

POSSIBLE FUTURE LEGISLATIVE AND SOCIAL TRENDS IN THE PROTECTION OF STATE, NATIONAL, AND COMMUNITY SYMBOLS IN SLOVAKIA

Ján Škrobák¹

ABSTRACT

*The paper deals with possible options and suggestions for changing the constitutional and legal regulations of the protection of state, national, and community symbols in Slovakia. In terms of constitutional regulation, the paper concludes that its change is not necessary—even in the context of the low overall rigidity of the Slovak constitution. In relation to the Act on State Symbols itself, only a change in the regulation of the use of the state emblem on the jerseys of the official national sports teams is proposed. Regarding the area of criminal law and administrative punishment, there is somewhat unclear distinction between the criminal offence of disorderly conduct and the infringement under Article 42(1)(a) of the Infringements Act. The distinction between misdemeanors and infringements is defined in the Criminal Code by means of substantive corrective. Thus, the relationship between the two offences in question is not dysfunctional and the *ne bis in idem* principle will not be infringed. However, the unclear relationship between the merits of the criminal offence and the infringement casts doubt on compliance with both the requirement of legal certainty and the requirements arising from the principle of *nullum crimen sine lege certa*. Despite the shortcomings of this approach, the only solution appears to be to leave the boundary between the respective criminal offence and infringement for the judiciary. The paper outlines how the courts approach the assessment of cases of defamation. However, the jurisprudence of Slovak courts in this matter is scarce and currently does not provide answers to all relevant questions. The decisions show the need for an individual and contextual assessment of the social danger of every case of defamation. The paper contains a proposal to create a new criminal offence—the defamation of a state symbol of the Slovak Republic. Criminal protection for foreign state symbols would continue to be provided in the context of the crime of disorderly conduct. This paper also provides proposals to change the regulation of the use of state symbols in public sports events. These amendments are intended to close the loopholes of the current regulation, which reduce its regulatory effectiveness. Furthermore, it is proposed to harmonize the rules governing the use of official stamps with state symbols—coat of arms—and with self-government symbols in relation to municipalities and self-governing regions.*

1 | Associate Professor, Department of Administrative and Environmental Law, Faculty of Law, Comenius University Bratislava, Slovakia; jan.skrobak@flaw.uniba.sk.



state symbols
municipality symbols
disorderly conduct
defamation of a state symbol
Slovak Republic
constitution

1. Introduction

This paper builds on my monograph chapter on the constitutional and legal protection of state symbols in selected Central European States, from a research project within the Central European Professors' Network; I focused on the description and analysis of the constitutional and statutory regulation of the use and protection of state, city, and municipality symbols, self-governing regions, and national and community symbols in the Slovak Republic. Despite identifying several shortcomings and problematic aspects in regulation, I did not look further to ascertain change or improvement. This paper adopts that objective and aims to analyze and present proposals for new legislative approaches.

The paper specifically focuses on regulation in the following laws:

- | The Constitution of the Slovak Republic No. 460/1992 Coll., as amended by later constitutional laws,
- | Act No. 63/1993 Coll. on the state symbols of the Slovak Republic and their use, as amended (hereinafter referred to as the State Symbols Act),
- | Act No. 300/2005 Coll., the Criminal Code, as amended (hereinafter referred to as the Criminal Code),
- | Act No. 372/1990 Coll. on infringements, as amended (hereinafter referred to as the Infringements Act),
- | Act No. 302/2001 Coll. on the self-government of higher territorial units (Act on self-governing regions),
- | Act No. 1/2014 Coll. on the organization of public sports events and amending certain acts, as amended,
- | Act No. 506/2009 Coll. on trade marks, as amended.

From the point of view of systematics, I will first focus on the level of constitutional law, and then on the level of ordinary laws.

I adopt the heuristic inquiry method—focusing mainly on normative texts, but also considering scientific literature—along with analysis, synthesis, deduction, and induction methods in my research. Further, I employ the empirical method of direct observation—focused mainly on media reporting—and deal with decision-making practices of Slovak courts, while focusing on criminal offences of disorderly conduct.

2. Changes in the constitutional regulation of state symbols, city and municipality symbols, self-governing regions, and community symbols

Despite the fact that the constitutional regulation of this matter in Slovakia is rather minimalist,² I am of the opinion that *de constitutione ferenda* there is no need to change the regulation of state symbols contained in the Slovak Constitution.

I have not identified any problems or non-functional elements in this regulation, and, to my knowledge, neither have any authors; although, the literature on this topic is quite sparse. I believe that the Constitution provides sufficient protection to the Slovak state symbols, in ensuring their esteem and respect.

