used by the citizens, offices and institutions or a national flag for the citizens and the institutions and a flag with a coat of arms for state offices.[14]

Illustration 13. Current flag of the Republic of Poland with a coat of arms.

[9] Ibidem, załącznik nr 2.

[10] Ustawa z dnia 29 grudnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej, Dz. U. 1989 nr 75 poz. 444.

[11] Ibidem, art. 4 ust. 3.

[12] Art. 43 ust. 1 Ustawy o godle, barwach i hymnie Polskiej Rzeczypospolitej Ludowej z dnia 31 stycznia 1980 r. Dz. U. z 1980 nr 7 poz. 18.

[13] A. Znamierowski, *Insygnia, symbole i herby polskie. Kompendium,* Warszawa 2003, p. 162-183.

[14] A. Znamierowski, *op. cit.*, p. 161-162.

The flag issue was regulated in the new Constitution of the Republic of Poland of the 2nd April 1997. Article 2 of the Constitution stipulated that "The colors of the Republic of Poland are white and red". [15] The regulations of the new Constitution are the same as the regulations of 1989. Details concerning the colors are left to the statutes[16].

The Emblem, Colors and Anthem of the Republic of Poland and State Seals Act of 31st January 1980 is still in force. It was amended many times. Between 1990 and 2009 8 amendments to the Act were introduced, modifying the list of the subjects entitled to the usage of the state symbols and the conditions of the usage. One of the modifications, which can be recognized as an attempt to restore the national colors to the citizens, was introduced in 2004. Conditions of the flag's usage was modified at the time. Article 5 was supplemented with an additional paragraph which stipulated that "Everyone has the right to use the colors if the Republic of Poland, especially in order to emphasize ceremonies, holidays and other events (...)"[17] Moreover, Article 6a, which established the Polish Flag Day (2nd May), was added.

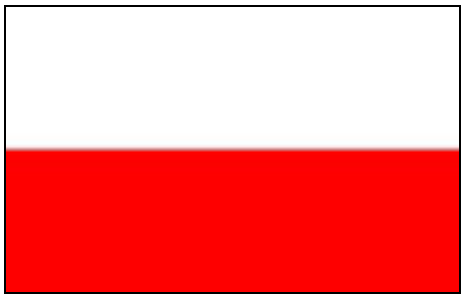

Illustration 14. Current flag of the Republic of Poland.

The above alterations were well accepted by the citizens, though there is a long way for the use of the white and red flag during national holidays to become common. The introduced modifications were long demanded by the Polish constitutional law doctrine. One of the doctrine's representatives, P. Sarnecki, wrote: "The fact that the Constitution regulates the state symbols cannot lead to a conclusion that the usage of the symbols is limited only to public subjects or even to organs of the Polish authorities. Quite the opposite – the usage of the symbols is available to all the citizens who created the Republic of Poland in its constitutional shape and whose common good is the Republic of Poland. One can even consider if there is a sort of a constitutional citizen right. "[18]

## The Anthem

The anthem of the Republic of Poland is a completely different issue. There were numerous songs which were acknowledged as anthems throughout the Polish history. The oldest song, "Gaude, mater Polonia" ("Rejoice, Mother Poland"), which dates back to the XIIIth century, was the anthem of the Piast dynasty (Table 1)[19]. It was written in 1231 by a Polish Dominican, poet and

[15] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. Dz. U. z 1997 r. nr 78 poz. 483.

[16] Ibidem, art. 28 ust. 5.

[17] Ustawa z dnia 20 lutego 2004 r. o zmianie ustawy o godle, barwach i hymnie Rzeczypospolitej Polskiej, Dz. U. z 2004 r. nr 49 poz. 467.

[18] P. Sarnecki, *Artykuł 28,* op. cit., p. 2.

[19] W. Panek, *Hymny polskie*, Poznań 1996, p. 5.

composer, Wincenty z Kielczy (de Kielcza) [20]. Nowadays, this song is performed during special occasions, and almost always accompanies academic ceremonies.

The first knight's anthem in Poland was „Bogurodzica" („Mother of God"), written in 1407 (Table 2). It is the oldest written and performed in polish song acknowledged as an anthem in Poland. In the XVth century the song was used as knight's reveille chanted on battlefields. According to historical records, "Bogurodzica" was chanted by the Polish royal knights before the battle of Grunwald in 1410[21].

Most of the hymnic songs, including the current anthem of Poland "Mazurek Dąbrowskiego" ("Dabrowski's Mazurka"), originated in the years 1795 – 1918, i.e. when Poland did not exist. The mazurka is also know as "The Song of the Polish Legions in Italy" and by its incipit "Poland Is Not Yet Lost" or "Poland Has Not Yet Perished".

## The anthem in the Second Republic of Poland

Despite its vast popularity, the "Dabrowski's Mazurka" was not acknowledged as a Polish anthem. When Poland re-emerged as an independent nation after the First World War in 1918, the second song competing for the status of an official national anthem was "Boże coś Polskę" ("God Save Poland")[22]. The conservatives preferred the abovementioned song due to the fact that it was a church song which imitated the English hymn "God save the King". "Boże coś Polskę" was known among other Slavic nations, but not as well as the "Dabrowski's Mazurka". It was translated into Hungarian, German and Italian[23].

During the first independent years, the question of a national anthem was left without an answer. The Constitution adopted in 1921 did not regulate the issue of national symbols. However, after it had been passed, the song "Boże coś Polskę"[24] was chanted. On the other hand, official Polish delegations were welcomed at that time with the sounds of songs such as: "Rota", "Warszawianka", "Mazurek Dąbrowskiego" lub "Boże coś Polskę".[25] It was an unprecedented situation.

The acknowledgement of the "Dabrowski's Mazurka" as a national anthem was contributed with numerous legal acts. The Minister of The Military Affairs with the order of 22nd March 1921 commanded to give military honors during the performance of the Mazurka and the anthems of the Allied, leveling them in terms of military ceremonial[26]. The "Dabrowski's Mazurka" was first described as the national anthem in the order of the Minister of The Military Affairs of the 2nd November 1921 which regulated the issue of the national anthem's performance during military ceremonies. [27] The Ministry of Religious Beliefs and Public Enlightenment issued a circular of 26th February 1927 on the national anthem valid during school occasions which declared the Mazurka as the only anthem of Poland. The 26th February 1927 is considered to be the official date of acknowledging the "Daborwski's Mazurka" as the anthem of the Republic of Poland[28]. It can be surprising that the issue of an anthem was left to legal acts of such low level in the hierarchy, especially due to the fact that the stylization of the coat of arms or the colors of the flag were highly regarded at the same time. It is said that the anthem's issue was treated as the element of the customary law[29]. The abovementioned thesis is confirmed by the fact that the anthem was not regulated in legal acts of higher rank until 1939[30].

## The anthem in the People's Republic of Poland

Since the beginning of the People's Republic of Poland, the state used the national symbols introduced in the Second Republic of Poland. However, the symbols were either gradually modified or replaced. In 1946, the leading state and party activists appealed for a new national anthem which would reflect the spirit of the new age. The appeal was badly received by the artistic circles. Finally, the "Dabrowski's Mazurka" remained the Polish state anthem because of Józef Stalin who did not support the then President's (Bolesław Bierut) attempts to create a new anthem[31].

The indecisive Polish parliament did not adopt any decision regarding the anthem, which lead to a situation similar to the one from the 20's. The issue of an anthem was regulated for the first time since 1945 in a legal act of a low rank. On the 20th April 1948, the Ministry of Education introduced the "Dabrowski's Mazurka" as an anthem for the use by the studying youth[32]. The Constitution of the People's Republic of Poland of the 22nd July 1952 did not regulate the issue of an anthem which was not surprising as its prototype – the Constitution of the Soviet Union of 1936 – also ignored the issue. Many representatives of the constitutional law doctrine agreed on the uselessness of such regulations arguing that the issue of a national anthem was an element of customary law[33].

The increase of the rank of a legal act regulating the issue of a national anthem occurred in the 70's due to the State Council's resolution on the conditions of the national celebrations and the local state ceremonies of the 8th March 1973,. The state anthem was regulated in the Constitution of 1976. It was a result of a thorough amendment of the Constitution of the People's Republic of Poland of the 22nd July 1952[34]. It can be considered paradoxical as the most controversial amendment in the history of the People's Republic of Poland (introducing – among other numerous regulations – the phrases about the communist party having a leading role and about friendship and cooperation with the Soviet Union) simultaneously raised to constitutional the rank of legal

[20] Ibidem, p. 11.

[21] Ibidem, p. 16-17.

[22] A. Rosner, *Prawnoustrojowe symbole Rzeczypospolitej szlacheckiej na ziemiach polskich w początkach XIX wieku,* Studia Iuridica XLII/2003,p. 195.

[23] W. Panek, Hymny..., op. cit. p. 35-38.

[24] M. Kijowski, *Polski hymn państwowy jako zagadnienie konstytucyjnoprawne*, Ius et Administratio, 2004/3, p. 122.

[25] W. Panek, Hymny..., op. cit., p. 31.

[26] M. Kijowski, *Polski hymn*..., op. cit. p. 123.

[27] Ibidem.

[28] M. Kijowski, *Polski hymn*..., op. cit. p.124.

