



## National and State Symbols in the Hungarian Legal System<sup>1</sup> (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 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*; [Hymn] 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 three horizontal stripes of equal width, the 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 division is a barry of seven gules and argent stripes. In its second, gules division, there is an argent double cross on the elevated middle part with an or crown above a vertical 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.<sup>2</sup>

However, the Constitution went further than 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 flag 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<sup>3</sup> and the state flag<sup>4</sup>, the

<sup>1</sup> Originally published in *International Journal of Public Administration in Central and Eastern Europe*. No. 2010/1. 60-66.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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 arcs which gave rise to ideologically inspired arguments in the years following the change of regime<sup>5</sup>. Moreover, the arms which is to be considered the "business card of the nation"<sup>6</sup> 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 flag 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.<sup>7</sup>

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). On the one hand, it incorporated the provision on the Hungarian flag 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<sup>8</sup>. 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 flag 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 in 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.

<sup>5</sup> 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 19th century up to now. Some data of the history of the Holy Crown] Szent István Társulat, Budapest, 2007. pp. 212-299.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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-Economix 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 People'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 flag or arms but the national symbols of the Republic of Hungary.<sup>9</sup> 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 following way: "Under the Constitution, however, our national symbols have, a double function which the fundamental Act itself defines. On the one hand, it gives a detailed description on symbols as related to Hungarian statehood in its Article 76. On 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 arms. The reason is that the flag is rather a way of expressing the national affiliation while the arms 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"<sup>10</sup>. The summary report of the "symbol committee" 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<sup>11</sup>.

## 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 does 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 spirit of freedom, equality and brotherhood, their protection and the respect of the rule of law and people's sovereignty".<sup>12</sup> Although the last

<sup>9</sup> 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.

<sup>10</sup> 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.

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

<sup>12</sup> 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 nation'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)<sup>13</sup>. 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 republic and the Holy Crown ideology]. In: *Közársaság a modern kori történelemben* (ed. Feitl, I.). Napvilág Kiadó, Budapest, 2007. p. 358.

<sup>13</sup> 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.