The degree of rigidity of the constitutional regulation of state symbols corresponds to the overall rigidity of the Constitution of the Slovak Republic, which is relatively low.³ It follows that the constitutional regulation of the state symbols of the Slovak Republic could be amended relatively simplistically. Thus, the current state symbols could be replaced with others relatively easily, or eventually even abolished. This risk could only be avoided by changing the constitutional regulation of the constitutional amendment itself. However, this is of course an extremely sensitive and complex constitutional, political, and social issue that goes far beyond the dimension of the state symbols themselves. Increasing the rigidity of the Constitution only to ensure greater stability of constitutional protection of state symbols would be—simply put—an overkill.

Based on common empirical knowledge, it can be argued that there is currently no real threat to the state symbols—in the sense that there would be tendencies in the Slovak discourse to revoke or replace them with other symbols. The only exception in this respect may be the State anthem of the Slovak Republic, for two reasons.

First, in Slovakia there are sometimes discussions, whether the anthem should be replaced by another hymn-song; according to some,⁴ the anthem no longer corresponds to the current situation of Slovaks, as Slovakia has been a sovereign state for decades and the revolutionary nature of the anthem (*Nad Tatrou sa blýska*—Lightning over the Tatra) appears to be obsolete. Some people think that the anthem should be a song that praises Slovakia, such as the hymn song *Aká si mi krásna*—How beautiful You are.

Discussions on the exact lyrics of the anthem *Nad Tatrou sa blýska* are not too distant in the past either. Although they concerned only two monosyllabic words, these two

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

3 | See Prusák, 1995, p. 113; Drgonec, 2019, pp. 1205–1206; Petranská Rolková, 2017, pp. 36–40.

4 | *Exprezident navrhuje zmeniť štátnu hymnu* [Online]. Available at: <https://domov.sme.sk/c/1480998/exprezident-navrhuje-zmenit-statnu-hymnu.html> (Accessed: 9 September 2022).

words fundamentally change the meaning of the text⁵. It cannot be ruled out that such discussions may reappear in the future.

Given the great symbolic value of state symbols and their link to ‘national consciousness’⁶, it can be said that as long as the Slovak Republic exists as a national state of Slovaks, it is very unlikely that state symbols may be endangered⁷ in a way that would require more effective constitutional protection—unless, of course, some fundamental change in the value paradigm of Slovak society should occur.

If the Slovak Republic, as a sovereign State, should cease to exist for some reason, the question of the protection of its state symbols would no longer be relevant—the state symbols would cease to exist as well. If the Slovak Republic were to continue to exist, but the Slovaks would lose their de facto political dominance, and the new dominant national or ethnic group would like to replace the current national symbols with its own symbols, no degree of rigidity in the Constitution would be able to effectively prevent this. If the fundamental social and value paradigm of Slovak society were to change,⁸ not even an extremely rigid constitution could prevent a change of state symbols.

Needless to say, in case of both such events, the question of state symbols would be quite secondary in the context of an overall political, legal, and societal change.

The question of state symbols is by nature *a posteriori*. State symbols always reflect a certain social and political reality. If social and political realities change fundamentally, even the strongest bulwarks of a rigid constitution will not be able to prevent constitutional changes to state symbols for a long time. The historical Slovak experience shows that the opposite is true.

Moreover, while the social importance of the constitutional regulation of state symbols is high, it is not so high that it must be seen as the core of the constitutional order. If there were social and political changes threatening the existing constitutional order or even the existence of the state itself, it would be much more important to protect other values, particularly the fundamental rights and freedoms of the people.

5 | In the past, the verse ‘Let’s stop them, brothers’ has also been used in the wording ‘Let’s stop, brothers’. The semantic difference is evident—the version currently used expresses more fighting spirit, as it calls for unspecified antagonistic entities to be stopped, while the version with the word ‘sa’ is more reluctant, defensive, encouraging patient waiting.

The next verse is ‘—they will get lost’. In the lyrics, the word ‘they’ can be expressed in two ways — either *ved’sa oni stratia* or *ved’sa ony stratia*. *Ony* is an inanimate pronoun, while *oni* is an animate pronoun. In the first case (corresponding to the current use), the anthem promises, that some inanimate entities will disappear. Those would probably be the thunder and lightning mentioned in the first two verses of the same stanza. In the latter case, it is the disappearance of some living entities, apparently personified enemies of Slovaks. Thus, in the present case, the wording used is both, more abstract as well as symbolic, and does not refer to any group of hostile persons. Clearly, the combination of the different wordings of these verses can achieve considerable shifts in the overall semantic meaning of the first stanza of the anthem, starting with the version where the anthem calls on Slovaks to wait patiently before thunder and lightning pass, up to the version where the anthem calls on them to combat a personalized enemy to be destroyed.

6 | Svák, Cibulka and Klíma, 2009, p. 275.