[29] D. Górecki, *Symbole i stolica państwa* [in:] *Polskie prawo konstytucyjne*, red. D. Górecki, Warszawa 2008,p. 53.

[30] M. Kijowski, *Polski hymn*..., op. cit., p. 12-13.

[31] Ibidem, p. 127.

[32] W. Panek, *Hymny*..., op. cit. p. 32.

[33] M. Kijowski, *Polski hymn*..., op. cit. p. 131.

[34] Ustawa z dnia 10 lutego 1976 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej, Dz. U. z 1976 r. nr 5 poz. 29.

regulations regarding a national anthem. Article 89 was supplemented with paragraph 3 which acknowledged the "Dabrowski's Mazurka" as the anthem of Poland[35] which made it subjected to a special protection. In 1976, directly after constitutional amendment, a consolidated text was announced. It changed the numeration of several articles and moved the regulations of the anthem to Article 103(3) [36].

Detailed regulations on the national and state symbols were included in the Act on The Emblem, Colors and Anthem of the People's Republic of Poland of the 31st January, 1980[37]. The act cleared up the regulated issues. It should also be appreciated that the rank of legal regulations regarding state symbols was raised to a statutory level. Article 12 of the Act repeated after the Constitution that the "Dabrowski's Mazurka" is the state anthem, settled the anthem's lyrics (attachment no. 4) and melody (attachment no. 5) and entrusted the supervision over the musical interpretation to the Minister of Culture and Art. Article 13 of the Act determined the circumstances under which the anthem were to be performed and Article 14 introduced exact rules of behavior during the performance of the anthem.

## The anthem in the Republic of Poland, 1989

The constitutional revision of the 30th December 1989, as well as the amendments introduced to the Act on the Emblem, Colors and Anthem of 1980, did not affect the state anthem. The Act of 1980 was subjected to numerous amendments after 1989. However, all the introduced modifications did not bring significant changes in terms of the state anthem. The Constitution of the Republic of Poland of 1997, which regulates the anthem and other state symbols in Article 28, confirmed legal stabilization of the issue[38]. Article 28(3) is concurrent with previous constitutional regulations.

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[35] Ibidem, Art. 1 pkt. 46.

[36] Obwieszczenie Przewodniczącego Rady Państwa z dnia 16 lutego 1976 r. w sprawie ogłoszenia jednolitego tekstu Konstytucji Polskiej Rzeczypospolitej Ludowej uchwalonej przez Sejm Ustawodawczy w dniu 22 lipca 1952 r., Dz. U. z 1976 r. nr 7 poz. 36.

[37] Dz. U. z 1980 r. nr 7 poz. 18.

[38] Dz. U. z 1997 r. nr 78 poz. 483.

Legal Compass

March 16, 2011

The on-line periodical of the Institute for Legal Studies of the Hungarian Academy of Sciences - 2011/Special Issue

# Evolution of the National Emblem and the Coat of Arms of the Republic of Poland as a Result of the Structural Transformation of 1989[1]

## (Excerpts)

It is natural to change the national emblem as well as the national constitution, especially when the state is based on new principles. The symbol of the eagle has been used by the Polish sovereigns for about 1000 years. The Polish coat of arms, representing an image of a crowned white eagle, has been present for 700 years[2]. In times of monarchy, the coat of arms was changing together with sovereigns. Nowadays, alterations of the national coat of arms are rare. Introduction of a new coat of arms symbolizes changes within the state. The current coat of arms in the Republic of Poland has been used – though not without modifications – for about 80 years. Only slight modifications of such important national symbol, introduced during intense structural transformation in the XXth century, can be surprising. Three ideologically different states adopted very similar coats of arms. However, the similarity is illusory. Adding or removing any elements often raised strong emotions among Polish people. Complex understanding of the symbolism of the Polish coat of arms requires consideration of its origin.

## Polish coat of arms during the People's Republic of Poland

In the years 1944 -1989, three types of the state coat of arms were present. The first one was used since the forties until 1955, though there were no legal regulations introducing it

The coat of arms of the People's Republic of Poland used after the II World War

It represented the image of a white eagle with a distorted beak, deprived of a crown, placed on a red, elongated shield framed with a general wavy line. Although seemingly only slightly different from the pattern of 1927, the coat of arms differed considerably. It was deliberate and symbolized a break with traditions characteristic for the period between the two World Wars. Due to no legal regulations introducing this coat of arms, formally the coat of arms of 1927 was in force.[3]

The first Polish constitution which regulated the issue of the coat of arms was the Constitution of the People's Republic of Poland of 1952.[4] The issue of the emblem, the colours and the capital was regulated in a separate ninth chapter, placed rather unfortunately at the nearly end of the legal act. According to the Article 89(1) "The image of a white eagle in a red field shall be the emblem of the People's Republic of Poland." The Constitution described the state emblem very concisely, specifying only the fact that it refers to the tradition of the white eagle. Detailed regulations were left to the executive acts[5].

The coat of arms of 1927 was officially derogated by a State Council's decree on the emblem and the colours of the People's Republic of Poland and the state's seals of the 7th December 1955[6]. According to the Article 1(1) "The image of a white eagle with his head turned right, outstretched wings, gold beak and talons in a red rectangular shield rounded at the bottom shall be the emblem of the People's Republic of Poland." The pattern of the state emblem (Illustration 7), for the first time incorrectly named as the coat of arms in a legal act, is represented in a graphic attachment. In spite of the later modifications concerning legal acts and the emblem itself, the conceptual mistake – i.e. replacing the term coat of arms with an emblem – has become a permanent element in the Polish legal system and the Polish language.

The coat of arms of the People's Republic of Poland (1955)

[1] Originally published in International Journal of Public Administration in Central and Easter Europe. No. 2010/1. p.78-84.

[2] A. Jaworska, *Orzeł Biały. Herb państwa polskiego*, Warszawa 2003, p. 5.

[3] D. Górecki, *Godło RP (art. 28),* [w:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, pod. red. W. Skrzydły, S. Grabowskiej, R. Grabowskiego, Warszawa 2009, p. 164.

[4] Dz. U. z 1952 r. nr 33 poz. 232.

[5] P. Sarnecki, *Artykuł 28, op. cit.*, p. 1.

[6] Dz. U. z 1955 r. nr 47 poz. 314.

The pattern of the coat of arms of 1955 was a slightly modified version of the pattern of 1927. The eagle was deprived of a crown which manifested structural transformations and a break with tradition. The crown, which symbolized the sovereignty of the Polish state, was removed against expert's opinions[7]. It unintentionally emphasized the dependence of the People's Republic of Poland from the Soviet Union. Modifications affected the shield as well. The wavy frame of the 1927's coat of arms, subjected to a strong criticism since the period between the World Wars, was removed.

Another modification of the state coat of arms took place in 1980, when a complex law on the state symbols was passed. Regulations of The emblem, the colours and the anthem of the People's Republic of Poland Act of the 31st January 1980 were preceded by a preamble which precisely defined the meaning of the state symbols for the Polish nation[8]. The Article 2(1) of the Act described the state coat of arms in a nearly identical manner as in the decree of 1955. Its graphical pattern, presented in the attachment no. 1 (Illustration 8), differed slightly from the previous version.

The coat of arms of the People's Republic of Poland (1980)

In relation to the 1955's coat of arms, the shape of the eagle's beak was corrected. However, the abovementioned modification can be considered irrelevant. The change of the end of the band on the eagle's wings is more important. The band's endings, formed in a five-leaf shape since 1927, were replaced with five-arm stars. Allegedly, the replacement was a result of the designer's mistake, though the explanation has not been credible. The symbol of a five-arm star was unambiguously associated and the Polish authorities had clearly pro-Russian sympathies.

## The coat of arms of the Republic of Poland (1990)

The structural transformations that took place in Poland after 1989 had a substantial character. Therefore, the fact that – unlikely to many other states of the former soviet bloc[9] - no new Constitution was passed directly after the structural breakthrough can be surprising. However, modification introduced into the Constitution of the People's Republic of Poland were so far-reaching that they are described as the constitutional revision of the constitution[10]. Modifications affected the name of the state (the traditional name The Republic of Poland was restored) and the state symbols, including the emblem and the coat of arms.

The modified Article 103(1) of the Constitution stipulated that "The image of a white eagle in a crown in a red field shall be the emblem of the Republic of Poland." [11] The regulations of the Article 3 of the Act on the revision of the Constitution of the People's Republic of Poland kept in force the validity of all the state documents prepared on forms and blanks provided with the former emblem and state name. The above regulation applied to orders, distinctions and tenders[12]. The Article 4(1) of the abovementioned Act allowed to prepare documents on forms and blanks provided with the former emblem and state name and to decorate with orders designed during the period of the People's Republic of Poland - until supplies ran out. The usage and issue of tenders was restricted to 31st December 1995.[13] The Article 4(1) provided two temporary periods relating to the use of the emblem which was applied until 1989. All the seals provided with the former emblem and state name were to be used until 31st December 1995. The official boards with the former emblem and state name were to be modified until 31st December 1992. [14] The longest temporary period related to the military symbols which had to be modified by 31st December 1997. [15]

Detailed regulations concerning the emblem and the coat of arms were included in The emblem, the colors and the anthem of the Republic of Poland Act. Similarly as in the case of the Constitution, no new legal act was adopted but the binding act was modified[16]. The modifications included the Article 2(1) which was given a new wording: "The image of a white eagle with a gold crown on his head which is turned right, with outstretched wings, placed on a shield with a red field shall be the emblem of the Republic of Poland." [17]

Modifications within the Act were related only to selected regulations on the emblem and the national flag. As a consequence of the above, the title of the Act as well as the unaltered regulations still used the People's Republic of Poland as the state's name. It can be surprising especially as it was an act which regulated the issue of the national symbols, modified due to the structural breakthrough. Nowadays it is hard to establish whether such fragmentary changes resulted from haste or legislative chaos connected with numerous amended legal acts. The abovementioned Article 2(1) used the Republic of Poland as the official state's name whilst the former name, i.e. The People's Republic of Poland, was left unamended in the Article 2(2) which stipulated that "The patter of the emblem of The People's Republic of Poland

[7] A. Jaworska, *op. cit.*, ss. 6-7.

