

National Symbols and Identity in Hungary and the EU

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ABSTRACT The history of symbols is as old as humanity itself, and they continue to play a key role in expressing national identity today. The external function of symbols is to express sovereignty – as a representation of autonomy and independence – while their internal function is to express identity (emotional attachment to the community). This study examines the constitutional and criminal law protection of national symbols, their history and changes, presenting their role in expressing national identity. The study discusses the fundamental national symbols enshrined in the Fundamental Law of Hungary (flag, coat of arms, national anthem) and, by examining the symbols of the European Union, also addresses the issue of EU identity. It also discusses the most important identity-forming elements and the nation as a political and cultural concept, whose identity is expressed by national symbols.

KEYWORDS *identity, constitution, symbols, European Union.*

1. Introduction

National and community symbols are sometimes explicitly referred to as symbols of identity and enjoy legal protection almost everywhere in Europe. The existence and extent of this legal protection may indicate the significance of symbols as identity-forming factors for a given state.¹

National and state symbols are almost as old as humanity itself. Throughout human history, almost every body, organization, or community that wished to express its power, sovereignty, or unity has used some kind of symbol. These symbols are therefore not merely simple representations, but also means of expressing power, identity, sovereignty, and group cohesion. These symbols can be divided into two groups, classified according to their external and internal functions. The external function of symbols is to represent the sovereignty of a given political community, while their internal function is to integrate individuals

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¹ Zoltán Tóth J., *Az identitászimbólumok védelme Európában* (Budapest: Országút, 2022), 2.

associated with a given state and to express their identity and cohesion.² Consequently, national symbols play an important role in expressing sovereignty and identity.

The supreme state authority generally decides on symbols and regulates their use and availability to others. Thanks to this privileged status, national and state symbols also enjoy criminal law protection. In addition to national symbols, the Holy Crown is also protected under criminal law and is part of the regulation. This was not originally included in the new Hungarian Criminal Code (Act C of 2012 on the Criminal Code) but was added as a result of an amendment proposed by Jobbik (a Hungarian right-wing political party) during parliamentary proceedings.

2. On our national symbols

Wearing and using symbols is an expression of belonging to a community and attachment to its traditions, which also means loyalty to a culture's values, religious or ideological commitments, and expected behavioral norms. Overall, wearing symbols is an act that strengthens an individual's identity and self-awareness.³ In his 2014 article, Péter Smuk views national symbols as manifestations of sovereignty.⁴ This is the external function of symbols, the expression of sovereignty, while their internal function is to represent a sense of belonging. In my work, I therefore approach the essence and purpose of national symbols from the perspective of sovereignty and identity, as I believe that, in addition to national independence, they express belonging and attachment to the community on the individual and social levels, showing who is at home in a given geographical area. Article I of the Fundamental Law of Hungary contains the most important national symbols: the coat of arms, the flag, and the anthem.⁵

*"The coat of arms of Hungary shall be a vertically divided shield with a pointed base. The left field shall contain eight horizontal bars of red and silver. The right field shall have a red background and shall depict a base of three green hills with a golden crown on top of the higher central hill from which rises a silver patriarchal cross. The Holy Crown shall rest on top of the shield."*⁶

*"The flag of Hungary shall feature three horizontal bands of equal width coloured red, white and green from top to bottom as the symbols of strength, loyalty and hope, respectively."*⁷

² Iván Halász and Gábor Schweitzer, "Nemzeti jelképek," in *Internetes Jogtudományi Enciklopédia*, ed. András Jakab, Miklós Könczöl, Attila Menyhárd and Gábor Sulyok (2020), 3.

³ Zoltán Tóth J., "A nemzeti szimbólumok büntetőjogi védelme," *Jogtudományi Közlöny* 58, no. 4 (2003): 195–200.

⁴ Péter Smuk, "A szuverenitás jelképei és alkotmányos védelmük," *MTA Law Working Papers* 1, no. 37 (2014): 1.

⁵ Article I of the Fundamental Law of Hungary.

⁶ Paragraph (1) of Article I of the Fundamental Law of Hungary.

⁷ Paragraph (2) of Article I of the Fundamental Law of Hungary.