7 | Such a change in the past was, for example, the emergence of the communist regime in a form antagonistic to religion, which led to the replacement of the double-cross as the symbol of Slovakia and of Slovaks, by a depiction of the mountain of Kriváň with a fire of the partisans.

8 | For example, a victory of totalitarian ideology that would aspire to change the state symbols.

In summary, I consider the existing constitutional regulation of state symbols to be sufficient, since issues not regulated by the Constitution are sufficiently regulated by laws.

There is no regulation of the symbols of self-governing regions, municipalities, or, for example, minority communities in the Constitution of the Slovak Republic. Of course, we can ask ourselves whether this is correct and whether such a regulation should not be included in the constitution.

Constitutional regulation of the right of municipalities, towns, and self-governing regions to have and use their symbols would—symbolically—strengthen their self-governing position. However, it would only be a truly symbolic strengthening, with no real practical added value. The absence of constitutional regulation of the symbols of local and regional self-governing bodies and authorities does not pose any practical problems. I would consider explicit constitutional regulation of the right to self-government⁹ to be more important and beneficial for local and regional self-government entities. If such a constitutionally regulated right was incorporated into the Constitution, through interpretation we could also reach a conclusion that it also covers the protection of the right of self-government to have and use its own symbols, without the need for such a provision to be expressly included in the Constitution. Personally, I prefer the Constitution to regulate only those issues that are of essential social and legal importance and need to be regulated by the highest-ranking legal rules.

Regarding the symbols of minority communities, I assess the need for such constitutional regulation in the context of the existing constitutional regulation of the rights of persons belonging to national minorities.¹⁰ These are the rights of an individual and subjective nature, whose entities are natural persons and not associations of natural persons. Constitutional regulation of the protection of national community symbols would interfere with this concept of ‘minority’ rights to some extent. As the paradigm of constitutional protection of minorities in Slovakia is focused on individual subjective rights, without changing this paradigm, it would seem impossible to regulate the abstract protection of community symbols in the Constitution as such. Thus, without changing the constitutional paradigm of the protection of minority rights, it would be conceivable to regulate the rights of persons belonging to national minorities to use the symbols of those minorities, but not abstractly protect those symbols constitutionally.

Understandably, this is a highly sensitive political issue. It can be assumed that an amendment to the Constitution aimed at constitutionally regulating the protection of national minority symbols would appear to be politically feasible only in very unusual political circumstances, perhaps even then not.

From a strictly legal point of view, the principal legal challenge in the case of constitutionally legislated regulation of the protection of national minority symbols is the fact that these symbols are also—at least in some cases—state symbols of third countries. For example, if Roma communities in Slovakia use their symbols, they are only non-state symbols. However, if, for example, Slovak Hungarians or Chinese people use their

9 | Currently, the concept of matters of territorial self-government is most closely related to this concept within the framework of positive legal regulation, as it is used by the Constitution of the Slovak Republic (in Art. 127a). See Drgonec, 2019, p. 1516.

10 | The rights of persons belonging to national minorities are regulated by the Constitution of the Slovak Republic in Arts. 33, 34.

symbols, they are also likely to be symbols of foreign states. Thus, if the Slovak Constitution expressly provided protection for national minority symbols, it would via facti also provide protection, at least in some cases, to foreign state symbols¹¹. This would not only be rather peculiar but could also interfere, on the one hand, with the legal regulation of the use of state symbols of the Slovak Republic, in relation to which the law of course regulates the preferential regime, and, on the other hand, with the current legal regulation of the use of foreign state symbols in the Slovak Republic.

As symbols have mainly symbolic value, it's legitimate if the state and the law protect and prefer their own symbols over foreign ones. In today's world, the question of the existence of states and nations is, to a considerable extent, a question of defining oneself against foreignness. In that regard, the fact that a state protects and favors its own symbols and protects foreign symbols to a lesser extent, or possibly limits their use, seems to me to be the expression of a natural instinct of self-preservation on the state level. The use of state symbols in the territory of the respective state expresses the sovereignty of the state. Therefore, the state symbols of each state need to be regulated and protected by its constitution and legal system.

The expression of state sovereignty of other states in the territory of the Slovak Republic is acceptable only in a very limited manner—for example, designated diplomatic missions or foreign official delegations.

3. Amendment to the State Symbols Act

I have a singular fundamental reservation regarding the State Symbols Act. It concerns the use of the coat of arms of the Slovak Republic on the sports clothing of the official sports representatives for the Slovak Republic. I believe the approach introduced here by amendment to the State Symbols Act introduced by Act No. 126/2019¹² is unreasonably strict.

11 | Of course, it could be avoided, for example, by a solution similar to the legislative solution in Serbia, by explicitly regulating that the national symbols used by national minorities must not be identical to the state symbols of third countries. According to Art. 16 of the Serbian Law on the protection of rights and freedoms of national minorities, members of national minorities shall have the right of choice of national symbols and signs. National symbols and signs may not be identical to symbols and signs of other states. See Law on the protection of rights and freedoms of national minorities [Online]. Available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2021/08/43e756834.pdf> (Accessed: 24 November 2022).