[8] Dz. U. z 1980 r. nr 7 poz. 18.

[9] After 1989 new Constitution were adopted in Croatia (1990), Bulgaria (1991), Macedonia (1991), Slovenia (1991), Czech Republic (1992), Estonia (1992), Lithuania (1992), Romany (1992), Slovakia (1992), Russia (1993), Belarus (1994) Ukraine (1996), Poland (1997). The Hungarian Constitution was thoroughly modified and Latvia restored the 1992's Constitution subjecting it to thorough changes.

[10] R. Grabowski, *Klasyfikacja konstytucji z uwagi na tryb ich zmiany*, [w:] *Zasady zmiany konstytucji w państwach europejskich*, red. R. Grabowski, S. Grabowska, Warszawa 2008, p. 13-14.

[11] Ustawa z dnia 29 grudnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej, Dz.U. 1989 nr 75 poz. 444.

[12] Ibidem, art. 3.

[13] Ibidem, art. 4 ust. 1.

[14] Ibidem, art. 4 ust. 2.

[15] Ibidem, art. 4 ust. 3.

[16] Art. 43 ust. 1 Ustawy o godle, barwach i hymnie Polskiej Rzeczypospolitej Ludowej z dnia 31 stycznia 1980 r. Dz. U. z 1980 nr 7 poz. 18.

[17] Art. 1 ust. 2 ustawy z dnia 9 lutego 1990 r. o zmianie przepisów o godle, barwach i hymnie Rzeczypospolitej Polskiej, Dz. U. z 1990 r. nr 10 poz. 60.

is included in the attachment no. 1." [18] The attachment no. 1 represented a graphic design of the new emblem which was consistent with the description given in the Article 2(1). The neglect was not removed until 1997, when the governmental administration was reformed[19].

Currently, The emblem, the colours and the anthem of the Republic of Poland and the state seals Act of 31st January 1980 is in force. The act was amended many times. Eight amendments approved in the years 1990 – 2009 modified the list of subjects entitled to use the national symbols and changed the rules related to their usage.

The coat of arms of the Republic of Poland (1990)

Attachment no. 1 to The Emblem, the Colours and the Anthem Act includes – as it is stipulated in the Act – the pattern of the emblem of the Republic of Poland. The term "emblem" is incorrectly used instead of the "coat of arms" term[20]. The graphic attachment represents an image of a white eagle with a gold beak and talons placed on a red heraldic shield of a modern French type from the XVIIIth century. The eagle's head is crowned which traditionally symbolizes the state sovereignty[21]. The idea of bringing the crown back was commonly expressed during the transformation period and was supported by specialists[22]. The idea expressed the will to restore the traditional image of the white eagle. The restoration of the eagle's crown was symbolic as well. It represented the breach of the ideology traditional for the People's Republic of Poland; ideology which discarded the Polish monarchist traditions by means of using the eagle without a crown. On the other hand, the pattern of the state coat of arms clearly refers to the symbolism of the period of the Second Republic of Poland. [23]

The eagle is represented in a classic combat position with outstretched wings and an open beak. The eagle's wings included a band with endings shaped as a three-leafs with additional fragmentary petals. The shape of the band's endings, never used before, was introduced in 1990 because the former endings were shaped as five-arm stars which aroused unfortunate associations.

The issue of the coat of arms was regulated in the New Constitution of the Republic of Poland of 2nd April 1997. The Article 28(1) stipulates that "The image of a crowned white eagle upon a red field shall be the emblem of the Republic of Poland." [24] The regulations of the Constitution are the same as those of 1989. Detailed regulations of the national symbols were left to other legal acts[25].

## Conclusion

The structural breakthrough, that took place in 1989, resulted in modifications of the national symbols. It also affected the state coat of arms. The designs used during the period of the People's Republic of Poland were abandoned whilst patterns from the period of the Second Republic of Poland were adopted. The coat of arms of the Republic of Poland introduced in 1927 has become a prototype of both, the coat of arms of the People's Republic of Poland and the Republic of Poland reborn after 1989.

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[18] Art. 2 ust. 2 Ustawy o godle, barwach i hymnie Polskiej Rzeczypospolitej Ludowej z dnia 31 stycznia 1980 r. Dz. U. z 1980 nr 7 poz. 18.

[19] Ustawa z dnia 4 września 1997 r. o działach administracji rządowej Dz. U. z 1997 r. nr 141 poz. 943.

[20] A. Jaworska, *op. cit.*, p. 7.

[21] Ibidem, p. 6-7

[22] *Stanowisko Polskiego Towarzystwa Historycznego i Polskiego Towarzystwa Heraldycznego w sprawie polskiego godła państwowego*, Mówią Wieki, nr 6, 1989, p. 26.

[23] P. Sarnecki, *Artykuł 28, op. cit.*, p. 2.

[24] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. Dz. U. z 1997 r. nr 78 poz. 483.

[25] Ibidem, art. 28 ust. 5.

Legal Compass

March 16, 2011

The on-line periodical of the Institute for Legal Studies of the Hungarian Academy of Sciences - 2011/Special Issue

# Czech State Symbols, their Legal Regulation and Protection[1]

## (Excerpts)

State symbols are important from the points of view of municipal and international law for the identification of states, resp. for the differentiation among them. Symbols and their appearance express the relationship between state and its traditions and continuity, but also reflects its territorial development (resp. its territorial claims) or its state idea. Symbols are one of the means to demonstrate its state sovereignty and also a means of representation vis-à-vis other states. State symbols are used for example for demarcation of state borders, in banknotes and state securities and stamps, in uniforms of members of armed corps, in documents and papers issued by state authorities, we can find them in public buildings and courthouses and so on. Their use and mutual recognition also express the mutual respect and recognition among states. The relationship of citizens vis-à-vis their own state is also reflected in their relationship vis-à-vis their state symbols – through symbols citizens identify themselves with the state, or, on the other hand, in the denial of state symbols they refuse their state, or identify themselves with the other state.[2] Next to states, symbols are used as expression of their identification and overall attitudes also by international organizations[3] and religious societies, associations, universities and private subjects too.

We can define state symbols rather widely. They can include for example crown jewels used for coronation, relics of particular saints and patrons of the country, national tree or plant, the capital, various memorials of rulers or of national heroes, eventually their photographs or pictures, or even buildings connected in various ways with the important historical moments of the states life. In this wider sense state holidays, important or memorable days, state decorations and medals, crown jewels of Czech kings, Prague Castle, capital Prague and the tomb of an unknown soldier belong to state symbols. They can be material or immaterial in their character; to the latter category belongs typically the national anthem.[4]

But we are first of all interested in state symbols in a narrow sense – it means symbols that got a special protection by the laws and laws (or constitution itself) also specifically regulate their use. The Constitution of Czech Republic (Law No. 1/1993 Sb.)[5] enumerates state symbols in its Art. 14, par. 1: The small and large state emblem (coat of arms), the state colours, the state flag, the flag of the President of the Republic, the state seal, and the national anthem. [6] Their order is determined by their mutual logical and graphic construction. From state emblem are derived state colours that form the basis of state flag and these symbols are in turn the basis for the creation of flag of the President of the Republic. In the same way the state emblem is the basis of state seal. Legal rules do not talk about the meaning of these symbols; it could be interpreted only from the Preamble of the Constitution that refers to historical tradition of the Czech state.[7] In the case of adoption of the flag we can talk about the reference to Czechoslovak tradition.

The notion "state symbols" appeared for the first time in Czechoslovak legal order only in 1936 in Law No. 269/1936 Sb., on the use of flags, emblems and other symbols, and of uniforms and badges and on measures against irregular emblems. Czechoslovak constitution from 1920 did not use this notion[8] and contemporary literature talked about "state emblems" ("odznaky státu")[9] or "external emblems" ("vnější odznaky").[10] The change of terminology was immediately reflected in literature.[11] On the constitutional level this notion was used for the first time in the constitutional law of Czech National Council No. 67/1990 Sb. on state symbols of Czech Republic.[12]

In general we can say that state symbols of Czech Republic developed from traditional symbols, continually used for centuries[13], that were reflected also in the

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[1] *Originally published in International Journal of Public Administration in Central and Easter Europe. No. 2010/1. p.42-50.*

[2] See e.g. J. Sovinský, Státní symboly České republiky. In: K. Klíma et al., Encyklopedie ústavního práva. Praha 2007, p. 60–61; V. Pavlíček et al., Ústavní právo a státověda. II. díl. Ústavní právo České republiky. Část 1. Praha 2008, p. 309–310.