*“The national anthem of Hungary shall be the poem Himnusz by KÖLCSEY Ferenc set to music by ERKEL Ferenc.”*⁸

The Fundamental Law of Hungary also allows for the use of other historically established forms of the coat of arms and flag: the President of the Republic may use a coat of arms with two angels as shield bearers, the Prime Minister and the Speaker of the Hungarian National Assembly may use a coat of arms surrounded by a holly branch and an olive branch, and the Hungarian National Bank is entitled to use a coat of arms surrounded by oak leaves and laurel leaves.⁹

The detailed rules on the wearing and use of symbols are laid down in Act CCII of 2011 on the use of the coat of arms and flag of Hungary and on state decorations. This law covers the details of the appearance of symbols and regulates their use, for example, by defining the circle of persons entitled to use them and the cases in which their use is mandatory or expressly prohibited. Under this regulation, local governments and municipal bodies are free to decide on their own coat of arms, but it must be distinguishable from the state coat of arms.¹⁰

National emblems and symbols can continue to exist as expressions of identity if they are also present in public education. The Hungarian National Core Curriculum mentions, in the context of visual culture as a school subject, within the framework of principles and objectives, that the aim of the subject is for students to become familiar with visually apparent national symbols.¹¹

3. Other national symbols

Although the Fundamental Law of Hungary lists the coat of arms, the flag, and the anthem as the most important national symbols and gives special status to the Holy Crown, Article J) specifies national holidays and official public holidays:

“(1) The national holidays of Hungary shall be:

a) the 15th day of March, in memory of the 1848–49 Revolution and War of Independence;

b) the 20th day of August, in memory of the foundation of the State and of King Saint Stephen the State Founder;

c) the 23rd day of October, in memory of the 1956 Revolution and War of Independence.

*(2) The official state holiday shall be the 20th day of August.”*¹²

These national holidays are symbols of outstanding importance, which, on the one hand, transcend the political situation and are characterized by permanence, and on the other hand, provide an opportunity to shape attitudes toward national

⁸ Paragraph (3) of Article I) of the Fundamental Law of Hungary.

⁹ Paragraphs (2) - (2a) of Section 1 of the Act CII of 2011 on the use of the coat of arms and flag of Hungary, and on state decorations.

¹⁰ Paragraph (1) of Section 4 of the Act CII of 2011 on the use of the coat of arms and flag of Hungary, and on state decorations.

¹¹ Point 8 of the Principles, Objectives of Decree No. 110/2012 (VI. 4.) of the Government on the publication, introduction, and application of the National Core Curriculum.

¹² Article J) of the Fundamental Law of Hungary.

history.¹³ They simultaneously express identity and provide an opportunity to experience that identity.

The symbols associated with March 15 and October 23 play a special role; they can be considered “multilevel” national symbols. The cockade and the national flag, from which the Soviet-style coat of arms has been removed, express 1) Hungarian national consciousness and identity, 2) the country’s independence and sovereignty against oppressive powers, and 3) are directly linked to specific historical events and figures (the 1848-49 revolution, the March youth, 1956 and its heroes).

Decision 32/2021. (XII. 20.) of the Constitutional Court of Hungary is considered a milestone in the constitutional discourse on constitutional identity. In its reasoning, the court established, in connection with sovereignty as a fundamental condition of identity, that national holidays linked to the founding of the state, the 1848-49 revolution and freedom fighters, as well as the 1956 revolution and freedom fighters, are also protected as elements of our constitutional identity.¹⁴

“A nation lives in its language” – goes the famous saying. The official language and culture are also important elements of identity, and this is especially true in the case of our country, Hungary, located in a Slavic-Germanic Sea.

“(1) In Hungary the official language shall be Hungarian.

(2) Hungary shall protect the Hungarian language.

(3) Hungary shall protect the Hungarian Sign Language as a part of the Hungarian culture.”¹⁵

With regard to Hungarian culture, the legislator acts with particular caution when, in addition to protecting the Hungarian language and culture, it also declares the languages and cultures of the national minorities of Hungary to be values worthy of protection. Other laws also provide for the protection of the official language, for example, Act XCVI of 2001 on the use of the Hungarian language in economic advertising and business signs, and certain public announcements, as a general rule, stating that “the Hungarian language is the most important expression of our national existence and the expression of our national identity.”¹⁶

4. Historical changes

The appearance of the Hungarian coat of arms can be traced back to the founding of the state. Its earliest element is the double cross, a symbol of royal power, which also frequently appeared in Byzantine depictions. Heraldry deals with the study of the composition of coats of arms. Another element of the Hungarian coat of arms that has been preserved for centuries is the shield field divided several times with red and silver, which first appeared on the pendant seal of King Imre’s charter issued in 1204. By the time of King Béla III, the double cross had become

¹³ Smuk, “A szuverenitás jelképei és alkotmányos védelmük,” 3.

¹⁴ Decision 32/2021. (XII. 20.) of the Constitutional Court of Hungary, Reasoning [109].

¹⁵ Article H) of the Fundamental Law of Hungary.