It would also be possible to allow the use of any symbols of national minorities, but only if they were different from the state symbols of third countries, their use would be subject to constitutional protection.

12 | As a result of this amendment and the new provision in Art. 3(3), the sporting representation of the Slovak Republic in a major international competition—i.e., for example, the World Ice Hockey Championship—, as well as in preparatory matches for such competition, may no longer use the coat of arms on its dresses other than in the manner provided for in this Act. The second sentence of Art. 3(3) of the SsA expressly provides that a sports representation of the Slovak Republic uses the Slovak coat of arms in a major competition, including the preparation for such competition, in particular by displaying it in the manner provided for in this Act on sports clothing.

My criticism is, of course, from a more political perspective and based on value rather than law. However, I think that the rigid requirement that the Slovak Republic's sport representatives must use the coat of arms in major competitions, as well as during the preparation for the competition, particularly by depicting it in the manner laid down in the State Symbols Act on sports clothing, is overly nationalistic. If the national ice hockey teams of Canada, Sweden, or Czechia—and these really are elite national hockey teams—can display stylized emblems on their jerseys, I do not see why this should not be appropriate and possible in the case of Slovakia.

If the argument is put forward that the state co-finances sports federations, and thus the state is justified in expecting the state symbols to be displayed on sports jerseys, only one thing can be said: If the State expects some kind of remuneration—in the form of the display of the coat of arms on jerseys—there is always the possibility to enshrine such an obligation for the sports federations in the financing agreements or in the terms of the grant schemes.

4. Amendments to the Criminal Code and the Infringements Act

In terms of judicial and administrative punishment, I have identified two problems. The first problem is that there is an unclear distinction between the criminal offence of disorderly conduct under Article 364(1)(b) of the Criminal Code and the infringement under Article 42(1)(a) of the Infringements Act, as regards the objective aspect relating to defamation—criminal offence—or derogation—infringement—of state symbols. There is no major semantic difference between these concepts; however, there is a subtle hint suggesting that a more serious act will be required to fulfill the merits of the criminal offence. This corresponds to the general relationship between criminal offences and infringements.

The distinction between criminal offences, namely, misdemeanors, and infringements is expressed in the Criminal Code by a so-called substantive corrective,¹³ according to which there is no misdemeanor if, having regard to the manner, in which the act was carried out and its consequences, the circumstances in which the act was committed, the degree of fault and the motivation of the offender, the seriousness of the conduct is negligible. From that point of view, the relationship between the two offences in question is not dysfunctional, even though this might appear to be the case at first glance. The *ne bis in idem*¹⁴ principle will therefore not be infringed. The problem, however, is the unclear relationship between the merits of the criminal offence and the infringement. This casts doubt on compliance with both, the requirement of legal certainty and the requirements arising from the principle of *nullum crimen sine lege certa*.¹⁵

As a solution, I considered the possibility of a change of Article 42(1)(a) of the Infringements Act, such that the infringement in question would require intentional fault only

13 | Art. 10(2) of the Criminal Code.

14 | Hamuláková, 2017, p. 55.

15 | Horvat, 2016, pp. 79–88.

in the event of damage or abuse of the state symbol. In the case of derogation, it would be expressly provided that the act must be negligent. If a state symbol was deliberately derogated and the manner, in which the act was carried out, would give it a sufficient level of gravity to pass the material corrective, such an act would be a criminal offence. However, the problem with this solution is that if the court—or the prosecution or the police—was to consider that the defamation/derogation of the state symbol does not give rise to a sufficient degree of social hazard, such intentional conduct would not be punishable as an offence, even though a similar negligent act would be punishable. This solution would therefore not only lead to a slight reduction in the protection of state symbols in the area of infringement law, but would create room for injustice: negligent conduct would be penalized and intentional action in some cases would not.

Unfortunately, in Slovak judicial practice, there are only a very small number of court decisions regarding cases of disorderly conduct under Article 364(1)(b) of the Criminal Code. The cases I have found testify to the importance of the contextual assessment of facts.