[3] E.g. United Nations Organization, European Union, North Atlantic Treaty Organization etc. Their symbols and use of them is usually regulated in documents founding these organizations.

[4] See e.g. V. Pavlíček – J. Hřebejk, Ústava a ústavní řád České republiky. Komentář. 1. díl. Ústavní systém. Praha 1998, p. 113–114; J. Sovinský, Státní symboly..., p. 60–61; V. Pavlíček et al., Ústavní právo..., p. 314–319; K. Klíma et al., Komentář k Ústavě a Listině. Plzeň 2009, p. 195. Take an example of Czech crown jewels. It is in fact the collection of artifacts that is composed of the St. Wenceslas Crown of emperor Charles IV. with a case and cushion, the royal sceptre with its case, the royal orb with its case and the coronation cloak (decorated with ermine, a belt, a stole and the so-called maniple). They are deposited in the Prague Castle and are not a state symbol according to Czech Constitution. By Decree of Czechoslovak Government No. 251/1962 Sb. they were declared to be a cultural monument in the sense of Law No. 22/1958 Sb. Later, on the basis of Art. 1 of Government Decree No. 337/2002 Sb., they became a national cultural monument. The special rules for their deposit and use are regulated by Government Decree No. 19 from January 13th, 1993 on the new distribution of keys to Czech crown jewels. The complex security system for the protection of crown jewels belongs to classified information (Government Decree No. 522/2005 Sb., Supplement No. 14, No. 1). For the crown jewels in detail see M. Bravermanová et al., České korunovační klenoty. Praha 2008.

[5] For an English translation of the Czech Constitution (that is the primary source of terminology used in this article) see The Constitution of the Czech Republic. In: The Constitutional Court of the Czech Republic. [on line], last revision not mentioned [cit. 1st Oct. 2009]. URL: <http://angl.concourt.cz/angl_verze/constitution.php>.

[6] For an introduction to this topics see J. Sovinský, Státní symboly..., p. 60–66; for an introduction in English see K. Klíma, Constitutional Law of the Czech Republic. Plzeň 2008, p. 165–168.

[7] For the notion of historical tradition see K. Klíma et al., Komentář..., p. 29–33.

[8] See Art. 5 of Law No. 121/1920 Sb.z. a n., that introduces Constitutional Charter of Czechoslovak Republic.

[9] F. Adler, Odznaky československého státu. In: Slovník veřejného práva československého. Svazek II. Brno 1932, p. 1103–1106.

[10] F. Weyr, Soustava československého práva státního. Brno 1921, p. 87–88.

[11] F. Weyr, Československé právo ústavní. Praha 1937, p. 113–114.

[12] K. Klíma et al., Komentář..., p. 195.

[13] For the development of state symbols with many images see in detail P. Sedláček et al., Česká panovnická a státní symbolika. Vývoj od středověku do současnosti. Katalog výstavy. Praha 2002. See also M. Hlinomaz, Vývoj

symbols of Hapsburg monarchy (especially in complex large state coats of arms). The origins of symbols of independent Czechoslovak state (that were more or less established in 1920) we can find in symbols of Czechoslovak Legions[14] that were inspired by traditional Czech symbols (symbols of Czech kingdom) and Slovak symbols (symbols of Hungarian state). State symbols of inter-wars Czechoslovakia were the origins of modern state symbols of Czech Republic and, to a certain extent, of Slovak Republic.

The constitutional provisions on state symbols remained practically the same for a long time. The Provisional Constitution from 1918 did not mention state symbols at all.[15] The so-called definitive Constitution from 1920 talked about colours of the Republic, state emblem and state flag.[16] The similar provisions were used in the so-called Constitution of 9th of May from 1948.[17] In spite of the fact that so-called socialist Constitution from 1960 talked only about state emblem and state flag,[18] in the Law No. 163/1960 Sb., on state emblem and state flag, we could find the provisions also on the flag of the president of the republic and on state seal. The federalization of Czechoslovakia from 1968 did not have any influence on the list of state symbols.[19] The fundamental quantitative change in the determination of state symbols on constitutional level brought only Constitutional Law on the State Symbols of Czechoslovak Federative Republic No. 102/1990 Sb. that enriched the list of state symbols: next to state emblem and state flag also the flag of the president of the republic, state seal and national anthem were added to the list. Similarly the above-mentioned Constitutional Law on State Symbols of Czech Republic No. 67/1990 Sb. enlisted among Czech state symbols state emblem, flag, seal and anthem.

The Constitution of Czech Republic merely gives us an exhaustive list of state symbols without prescribing how they look like. The actual depiction of state symbols can be found (on the basis of constitutional delegation in par. 2 of Art. 14 of the Constitution) in Law No. 3/1993 Sb. on state symbols, resp. the annex to this Law. The use of state symbols is then regulated by Law No. 352/2001 Sb., on the use of state symbols of Czech Republic. It is therefore necessary to change the constitution if we want to change the list of state symbols, whereas for the change of the "look" of these symbols it is sufficient to change an "ordinary" law. It is not quite a standard constitutional solution, because the description and images of state symbols are the usual parts of constitutions themselves.

Large state emblem (coat of arms) forms the quartered Spanish shield. In the first and fourth quartering is the traditional coat of arms of the Czech country, the silver double-tailed lion with golden crown and golden armour on a red field. In the second quartering is the coat of arms of Moravian country, silver-red checky eagle with golden crown and golden armour on the blue field. In the third quartering is the Silesian black eagle with silver crescent with golden crown and red armour in a golden field (fig. 1).[20] Small state emblem forms the abovementioned coat of arms of the Czech country – Gothic shield with the silver double-tailed lion with golden crown and golden armour on a red field (fig. 2).[21] The author of the original appearance of Czech state emblem is heraldist Jiří Louda.

Traditional arms of Czech state was originally black eagle with red "flames" in a silver field connected with the house of Přemyslids, later at the end of the 12th century replaced with silver crowned lion with golden armour (that had originally only one tail, and from the 13th century onwards is double-tailed) in a red field.[22] Probably in connection with the original patrimonial character of the state the dynastic arms became also the arms of the state. Present day state emblem is in fact the intentional continuation of the Czechoslovak state emblem. This Czechoslovak emblem was for the first time legally regulated only provisionally in 1919 – at that time it was the contemporary coat of arms of the Czech kingdom.[23] This coat of arms was the part of complex arms of Hapsburg monarchy, for the last time regulated in 1915.[24] Czech state emblem then formed the basis of definitive state emblems with the more complicated structure.[25] In these more complex emblems we could find the arms of different parts of state territory, above all of Bohemia and Slovakia. The fundamental political and ideological change in 1948 was not for a long time reflected in state symbols.[26] The important change of the traditional state emblem took place in 1960. Socialist ideology affected this change in a numerous ways: crown over the lion's head was replaced by the five-pointed star, instead of the shield the allegedly "husite" pavise was used, the cross on the Slovak emblem was replaced by the allegedly "partisan" flame and three hills were replaced by the sharp silhouette signifying the mountain Kriváň.[27] Between 1968 and 1970 in connection with

československé státní symboliky 1918–1990. In: Sborník archivních prací, vol. 42, no. 1, 1992, p. 81–184; in English see P. Sedláček, Symboly republiky. Symbols of the Czech Republic. Praha 2007 (thereinafter P. Sedláček, Symbols...) (see too in: Gouvernement of the Czech Republic. [on line], last revision 22st Oct. 2007 [cit. 1st Oct. 2009]. URL: <http://www.vlada.cz/assets/urad-vlady/udalosti/symboly-katalog_1.pdf>).

[14] For these symbols see P. Sedláček et al., Česká ..., p. 87-88.

[15] Law No. 37/1918 Sb. z. a n., on Provisional Constitution.

[16] Art. 5. of Law No. 121/1920 Sb. z. a n.

[17] Art. 169 of Constitutional Law No. 150/1948 Sb., Constitution of Czechoslovak Republic.

[18] Art. 110 of Constitutional Law No. 100/1960 Sb., Constitution of Czechoslovak Socialist Republic.

[19] See Constitutional Law No. 143/1968 Sb., on Czechoslovak Federation, and Constitutional Law No. 125/1970 Sb. (that amended the law on federation).

[20] Art. 2 par. 1 of Law No. 3/1993 Sb.; P. Sedláček et al., Česká..., p. 121, 123.

[21] Art. 2 par. 3 of Law No. 3/1993 Sb.; P. Sedláček et al., Česká..., p. 120, 122.

[22] For the early development of Czech state emblem see e.g. P. Sedláček et al., Česká..., p. 19–29; P. Sedláček, Symbols..., p. 17–20.

[23] Decree of Government of Czechoslovak Republic No. 300/1919 Sb. that set down the state emblem; M. Hlinomaz, Vývoj..., p. 93; P. Sedláček et al., Česká..., p. 92–93.