For example, in a recent case decided by the Specialized Criminal Court in 2020–2021,¹⁶ the act was committed in September 2019 in Budapest, at the football stadium Groupama Arena, where the EURO 2020 qualifying football match between Hungary and Slovakia was being played. The act was committed in such a way that the perpetrator—in the sector intended for guests, that is for Slovak citizens—in front of the fans present, at a personal distance, in a position indicating readiness for a physical attack, shouted and attacked the victim cheering for the Slovakian team—by hanging a Slovak flag on the visitors' sector. In this incident, the perpetrator covered the Slovak flag with a Hungarian flag in violation of the rules of the UEFA. The attacked person did not submit to his actions; he defended the Slovak flag with his own body and again pulled the Slovak flag out from under the Hungarian flag and hung it on the railing. At the time of the act, the perpetrator was demonstratively wearing outerwear consisting of a black sweatshirt, which had a patch with the Hungarian tricolor on the left sleeve interrupted with the inscription *HARCOS*—warrior—and red and white stripes representing the Arrow Cross Party, but also the neo-Nazi organization Blood and Honor. On the left side of the chest in an early Gothic shield with a red color crowned with olive branches, he had a clearly visible white Ing - rune, which is the symbol of the neo-Nazi organization Blood and Honor.

Therefore, the essence of the assessment of the action as a defamation of the Slovak state symbol was the overlaying of the Slovak flag with the Hungarian flag. However, the overall factual circumstances of the case are very important. It should be mentioned that the court also ruled on the matter of other acts of the perpetrator, with which he fulfilled the facts of various extremist crimes and established the jurisdiction of the Specialized Criminal Court.

Another case of disorderly conduct was determined by a criminal order by the Prešov District Court in 2014.¹⁷ The perpetrator committed the act by committing gross indecency in public, by urinating on the front hood of a police car parked there. The coat of arms of

16 | Judgment of the Specialized Criminal Court, File number: 3T/41/2020, date of decision: April 28, 2021, ECLI: ECLI:SK:SSPK:2021:9520100325.2.

17 | Judgment of the Prešov District Court, File number: OT/57/2014, date of decision: April 24, 2014, ECLI:SK:OSPO:2014:8114000425.1.

the Slovak Republic was displayed on the front hood of the said vehicle in addition to the inscription police.

I will also discuss a very recent decision by the Supreme Court of the Slovak Republic¹⁸. Although it does not refer to the crime of disorderly conduct under Article 364(1)(b) of the Criminal Code, it concerns a related merit under Article 364(1)(c) of the Criminal Code—a person commits this subcategory of the crime of disorderly conduct if he or she defames a historical or cultural monument. In the case under consideration, that the perpetrator defamed a registered cultural monument in public, namely the Monument to the Fallen of World War II, in such a way that, with a screwdriver, he forcibly pried and thus removed out of the monument a total of 13 pieces of hammer and sickle symbols, and he damaged five of them, causing damage in the amount of 72 Euros. I view the importance of this decision from two perspectives: on the one hand, it expresses the view of courts of all levels on when it is possible to talk about defamation—albeit in relation to a cultural monument, but with the possibility of generalization also to a state symbol; on the other hand, it also deals with the relationship of this criminal act to freedom of speech.

The Supreme Court of the Slovak Republic stated that, among other things, the criteria used to determine the seriousness of the offense relate to: a) Actions, consequences, and circumstances of committing the offense—test of the objective aspect. b) Degree of culpability and motives for the act—test of the subjective aspect.

The court specifically stated that the mentioned criteria are so different and variable that they can be used to sufficiently distinguish the degree of seriousness of the committed offense in a specific case, or an act showing the characteristics of a crime. The mentioned criteria cannot be evaluated in isolation but in their summary, without some being overrated or stronger at the expense of others. Moreover, the seriousness of some anti-social behavior is usually the dividing line between a crime and an infringement.

The Supreme Court stated that freedom of speech has its limits. In the opinion of the court, it cannot be considered acceptable that freedom of speech results in actions aimed at defaming a cultural monument, even under the guise of fighting against a criminal regime. Only a good path leads to a good goal. Although it may be thorny, it cannot have an aggressive and arbitrary character that violates not only moral but especially legal regulations. The goal achieved in this way, although correct, is sacrificed to the expediency of the procedure, and this is considered unacceptable by the Supreme Court as long as The Slovak Republic should be described as a state governed by the rule of law.

From the decision of the appellate court—that is, the regional court—in this case, it follows that in terms of the interpretation of the term defamation of a cultural monument, such an action must meet two criteria. One is that it must be a physical attack on a cultural monument, and the other is that it shows disrespect for this cultural monument.

These conclusions should obviously also be applied to defamation of state symbols.

Unfortunately, administrative decisions regarding infringements, as well as decisions of the police and the prosecutor's office, by which criminal cases were transferred due to a lower degree of seriousness to administrative infringement proceedings, are not publicly available.

18 | Decision of the Supreme Court of the Slovak Republic, File number: 1Tdo/3/2022, date of decision: September 13, 2022, ECLI: ECLI:SK:NSSR:2022:7118010732.1. The decision of the court of the first instance in this case was the judgment of the District Court Košice I, File number: 7T/35/2018, date of decision: October 21, 2020, ECLI: ECLI:SK:NSSR:2022:7118010732.1.

I conclude that due to the existence of the substantive corrective in the Criminal Code, it can never be ruled out that, in the case of a misdemeanor, the court may assess the degree of social danger as so low that it does not classify the act as a criminal offence. Thus, the only solution appears to be to maintain the *status quo* and to leave identifying the boundary between the aforementioned public offences for judicial decisions with all the risks involved.

The second issue I have identified concerns only the Criminal Code.

I am of the opinion that the *status quo*, when criminal law protection is provided to state symbols through the crime of disorderly conduct, is inappropriate. I have this opinion for several reasons.

On the one hand, the social values that are generally protected by the different subtypes of the crime of disorderly conduct are public order and decency in public space. In the case of state symbols, their dignity must be seen as a value *per se*—different from values of public order or morality/decency. This value also deserves special protection under criminal law. I therefore consider it necessary to create a separate criminal offence, the object of which is not primarily public order or decency, but the very dignity of a state symbol.

I came to this conclusion based on a study of almost 200 decisions of first-instance courts, as well as appeals courts, in the Slovak Republic,¹⁹ which dealt with disorderly conduct. It can be concluded that in judicial practice, most criminal acts of disorderly conduct have the character of minor acts of violence (fights, assaults, threats of violence)—Article 364(1)(a) of the Criminal Code; a smaller part concerns moral offenses such as sexual—usually perverted—activities in public, what falls under Article 364(1)(e) of the Criminal Code. In the context of this focus, the inclusion of criminal law protection of state symbols in this group seems undignified. This empirical research also confirmed my thesis that the object of protection in the case of the crime of disorderly conduct under Article 364(1)(b) of the Criminal Code is significantly different when compared to more ‘common’ cases of disorderly conduct.

Another reason I consider it necessary to detach the criminal protection of state symbols from the crime of disorderly conduct and to create a new criminal offence is that, under the present rules, the same criminal law protection is provided to the Slovak state symbols and to foreign state symbols.²⁰ I do not see any reasons for this. The state should protect its own symbols more than foreign ones.

The solution I propose is to create a new criminal offence—defamation of the State symbols of the Slovak Republic. The offence would be committed by anyone who would, publicly or in a place accessible to the public, defame a state symbol of the Slovak Republic. An intentional fault would be required. The penalty rate would remain unchanged compared to the current situation.

19 | Court decisions regarding these crimes can be found on the website of the Ministry of Justice of the Slovak Republic [Online]. Available at: <https://obcan.justice.sk/infosud> (Accessed: 25 November 2022). The crime of disorderly conduct is very frequent. Within this crime, however, the cases of the crime under Art. 364(1)(b) of the Criminal Code are very rare.

20 | Ivor et al., 2021, p. 507. In the work of other scholars, one can also encounter a slightly modified view of this question, based rather on what real social concern the defamation of a foreign state symbol will cause. Burda et al., 2011, p. 1235.

At present, Article 364(2) of the Criminal Code lays down the following qualifications justifying a more severe penalty for disorderly conduct: committing the act (a) from a specific motif; (b) by a more serious way of acting; (c) in the presence of a group of persons below the age of 18; (d) against a protected person, or (e) although the perpetrator has been convicted in the previous twenty-four months or punished in the previous 12 months for the same or a similar act.

Of these, only some appear to be relevant for the defamation of a state symbol and should also be kept in the proposed new regulation. In particular, this should be the specific motive, a more serious course of action, committing the act in the presence of a group of persons under the age of 18, and the fact that the offender has been convicted in the previous twenty-four months or punished in the previous twelve months for a similar act.

Finally, it is also worth considering whether it would not be appropriate to impose more severe sanctions on Slovak nationals than on foreigners and persons without citizenship for defamation of the state symbols of the Slovak Republic. Citizens are bound to the Slovak Republic by a commitment of loyalty, and therefore, defamation of their own state symbols can be seen as more reprehensible.

Criminal protection for foreign state symbols would continue to be provided as part of the disorderly conduct crime. Its constituent elements would be modified by inserting the words 'of a foreign State' in Article 364(1)(b) of the Criminal Code after the words 'state symbol'.

5. Proposed changes to the Act on the Organization of Public Sports Events

I have also identified some shortcomings in relation to Act No. 1/2014 Coll. on the organization of public sports events and amending certain acts, as amended (hereinafter also referred to as the Act on sports events).