[24] Decree of Imperial Royal Prime Minister No. 327/1915 Ř.z. that set down and describe the arms of Austrian countries. For state symbols of Hapsburg monarchy see T. Tyl, Vývoj státní symboliky ve vztahu k zemím Koruny české mezi léty 1848 až 1918. In: Stát a právo v letech 1848–1918 ve středoevropském kontextu, Bratislava 2007, p. 258–261; P. Sedláček, Symbols..., p. 7–13.

[25] There were used small, middle and large state emblems, regulated by Arts. 4-6 of Law No. 252/1920 Sb. z. a n. that set down provisions on state flag, state emblems and state seal. P. Sedláček et al., Česká..., p. 94–97; P. Sedláček, Symbols..., p. 13–14, 19–21. For the development of regulation of Czechoslovak state symbols in 1918–1938 (including proposals of variants) see M. Hlinomaz, Vývoj..., p. 88–106.

[26] Also the change of state territory was not reflected: From 1945 to 1960 were the arms of Podkarpatská Rus (sub-Carpathian Ruthenia) still the part of large and middle state emblem (although they were not used), although this territory was ceded to Soviet Union on the basis of Treaty from 29th of June 1945 (published as No. 186/1946 Sb.).

[27] Art. 110 par. 1 of Constitutional Law No. 100/1960 Sb., Constitution of Czechoslovak Socialist Republic; art. 1 of Law No. 163/1960 Sb., on the state emblem and state flag. See also S. Zdobinský et al., Československá

federalization of the state there were some discussions on the adoption of state emblem of more traditional appearance but they did not bring any changes.[28] Only in 1989 the new state emblem of the federation was considered during the works on the preparation of new constitution.[29] Finally the return to traditional emblem was made by constitutional law on state symbols in 1990.[30] As a part of the federation Czech Republic had its own state emblems only from 1990 to 1993.[31]

State colours are the white, red and blue in this particular order.[32] Colours are usually used in the form of tricolor (fig. 3). Its use is explained by the fact that red and white are the colours of the Czech kingdom, but they were also used in Moravia and Silesia. Because these two colours are also state colours of neighboring states (Austria, Poland), blue colour was added as an expression of the continuity with the so-called Slavic tricolor; its creation is allegedly connected with revolutionary year 1848.[33] In spite of the fact that traditional Czech colours were since Middle Ages only red and white, tricolor, for the first time regulated in the 1920 Czechoslovak Constitution[34], was preserved also after the split of Czechoslovakia.

State flag has proportions of width and length 2 to 3. It is composed of the upper white strip and lower red strip; between these strips is inserted the blue wedge whose length is a half of the flag's length (fig. 4).[35] We have to distinguish between flag and banner that does not have to respect the abovementioned proportions.[36] It is interesting that the banner could be used according to Art. 7 of Law No. 352/2001 Sb. also for the flag decorations of buildings. Jaroslav Kursa is considered to be the author of the Czechoslovak flag, which is the basis of the Czech flag. It was regulated for the first time in 1920[37] as an expression of state colours.[38] Czech Republic use the older state flag of Czechoslovakia and the use is in breach of the constitutional law about the division of state – according to this law no one of the successor states can use state symbols of the previous common state.[39] But neither Czech Republic, nor Slovakia respects this law in its entirety.[40] According to present day legal doctrine, constitutional laws are binding for the subjects only for the time of the state's existence and time of its extinguishment. On the basis of resolution of Czech National Council No. 5/1993[41] it is interpreted that Czech legislative assembly is sovereign and is not bound by the decision of Czechoslovak Federal Assembly. Slovak Republic did not accept Czechoslovak traditions and adopted different state symbols. Therefore after the end of the common state, the Czechoslovak flag became open for the use and as such was adopted by the Czech Republic.[42] It is also possible to argue that existence of federal state was a necessary condition for the existence of subject-matter of federal state symbols and it is not possible to apply the regulation of this non-existent subject-matter after the split of the common state.[43] Eventually we could also reason that Law No. 3/1993 Sb. on state symbols of Czech Republic indirectly abolished the previous legal regulation.[44] From 1990 to 1992 Czech Republic had within the framework of federation its own white-red flag (with strips of the same width) that was however used in practice only very rarely, inter alia for its resemblance with Polish flag.[45] As the oldest Czech stat flag we can consider probably St. Wenceslas standard that was in the Middle Ages composed of the standard of St. Adalbert and lance of St. Wenceslas.[46]

The flag of the President of the Republic is white with the border of white, red and blue flames; in the middle of the white field is the large state emblem under which there is the inscription "Pravda vítězí" (literal translation is "Truth gains victory" or "Truth prevails") in a red ribbon

ústava. Komentář. Praha 1988, p. 210; M. Hlinomaz, Vývoj..., p. 120–124; P. Sedláček et al., Česká..., p. 112; P. Sedláček, Symbols..., p. 21.

[28] M. Hlinomaz, Vývoj..., p. 124–126.

[29] Not less than six variants were prepared. M. Hlinomaz, Vývoj..., p. 126–128; P. Sedláček et al., Česká..., p. 114.

[30] Art. II of Constitutional Law No. 102/1990 Sb., on state symbols of Czech and Slovak Federal Republic; M. Hlinomaz, Vývoj..., p. 128–133; P. Sedláček et al., Česká..., p. 116.

[31] Large state emblem was composed of traditional arms of Czech countries: In the first and fourth field was Czech lion, on the second the Moravian eagle and on the third Silesian eagle. The small state emblem was Czech lion. Art. 1 of Constitutional Law No. 67/1990 Sb.; M. Hlinomaz, Vývoj..., p. 134–137; P. Sedláček et al., Česká..., p. 119, 120; P. Sedláček, Symbols..., p. 15–16, 21.

[32] Art. 3 of Law no. 3/1993 Sb.

[33] See travaux preparatoires to the government proposal of law on state colours and state flag etc. Document No. 1773/1919. Published in: Společná česko-slovenská digitální parlamentní knihovna. [online], last revision not mentioned [cit. 1st. Oct. 2009]. URL: <http://www.psp.cz/eknih/1918ns/ps/tisky/t1773_00.htm>. The so-called Slavic tricolor is in fact the Russian tricolor and its spread is connected with the spread of pan-Slavic ideas.

[34] Art. 5 par. 2 of Law No. 121/1920 Sb. z.a n. Surprisingly, state colours were not mentioned in Constitution of 1960. P. Sedláček, Symboly republiky. Symbols..., p. 22–25.

[35] Art. 4 par. 1 of Law No. 3/1993 Sb.

[36] Flag is the banner emblem that is connected to flagstaff with a cord and whose proportions are set down. Only flag is the official emblem of state sovereignty. Banner is a piece of cloth of arbitrary proportions that is nailed on the flagstaff. Banner is not the official state emblem and international rules on flags do not apply to banners. F. Adler, Odznaky..., p. 1106; V. Sládeček – V. Mikule – J. Syllová, Ústava České republiky. Komentář. Praha 2007, p. 128.

[37] Art. 1 of Law No. 252/1920 Sb.

[38] M. Hlinomaz, Vývoj..., p. 93–94, 97–101; V. Pavlíček – J. Hřebejk, Ústava..., p. 111–112; P. Sedláček, Symbols..., p. 26–29.

[39] Art. 3 par. 2 of Constitutional Law No. 542/1992 Sb., on the dissolution of Czech and Slovak Federative Republic. To prevent the breach the changes of tha flag were considered, such as the shortening of the blue wedge of one third of flag's length and the change of blue colour for lighter azure. P. Sedláček et al., Česká..., p. 119.

[40] Neither of the new states respected Art. 4 of the above-mentioned law. V. Pavlíček – J. Hřebejk, Ústava..., p. 114; K. Klíma, Ústavní právo. Plzeň 2004, p. 143; V. Pavlíček et al., Ústavní právo..., p. 311; K. Klíma, Constitutional Law..., p. 121.

[41] Resolution of Czech National Council No. 5/1993 Sb., connected with the adoption of constitutional law of Czech National Council on measures related to the dissolution of Czech and Slovak Federative Republic.

[42] V. Pavlíček – J. Hřebejk, Ústava..., p. 114; V. Pavlíček et al., Ústavní právo..., p. 311. To the constitutional dissolution of federation see in brief K. Klíma, Ústavní právo..., p. 138–150; K. Klíma, Constitutional Law..., p. 118–129. For Slovak national symbols see the contribution of P. Kukliš, L. Kurilovská and V. Janáč „Regulation of National Emblem in the Slovak Republic", published in this journal.

[43] Art. 1 par. 1 of Constitutional Law No. 4/1993 Sb., on measures related to the dissolution of Czech and Slovak Federal Assembly.

[44] This reasoning is possible because of Art. 112 par. 3 of Constitution of Czech Republic. According to this article constitutional laws valid in the territory of Czech Republic at the moment, when the Constitution entered in force, changed their character to „ordinary" laws. As a consequence of this "degradation" of former constitutional laws to "ordinary" laws, well-known principle of "lex posterior derogate legi priori" applies. See K. Klíma, Ústavní právo..., p. 149; K. Klíma, Constitutional Law..., p. 128.

[45] Art. 2 of Constitutional Law No. 67/1990 Sb., on state symbols of Czech Republic. About the normal use of the „state" white-red flag already in the eighties in the Czech part of Czechoslovak federation writes V. Pavlíček et al., Ústavní právo..., p. 239. There were only differences in proportions between Czech flag (2 to 3) and Polish flag (5 to 8). P. Sedláček, Symbols..., p. 28–29.