The organizer of a risk sports event should not only have the obligation to ensure that participants do not bear the state symbols of other states or their predecessors in domestic events. This obligation should *de lege ferenda* also apply to objects resembling such state symbols and to objects that can be arranged to form shapes of state symbols of other states or their predecessors. Similarly, prohibitions on the introduction of such objects should also be explicitly provided in relation to participants in such events. Empirical knowledge resulting, for example, from media coverage shows that in their current form, these prohibitions and obligations can be circumvented relatively easily.²¹

However, the organizer of a risk sports event should also have an explicit obligation to ensure that prohibited items are not only not brought by participants, but by anyone. In

21 | See for example this article: Maďarská vlajka na tribúne vyjde Dunajskú Strediu poriadne draho [Online]. Available at: <https://tvnoviny.sk/sport/clanok/74365-madarska-vlajka-na-tribune-vyjde-dunajsku-strediu-poriadne-draho> (Accessed: 25 November 2022). In this case, the football club was penalized, but only by the Slovak Football Association based on its internal regulations.

its current form, this ban can be bypassed, for example, by fans not bringing foreign state symbols into the stadium; rather, they would be brought by club employees.

6. Proposed changes in the Act on Trade Marks

I am of the opinion that there is no need for change in relation to the statutory regulation of the use of state symbols in business. The use of state symbols in business, which does not contradict the current wording of the law—particularly, it must be dignified and must not create an incorrect impression that it is an official use of state symbols—is not problematic.

However, there is scope for change in Act No. 506/2009 Coll. on trade marks, as amended. According to the current regulation in Article 5(1)(j) and (k) of Act on trade marks, a sign is not to be entered in the register of trade marks, if: a) it contains a sign of high symbolic value, in particular a religious symbol; b) it contains, without the consent of the competent authorities, signs, emblems, or coat of arms other than those protected under an international convention and which are of public interest.

However, the law should explicitly provide that a state symbol is not eligible for registration—without the consent of the competent authorities—in order to remove any interpretive doubts regarding the above provision.

7. Proposed changes in relation to the symbols of local and regional self-government

Regarding the symbols of cities, municipalities, and self-governing regions, I propose a harmonization of their regulation. In particular, there is no reason to preserve the differences in the regulation of official stamps. While Act No. 369/1990 Coll. on Municipal Establishment does explicitly require the municipalities to use the official stamp of a municipality bearing the coat of arms of the state when performing duties of state administration, and in the exercise of its own self-governing powers, the municipality is required to use official stamps with its own coat of arms. The Act on self-governing regions does not expressly regulate official stamps of a self-governing region. Although I am not aware of any practical problems arising from this inconsistency, I do not consider a non-uniform legislative approach appropriate.

I do not consider it necessary to provide greater penal protection for the symbols of towns, municipalities, and self-governing regions, since their possible defamation is not as dangerous to society as the defamation or derogation of the state symbols.

8. Conclusion

From my perspective, Slovak society should move in the direction of giving more importance to state symbols. My feeling is that Slovaks are a little more lukewarm in this respect compared to several other Central European nations. However, I have not identified any need for change in the constitutional regulation of state symbols. On the one hand, I consider the constitutional regulation sufficient *per se*. On the other hand, any constitutional amendment aimed at increasing the rigidity of the protection of state symbols would still run into the overall low rigidity of the Constitution of the Slovak Republic, and in the event of revolutionary social and political changes, its effect would be thwarted by the radically changed social reality.

Regarding the statutory provisions contained in the State Symbols Act, as the only amendment, I propose cancellation of the legal obligation for sports representations of the Slovak Republic to display the Slovak coat of arms in official international competitions on sports jerseys.

Regarding the area of criminal law and administrative punishment, the problem can be seen in the unclear distinction between the criminal offence of disorderly conduct under Section 364(1)(b) of the Criminal Code and the infringement under Article 42(1)(a) of the Infringements Act. This ambiguity concerns those parts of the objective aspect of the facts of each respective offence that relate to defamation or derogation of state symbols. There is no major semantic difference between these concepts in Slovak, just a mild shade of difference. The distinction between criminal offences, namely, misdemeanors, and infringements is defined in the Criminal Code by means of substantive corrective. Thus, the relationship between the two offences in question is not dysfunctional. The *ne bis in idem* principle will not be infringed. The problem, however, is the somewhat unclear relationship between the merits of the criminal offence and the infringement. This casts doubt on compliance with both, the requirement of legal certainty and the requirements arising from the principle of *nullum crimen sine lege certa*.

I considered a possible solution in this paper, namely that in the case of the infringement in question,²² intentional fault would be required only in the event of damage or abuse of the state symbol. The Act would then expressly provide that in the case of derogation such an act must and may be only negligent. However, the problem with this solution is that if the court were to consider that the defamation or derogation of the state symbol does not give rise to a sufficient degree of social hazard; such intentional conduct would not be punishable as an offence, even though a similar negligent act would be punishable. Therefore, this solution creates room for injustice.

Examining dozens of court decisions related to the crime of disorderly conduct, I identified three in the paper that relate to defamation—either of a state symbol or a cultural monument—, and with their help, I outlined how the courts approach the assessment of these proceedings. However, the jurisprudence of Slovak courts in this matter is scarce and currently does not provide answers to all relevant questions for the time being. The decision of the Slovak Supreme Court, which I present in this paper, also shows the need for an individual and contextual assessment of the social danger of every case of defamation.