[46] Standard was probably taken by Austrians in 1278 after the battle on the Marchfeld (i.e. Morava Field) at Dürnkrut and we have no knowledge about it later. P. Sedláček et al., Česká..., p. 24-25.

underlined with golden lime spray (fig. 5).[47] This motto is traditionally ascribed to Jan Hus ("The Truth of the Lord prevails") and the first Czechoslovak president Tomáš Garrigue Masaryk popularized it. During the existence of Czechoslovakia president's flag was called a standard. It was regulated for the first time in 1920.[48] Its changes reflected especially the changes of the image of state emblem.[49] In 1990 was the motto changed after long discussions, as a consequence of Slovak objections, for Latin (i.e. neutral) "Veritas vincit", but it was only short-lived change.[50] The design of the flag is the work of Jiří Louda.

State seal that is kept by the president constitutes large state emblem underlaid with lime spray on the sides and overall there is the inscription "Česká republika" (fig. 6).[51] This is the work of Zdeněk Přikryl. It reflects the continuity with medieval state seals and its changes reflected changes of state emblem. It was regulated for the first time in 1920.[52] Till 1960 it was kept by the prime minister. The oldest state seal was made in the thirties of the 15th century and was used during interregnum till 1436 and later from 1452 till 1458.[53] Between 1990 and 1993 there existed also special seal of Czech Republic that was kept by the president of Czech National Council.[54]

National anthem is the first strophe of song "Kde domov můj" (fig. 7)[55] (literally translated "Where is my home?") by František Škroup and Josef Kajetán Tyl that was composed in 1834 for patriotic theatre play "Fidlovačka". Very soon this song became popular and was considered to be a national anthem. After the creation of independent Czechoslovakia in 1918 the anthem was regulated in many different laws and regulations (including ministry circulars[56]). In Czechoslovakia the second part of the anthem was the first strophe of Slovak song "Nad Tatrou sa blýská" (literal translation "Lightning over the Tatras") by Janko Matúška as a symbol of the equality between Czech and Slovak nation.[57] The Czech part of Czechoslovak anthem was considered to be the national anthem of Czech Republic.[58] From a historical perspective there were more songs considered in different times to be Czech state or national anthems, like medieval religious song "Hospodine pomiluj ny" (literal translation "Lord, give us your love" or "Lord have mercy") and "Svatý Václave" ("Saint Wenceslas").[59] Also president as the head of the state uses traditionally the anthem – fanfare from the overture to opera "Libuše" by Bedřich Smetana. This anthem is however not regulated, but according to J. Sovinský its use is constitutional convention.[60]

Because there is no continuity in statehood between present day Czech Republic and the so-called Second Czecho-Slovak Republic, Protectorate of Bohemia and Moravia and Slovak Republic (according to Decree of President of the Republic No. 11/1944 Úř. věst. čsl.[61]), symbols of these legal entities existing from 1938 till 1945 does not form a part of the legal development of Czech state symbols.[62]

Next to above-mentioned state symbols Czech laws also mention other symbols that represent Czech Republic, are not regulated on the constitutional level, but are derived from state symbols. These are the military emblem, national distinctive emblem and emblem of the President's Castle Guard.[63] They are regulated in detail by the Regulation of Ministry of Defence No. 257/1999 Sb.[64] Emblem of Castle Guard is according its Art. 1 par. 2 three shields with the image of white Czech lion on the red field, Moravian eagle of red-blue colour in a blue field and Silesian eagle of black colour in a yellow field that are completed with golden lime leaves.[65] It is maybe a reminiscence of the so-called alliance emblem of Czechoslovak Legions from the First World War.[66] National distinctive emblem used in military equipment is according to Art. 11 of circular shape and divided on three equably wedges of white, red and blue colours. There could be border used dependent on the background or the colours could be omitted.[67] Military emblem is composed according to Art. 1 par. 1 of two crossed swords (described in details ibid).

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[47] Art. 5 par. 1 of Law No. 3/1993 Sb.; P. Sedláček et al., Česká..., p. 121, 124.

[48] Art. 2 of Law No. 252/1920 Sb., P. Sedláček et al., Česká..., p. 98; P. Sedláček, Symbols..., p. 30.

[49] P. Sedláček et al., Česká..., p. 116; P. Sedláček, Symbols..., p. 30–33. There is one interesting curiosity: Between 1954 and 1960 standard was used in its pre-war appearance, so there was still the large state emblem used including the arms of Sub-Carpathian Ruthenia ceded in 1945 to Soviet Union.

[50] Art. IV par. 1 of Constitutional Law No. 102/1990 Sb.; M. Hlinomaz, Vývoj..., p. 131–132; P. Sedláček et al., Česká..., p. 116.

[51] Art. 6 of Law No. 3/1993 Sb; P. Sedláček et al., Česká..., p. 120, 121.

[52] Art. 8 of Law No. 252/1920 Sb. z. a n.; P. Sedláček et al., Česká..., p. 93, 98, 99, 113, 117, 120, 121; P. Sedláček, Symbols..., p. 35, 36–37.

[53] It is the seal of the Czech Crown. For this seal see P. Sedláček et al., Česká..., p. 24, 25; P. Sedláček, Symbols..., p. 34, 36.

[54] Art. 3 of Constitutional Law No. 67/1990 Sb.; P. Sedláček et al., Česká..., p. 120, 121.

[55] Art. 7 par. 1 of Law No. 3/1993 Sb.

[56] E.g. Journal of Ministry of Education and National Enlightenment, vol. 15, 1933 (decree no. 39 from 9th May 1933, Kde domov můj)

[57] V. Pavlíček – J. Hřebejk, Ústava..., p. 112. For details see G. Gössel et al., Státní hymna České republiky v proměnách doby. Praha 2008; P. Sedláček et al., Česká..., p. 84–85, 93; P. Sedláček, Symbols..., p. 38–39; J. Sovinský, Státní symboly..., p. 65–66.

[58] Art. 4 of Constitutional Law No. 67/1990 Sb.

[59] P. Sedláček et al., Česká..., p. 19–20, 21, 23–24, 26–27; P. Sedláček, Symbols..., p. 38.

[60] P. Sedláček at al., Česká..., p. 103; J. Sovinský, Státní symboly..., p. 61, 62.

[61] For this decree see J. Kuklík, Mýty a realita tzv. Benešových dekretů. Praha 2002, p. 160–168.

[62] For details of symbols of these entities see M. Hlinomaz, K problematice státních symbolů pomnichovské ČSR a tzv. protektorátu. In: Archivní časopis, vol. 37, no. 2, 1987, p. 79–89; M. Hlinomaz, Vývoj..., p. 106–119; P. Sedláček et al., Česká..., p. 105–109.

[63] See Law No. 219/1999 Sb., on military forces of Czech Republic (Art. 31, par. 4).

[64] Regulation of Ministry of Defence No. 257/1999 Sb. that set down the depiction of military emblem, national distinctive emblem and Castle Guard emblem, rules for the labeling of military material with military emblem, and national distinctive emblem, the depiction of military uniform and military badges and their use and rules for labeling of military equipment with national distinctive emblem or with state symbol or with Castle Guard emblem.

[65] P. Sedláček et al., Česká..., p. 116, 120–121

[66] On this emblem and on its use see M. Hlinomaz, Vývoj..., p. 94–95; P. Sedláček et al., Česká..., p. 88; P. Sedláček, Symbols..., p. 12–13.

[67] In the past the military white-blue-red cockade was also used (1919–1921) that was replaced in 1921 by banner-like emblems. In 1926 they were replaced again by military cockade of 1926 type divided on the equal white, red and blue wedges – these became later the national distinctive emblem. Next to it ministry of interior from 1936 used the so-called spherical triangle composed of the wedges of the same colours. P. Sedláček et al., Česká..., p. 93–94, 99–100, 101–102; P. Sedláček, Symbols..., p. 24–25.

Legal Compass

March 16, 2011

The on-line periodical of the Institute for Legal Studies of the Hungarian Academy of Sciences - 2011/Special Issue

# Regulation of National Emblems in the Slovak Republic[1]

## (Excerpts)

National emblems are an integral part of the formal signs of nationhood. They are an external manifestation of the State, expression of its sovereignty, independence and integrity. This institute represents the State outward, describing its history, traditions and values that are accepted by the most of its inhabitants or nations and nationalities (although it is not always the case). The national emblems are an official, non-interchangeable and unique designation of the State, by which the State differs from other States and that is recognised by other States in mutual relations. They represent a means by which most of the inhabitants identify themselves with their State. The basic national emblems of a State (particularly flag, anthem and coat of arms) are an integral part of important political events (such as national holidays, meetings of important officials) and a natural part of important institutions.[2]

It is evident that the issue of national emblems and its regulation by the law have a substantially interdisciplinary character. Its legal representation should take into account a large number of various and often contradictory variables, such as political, legal, social, socio-psychological, international law, historical, heraldic, aesthetic and economic variables (e.g. in the constitution or at the change of national emblems).

The national emblems of the Slovak Republic have origins in the nation's emblems. But the system of the nation's emblems is much more extensive than as pertracted in this article (coat of arms, flag, seal, anthem etc.). Different personalities, events, phenomena and objects may be subsumed under the nation's emblems in accordance with the socio-cultural and historical context. The nation's emblems underlined the membership of the nation, created a positive image of the nation, embodied its specific, exceptional features, attractive values and characteristics, recalled glorious pages of the nation's history and outlined the project of its "glorious future". They also showed actual and fabricated dark moments of the nation, its wrongs, oppression and suffering in the past and in the present. Consequently they brought in themselves a political message, offering arguments to the emerging national policies for the purpose of their legitimation.[3]

On the basis of aforesaid we may adhere to the rarely pertracted opinion that national emblems express to a certain degree the idea of the State as one of the state-forming elements.[4]

1.1. In older legal literature from the view of the issue under review it is stated that "state badges" are in the international relations a visit card of the State and a visible expression of its sovereignty. Moreover they often represent the historical development or at least outline the memories of certain events, sometimes joined to political requirements. In this way "state badges" affect the population's emotions and usually "radiate" certain emotional values that are the bigger, the better "state badges" – by their external form - are able to serve as the binder between different layers of the population to "bind to the State also emotionally remote elements". The term "integrating effect of national emblems" has been created for this function of national emblems. In this context it has been among others stated that "irrespective of the purely practical importance of national emblems their symbolic value that ...., had been very significant in the past, is now obviously on the retreat ...".[5] With lapse of time distinction started to be drawn between the emblems (emblems of state sovereignty and others) and badges that ceased to be regarded as emblems, but instead "showed the relation of an individual to a community of ideas".[6]

1.2. From the point of view of the theory of constitutional law there are different approaches to the definition of the term "national emblems". This term is often wider defined and beside of the national emblem, national flag, national seal and national anthem it includes, although indirectly, the position of the capital of the republic, the flag of the president of the republic, national holidays and memorial days, national language and state decorations.[7] In this context national emblems and other forms symbolising the State are sometimes distinguished (e.g. days and dates symbolising the State, state decorations, graphic form of official currency, the capital of the State, some of national cultural

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[1] *Originally published in International Journal of Public Administration in Central and Easter Europe. No. 2010/1. p. 85-92.*

[2] Also in SVÁK, J. – CIBULKA, Ľ. – KLÍMA, K.: Ústavné právo Slovenskej republiky. Všeobecná časť. Žilina, Eurokódex 2009, p. 275.

[3] ŠKVARNA, D.: Začiatky moderných slovenských symbolov. K vytváraniu národnej identity od konca 18. storočia do polovice 19. storočia. Banská Bystrica 2004, p. 7.

[4] Also e.g. in PAVLÍČEK, V. a kol.: Ústavní právo a státověda. II. díl. Ústavní právo České republiky. Část 1. Praha, Linde Praha, a. s. 2001, p. 169. In this context it is stated that "the state idea ideologically, value and emotionally reinforces the State and the national symbols singificantly contributes to it" (therein). The state idea is the integrating factor constituting a state nation. For details see PAVLÍČEK, V. a kol.: Ústavní právo a státověda. I. díl. Obecná státověda. Praha, Linde Praha, a. s. 1998, pp. 52 – 58.

[5] Slovník veřejného práva československého. Svazek II. Brno, Polygrafia 1932, p. 1103 (reprint of the original edition, Eurolex Bohemia, s. r. o. 2000).

[6] Tamže, Svazek V. Brno, Polygrafia 1948, p. 182; see also WEYR, F.: Československé právo ústavní. Praha, Melantrich 1937, pp. 113 - 114 and literature quoted therein.

[7] Also in SVÁK, J. – CIBULKA, Ľ. – KLÍMA, K., footnote 1, pp. 293 - 310; POSLUCH, M. – CIBULKA, Ľ.: Štátne právo Slovenskej republiky. Bratislava, Heuréka 2006, p. 192 - 196; also in SVOBODA, J. a kol.: Slovník slovenského práva (first modern edition) Žilina, Poradca podnikateľa, spol. s r. o. 2000, p. 641.

monuments, crown jewels, name of the State, Head of the State, established religion).[8]

2. From the aforesaid it follows that the level of the legislative regulation of national emblems corresponds to the value level of national emblems. It is evidently subject of the legislative regulation at the highest, i.e. constitutional level. From the legal point of view the stipulation of national emblems means the order given to state authorities (components of the state mechanism) to identify themselves through them inside the State as well as outwardly. On the other hand this fact means the prohibition of the use of national emblems for any other purposes.[9]

2.1 The Constitution of the Slovak Republic in Art. 8 provides that national emblems of the Slovak Republic are national emblem, national flag, national seal and national anthem. In Article 9 it regulates that:

- The National emblem of the Slovak Republic is a red, early Gothic shield with a silver double cross mounted on the central peak of the blue three hill group (paragraph 1);

- The National flag of the Slovak Republic is composed of three equal horizontal stripes – white, blue and red. In the first half of the national flag of the Slovak Republic there is the national emblem of the Slovak Republic (paragraph 2);

- The National seal of the Slovak Republic consists of the national emblem encircled by the inscription "Slovenská republika" (paragraph 3)

- The National anthem of the Slovak Republic is composed of the first two stanzas of the hymn "Nad Tatrou sa blyska"("Lightning over the Tatras", paragraph 4)

- The details on the national emblems of the Slovak Republic and their use shall be arranged by the law (paragraph 5).

For comparison, the Constitution of the Czech Republic stipulates as national emblems of the Czech Republic the large and small national emblem, national colours, national flag, flag of the president of the republic, national seal and national anthem (Art. 14).[10] The Constitution of the Republic of Hungary stipulates as national emblems the anthem of the Republic of Hungary (specified in Art. 75), the flag of the Republic of Hungary (specified in Art. 76 par. 1) and the emblem of the Republic of Hungary (specified in Art. 76 par. 2); the Constitution of the Republic of Poland stipulates the national emblem, the colours and the national anthem of the Republic of Poland (specified in Art. 28 par. 1 to 5).

2.2 The legal regulation stipulating the details on national emblems of the Slovak Republic and their use (Art. 9 par. 5 of the Constitution of the Slovak Republic) is the Act No. 63/1993 Coll. on national emblems of the Slovak Republic and their use, as amended ("Act on National Emblems"). The Act on National Emblems in Art. 1 provides that national emblems of the Slovak Republic may be graphically represented and used only in the way prescribed by this Act. The preamble (within the meaning report to the law) to the government bill of national emblems of the Slovak Republic and their use (parliamentary press 140, January 1993) in this context underlines that as Art. 8 of the Constitution of the Slovak Republic already lays down the national emblems of the Slovak Republic, the submitted bill does not repeat this provision, but instead contains the basic rule for their use, which applies to all four emblems. The national emblems are only the emblems specified in this provision. The other emblems referred to in the bill, i.e. national flag and national seals containing the national emblem, are not national emblems - they are only derived from national emblems. It is however necessary to regulate their use which is in the practice more often than the use of the national flag and the national seal (pp. 13 and 14).

2.2.1. The National emblem of the Slovak Republic is a red, early Gothic shield with a silver double cross mounted on the central peak of the blue three hill group. The body and the arms of the cross are extended and sunk in the ends, the tops are round (Art. 2 par. 1 of the Act on National Emblems). The representation of the national emblem forms Annex No. 1 to the Act. In this context the Act on National Emblems allows a different representation of the national emblem (specified in Art. 2 par. 2 to 4). This Act in its following provisions (Art. 3 to 6) regulates the use of the national emblem, including its use in buildings, official documents and official seals.

In this context the preamble to the government bill of national emblems (within meaning of the report to the law) states that main symbol of the national emblem of the Slovak republic is a double cross.[11] Its origin is related to Byzantia, where it had been enjoying special respect as one of national emblems since the 9th century. It goes without doubt that the mission of Constantine and Methodius to Great Moravia in that period had extraordinary importance for its propagation in our territory. The symbol of double cross historically appears in the heraldic shield in the end of the 12th century, which is proved by the denier of Bela III from the year 1190 (p. 14).[12]

The tradition of the double cross symbol in our territory was very strong already in the middle ages. It is proved by numerous city blazons from the territory of medieval Slovakia, in which the double cross symbol is represented, unlike the cities in the region of Zadunajsko, where the motif of other royal symbol – red-and-silver

[8] Also in FILIP, J.: Ústavní právo Český republiky. I. díl. Základní pojmy a instituty. Ústavní základy ČR. Brno, Doplněk 1999, pp. 151 – 160; also in GERLOCH, A. – HŘEJBEK, J. – ZOUBEK, V.: Ústavní systém České republiky. Základy českého ústavního práva. Praha, Prospektrum 1996, pp. 102 – 107; PAVLÍČEK, V. a kol., footnote 5, p. 172.

[9] FILIP, J., footnote 7, p. 152.

[10] For details see SLÁDEČEK, V. – MIKULE, V. – SYLLOVÁ, J.: Ústava České republiky. Komentář. Praha, C. H. Beck 2007, pp. 126 – 129; KLÍMA, K. a kol: Komentář K Ústavě a Listině. Plzeň, Vyd. a nakl. Aleš Čeněk 2005, pp. 129 – 131.