22 | The infringement under Art. 42(1)(a) of the Infringements Act.

Due to the existence of the substantive corrective, it can never be ruled out that the court may assess the degree of social danger of a specific conduct as so low that it will not classify the act as a misdemeanor. Thus, despite the shortcomings of this approach, the only solution appears to be to maintain the *status quo* and leave the boundary between the respective criminal offence and infringement for the judiciary.

The second issue concerns only the Criminal Code; currently, criminal protection is provided to state symbols through the crime of disorderly conduct. I consider this inappropriate. In the case of criminal law protection of symbols, the protected social value should be viewed as significantly different from public order. Moreover, it does not seem appropriate or dignified if defamation of a state symbol is subsumed under the same criminal offence as the ordinary cases of acts of public disorder. It is also incorrect if the law provides the same level of criminal protection for Slovak state symbols and foreign state symbols in a single set of merits of a criminal offence. That is why I propose to create a new criminal offence—the defamation of a state symbol of the Slovak Republic. This crime would be committed by a person who would, publicly or in a place accessible to the public, defame a state symbol of the Slovak Republic. An intentional fault would be required, while the penalty rate would remain unchanged compared to the current legislation.

Criminal protection for foreign state symbols will continue to be provided in the context of the crime of disorderly conduct.

This paper also provides proposals to change the regulation of the use of state symbols in public sports events. These amendments are intended to close the loopholes of the current regulation, which reduce its regulatory effectiveness. Furthermore, it is proposed that the Act on Trade Marks should expressly provide that the state symbols are not eligible for registration as a trademark.

Finally, I propose harmonizing the rules governing the use of official stamps with state—symbols coat of arms—and with self-government symbols in relation to municipalities and self-governing regions.

I do not consider it necessary to provide greater legal protection for the symbols of towns, municipalities, and self-governing regions, since their possible defamation is not as dangerous for society as the defamation or derogation of a state symbol.

Research into state symbols, in particular its comparative dimension, has led me to believe that Slovak society should have a higher degree of natural respect for its own national symbols and for the state symbols of the Slovak Republic. However, it is almost impossible to force people to respect certain values by legal means and this paper was not intended to deal with extralegal instruments for increasing that respect. Through this paper, I have limited the proposals for legislative changes to what I perceive as necessary. My goal is not to criticize the existing constitutional or legal regulation at any cost, as I perceive them to be, in principle, good and functional.

Bibliography

- Burda, E., Záhora, K. et al. (2011) *Trestný zákon. Komentár. II. diel. Osobitná časť*. Praha: C. H. Beck.
- Drgonec, J. (2019) *Ústava Slovenskej republiky*. 2nd edn. Bratislava: C. H. Beck.
- Exprezident navrhuje zmeniť štátnu hymnu* (2004) SME.SK, 1 May [Online]. Available at: <https://domov.sme.sk/c/1480998/exprezident-navrhuje-zmenit-statnu-hymnu.html> (Accessed: 9 September 2022).
- Hamuláková, Z. (2017) *Správne delikty právnických osôb – vybrané inštitúty a problémy*. Bratislava: Wolters Kluwer.
- Horvat, M. (2016) ‘Nullum crimen sine lege certa – opomínaný princíp správneho trestania?’ in *Princípy trestania a správne delikty*. Trnava: Trnavská univerzita, Právnická fakulta, 2016, pp. 79–88.
- Ivor, J., Záhora, J., Polák, P. (2021) *Trestné právo hmotné. Osobitná časť*. 2nd edn. Bratislava: Wolters Kluwer.
- Law on the protection of rights and freedoms of national minorities* (2018) Ravnopravnost.gov.rs [Online]. Available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2021/08/43e756834.pdf> (Accessed: 24 November 2022).
- Maďarská vlajka na tribúne vyjde Dunajskú Stredú poriadne draho* (2017) Tvnoviny.sk, 27 November [Online]. Available at: <https://tvnoviny.sk/sport/clanok/74365-madarska-vlajka-na-tribune-vyjde-dunajsku-stredu-poriadne-draho> (Accessed: 25 November 2022).
- Petranská Rolková, N. (2017) *Ústava Slovenskej republiky a jej dvadsaťpäť rokov (1992–2017)*. Bratislava: Kancelária Národnej rady Slovenskej republiky.
- Prusák, J. (1995) *Teória práva*. 1st edn. Bratislava: Vydavateľské oddelenie Právnickej fakulty UK.
- Svák, J., Cibulka, L., Klíma, K. (2009) *Ústavné právo Slovenskej republiky. Všeobecná časť*, 2nd edn. Bratislava: BVŠP.