[11] For cross symbols see e.g. VRTEĽ, L.: Na troch vŕškoch biely kríž. Bratislava, Archa 1990, pp. 5-6; VRTEĽ, L.: Dvojitý znak v tisícročí, Vlastivedný časopis, 1990, No 3; VRTEĽ, L.: Osem storočí slovenskej heraldiky. Martin, Matica slovenská 2003.

[12] Also e.g. in ČIČ, M. a kol.: Komentár k Ústave Of the Slovak Republic. Martin, Matica Slovenská 1997, p. 65 et seq.

stripes – appears more frequently. It has significantly contributed to the fact that the double cross, originally a purely royal blazon, started to be perceived as a symbol of the territory of Upper Hungary - Slovakia. An important development also occurred thanks to the completion of the three hill group beneath the double cross in the first years of the 14th century. From the 15th century the three hill group started to be interpreted as mountains of Upper Hungary – Slovakia: Tatra – Matra – Fatra, and the stripes from the second royal blazon as rivers: Danube - Tisza – Drava - Sava.[13] The strong tradition of the double cross symbol on the three hill group in the territory of Slovakia had "caused" that, in 1848, the supporters of Ľ. Štúr declared this royal as well as territorial symbol to be the symbol of the Slovaks and Slovakia.

As mentioned above, the national emblem by its representation respects the early Gothic shape of a shield that is typical for the period from this the historical pattern comes. It also respects the moderately extended and sunk ends of the body and arms of the cross as we as the round silhouette of the three hill group, which fully corresponds to the heraldic and stragistic patterns of that period. The only heraldic alteration consists in the slightly elevated three hill group. Since the time when the blazon with double cross and a three hill group became Slovak national symbol (1848), the three hill group in the Slovak emblem has been always regarded as an important and meaningful symbol and represented so as to be visible enough.[14]

2.2.2. The National flag of the Slovak Republic is composed of three superimposed longitudinal stripes – white, blue and red, with equal width. In the first half of the national flag's leaf the national emblem is centred. The national emblem on the national flag is at equal distance from the upper, front and lower edge of the national flag and its height equals to a half-height of the national flag. On the contact of the shield with a colour other than white there is a white border, the width of which corresponds to one hundredth of the national flag's length. No contour line is used in the national emblem on the national flag. The ratio of the national flag sides is 2 to 3 (Art. 7). The graphic representation of the national flag forms Annex No. 2 to this Act. The Act also provides that the national flag may be also used in the form of a national standard (for details see Art. 10). The Act, like for other national emblems, prescribes the way of use of the national flag (Art. 8 and 9)

In this context, on page 19 of the preamble (within meaning of the report to the law) it is stated that traditional Slovak tricolour – white, blue and red – has its origins in the revolutionary movement of the year 1848. It was constituted under the influence of the Russian colours that had been also perceived as Panslav colours in the 19th century. The sequence of the Slovak colours as well as the width of the individual stripes on the flag became established gradually, the preserved exemplars of national flags from the year 1848 differ from each other in the details.

The white-blue-red flag was first anchored in the law (interestingly not in bohemia, but in Slovakia) by a decree of the minister vested with full powers for administration of Slovakia from 28 February 1919 (Decree No. 1007/1919 on flags, emblems and badges). The traditional Russian white-blue-red flag (used in Russia from the year 1693) was then abandoned and thus became free from the vexillological view. However in 1991 the Parliament of the Russian Federation decided on the return to the historical white-blue-red national flag of Russia. As, from the historical and heraldic (vexillologic) view, Russia has undoubtedly the priority right for the use of such flag, in connection with the implementation of the Resolution of the Government of the Slovak Republic, an eight-option study on potential forms of the national flag of the Slovak Republic has been drawn up. The commission designated as the most acceptable the option which enriches the tricolour with the national emblem situated in the front half of the flag leaf (for details see pp. 19 - 20).[15]


2.2.3. The National seal of the Slovak Republic is round. In its centre there is the national emblem of Slovakia and the colours of the emblem are marked by heraldic hatching. The national emblem is surrounded by the inscription SLOVENSKÁ REPUPLIKA (The SLOVAK REPUBLIC). In the lower part of the inscription circle is a linden leaf.

The diameter of the national seal is 45 mm. The national seal is applied to the originals of the deed of constitution and constitutional acts of the Slovak Republic, international treaties, credential letters of diplomatic agents and in other cases where its application is usual. The typarium of the national seal is in the custody of the President of the Slovak Republic. The graphic representation of the national seal forms Annex No. 4 to the Act on national emblems (Art. 12 (1) to (4)).

The form of the national seal of the Slovak Republic corresponds to the European usage established since the middle ages. It is so-called heraldic seal, where the centre of the seal field is filled with the heraldic shield with a

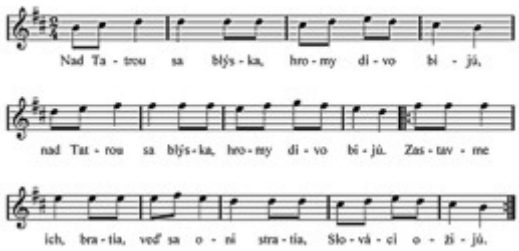
[13] Preamble to a bill on national emblems of the Slovak Republic and their use (Parliamentary Press 140, January 1993), p. 15; for details see SVÁK, J. – CIBULKA, Ľ. – KLÍMA, K., footnote 1, p. 295 et seq.

[14] Preamble, footnote 12, p. 16 (authors of the design of the national emblem of the Slovak Republic are the heraldist Ladislav Vrteľ and the designer Ladislav Čisárik, ml.).

[15] An inorganic part of the legislation on the use of national flag is to a certain extent the partial regulation of the institute of national mourning (Art. 9a) in effect from 1 July 2006. The question is whether this issue should not be a part of e.g. the Act No 241/1993 Coll. on national holidays, bank holidays and memorial days, on the condition of the extension of the subject of this regulation (including the name of the Act).

sign. The national seal means the relief impression of the seal (typarium), most frequently in the wax; other sealing materials, such as metal or the sealed document itself (in the form of so-called dry seal) are also acceptable. The national seal is not identical with the round stamp bearing the national emblem. The seal is always embossed and the stamp represents a colour print on the paper. The relation between the national seal and a stamp bearing the national emblem is comparable with the relation between the national flag and the national standard. The national seal of the Slovak Republic is not identical with the national seal - typarium, i.e. tool for production of the national seal; this may have the character of state insignia or other form.[16]

**Nad Tatrou sa blýska**




2.2.4. The provision of Art. 13 (1) of the National Emblem Act lays down that the National anthem of the Slovak Republic are the first two stanzas of the hymn "Nad Tatrou sa blýska". The national anthem is played or sung on the occasion of national holidays, memorial days, anniversaries and on other important occasions of national or local character; the national anthem of other State is played if the official delegation of such other State is present. The text of the national anthem and its score form Annex No. 5 to the National Emblem Act (Art. 13 (2) and (3)).

The hymn "Nad Tatrou sa blýska" (original name "Ponad Tatrou blýska") is based on a folk song "Pri studienke stála" ("By a Well She Stood") and its score was first written by August Horislav Krčméry, composer and master of the Bratislava Lyceum´s Choir on 16 March 1843. In March 1845, on the basis of the Krčméry´s score in a two-four time, the poet Janko Matuška composed the hymn "Ponad Tatrou blýska". This hymn was sung by the students of Ľ. Štúr during their demonstrative departure from the Evangelical Lyceum in Bratislava to Levoča, in protest against persecution of Ľudovít Štúr and the prohibition of his lectures on the lyceum. The hymn in this form became a folk song.[17]

The first stanza of this hymn has become a part of the national anthem of the Czecho-Slovak Republic, whereby its second stanza has departed from the original; the initial text "let's stop them, brothers" was altered to "let's stop, brothers" due to which the hymn lost its original revolutionary charge. The Constitutional Act of the Slovak National Council No. 50/1990 Coll. on name, national emblem, national flag, national seal and national anthem of the Slovak Republic has eliminated this deficiency and returned to the words of the anthem their original meaning.[18] [17]

3. The standard of the President of the Slovak Republic (Act No. 51/1993 Coll.), unlike e.g. the Czech Republic (2.1.), cannot be regarded as a national emblem. This fact is stressed *expressis verbis* by the preamble to the government bill on national emblems (within meaning of the report to the law) (p. 14). The President of the Slovak Republic uses the standard of the President of the Slovak Republic as symbol of its office (Art. 1 of the quoted Act).

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[16] Preamble to the bill, footnote 12, pp. 22 - 23; also in SVÁK, J. – CIBULKA, Ľ. – KLÍMA, K., footnote 1, pp. 300 - 301.

[17] Preamble to the bill, footnote 12, p. 24; compare also with ČIČ, M. a kol., footnote 11, pp. 66 – 67; SVÁK, J. – CIBULKA, Ľ. – KLÍMA, K., footnote 1, pp. 301 – 302; KOVÁČ, D. a kol.: Kronika Slovenska. Bratislava, Fortuna Print 1998, p. 434.

[18] The composer and music theorist Ladislav Burlas altered the Slovak national anthem following the extinguishment of the Czecho-Slovak Federation (he used other harmony and a slower place); e.g. on the website of the President of the Slovak Republic www.prezident.sk four versions of the national anthem´s sound record are available.