¹⁶ See the introductory part of Act XCVI of 2001 on the use of the Hungarian language in economic advertising and business signs, and certain public announcements.

a symbol of royal power rather than that of the church.¹⁷ This change may have been justified by the fact that St. Stephen received the crown from the head of the Catholic Church, the Pope. The cross originally floated, and it was not until the 13th-14th centuries that the triple mound pedestal was developed. The popular symbolism of the triple mound, representing the Mátra, Tátra, and Fátka mountains, developed in modern times. Similarly, the idea that the silver stripes represent the Danube, Tisza, Drava, and Sava rivers is also a modern concept. One of the earliest interpretations of the triple mound referred to Golgotha, while others referred to the three social orders of the country.

From the 15th century onwards, the coat of arms of the Kingdom of Hungary began to feature in the coats of arms of the other territories belonging to the Holy Crown alongside the “Árpád stripes”. This is how the large coat of arms and the medium coat of arms came into being, while the original form was called the small coat of arms. The so-called crowned small coat of arms was in use until 1945, except for the shorter periods of the revolutions of 1848-49 and 1918-19. In 1849, Lajos Kossuth made the so-called Kossuth coat of arms without the crown official, by which he tried to emphasize that the dethroned Franz Joseph was not recognized as the Hungarian ruler.

This coat of arms was also used during the 1918 Aster Revolution, when Prime Minister Mihály Károlyi issued a decree stipulating the use of the “coat of arms of the Hungarian People’s Republic.” The Hungarian Soviet Republic used the red flag and the star, and then the Second Hungarian Republic, proclaimed on February 1, 1946, returned to the small coat of arms without the crown. The Soviet-style constitution of 1949 (Act XX of 1949) reduced the national character of the coat of arms in terms of its appearance and placed a hammer, a wheat ear, and a five-pointed red star on it. During the Imre Nagy government in the fall of 1956, the Kossuth coat of arms was reinstated, but from 1957, Soviet symbols reappeared in the design of the Republic’s coat of arms.

In the first free elections in 1990, the crowned coat of arms finally replaced the Kossuth coat of arms as the coat of arms of the Third Hungarian Republic, as proclaimed by Act XLIV of 1990.¹⁸

Another important national symbol, the historical changes in which I will discuss below, is the national flag. Its colours are derived from those of the coat of arms. Just as there are different explanations for the mounds and stripes on the coat of arms, there are also different explanations for the colours of the flag. The most common explanation is that red symbolizes strength or the blood of heroes, white symbolizes loyalty, and green symbolizes hope. Although the red white green flag had been in use since the 16th century, it was not until the 19th century that Act XXI of 1848 established the national colours at the legislative level. After the revolution and war of independence were crushed, its use was banned, but it was restored during the Compromise of 1867. In 1949, the communist coat of arms was placed in the centre of the flag, but it was cut out by freedom fighters

¹⁷ József Laszlovszky, *A magyar címer története* (Budapest: Egyetemi Nyomda, 1989), 9.

¹⁸ Halász and Schweitzer, “Nemzeti jelképek,” 9.

in 1956. After the change of regime, Act XL of 1990 finally adopted the red white green flag without the coat of arms as the official flag of the Republic of Hungary.¹⁹

From a historical overview of the flag and the coat of arms, we can see that they are visible expressions of national identity, formal manifestations of belonging to a community, whose form and values – beyond their basic principles – may depend on the political convictions of the ruling power, the geographical extent of the state, and the prevailing ideological trends.

The original meaning of the hymn is a religiously inspired poem written in a solemn, unbound form. As Christianity began to spread, the hymn took on a new meaning, with the function of singing the praises of God becoming more prominent, and St. Augustine, Bishop of Hippo, played a particularly important role in this. During the European Reformation, hymns were similar to biblical psalms. The religious nature of hymns declined in the 18th century, and today's national anthem emerged during the awakening of national consciousness.

Ferenc Kölcsey finished writing his poem entitled Himnusz (Hymn) in Cseke, Szatmár County, at the end of January 1823, and it was first published in print in 1829 in the magazine *Auróra*, edited by Károly Kisfaludy. It is interesting to note that in the 19th century, *Szózat* was still considered the national anthem, while Kölcsey's poem was regarded as a "valuable literary work."²⁰

This changed at the turn of the century, and although a proposal to revise the national anthem was put forward as early as 1903, it was only implemented under Act XXXI of 1989, which comprehensively amended the Constitution.

5. The achievements of the historical constitution and the Holy Crown

Although neither the achievements of the historical constitution nor the Holy Crown are considered national symbols under the Fundamental Law of Hungary, mentioning them is justified by their outstanding significance and the appearance of the crown in the coat of arms, and also by the fact that Section 334 of the Criminal Code regulates the violation of national symbols and the violation of the Holy Crown in a single provision and punishes both acts equally as misdemeanours.

*"Any person who – before the public at large – uses an expression to dishonour or degrade the national anthem, the flag or the coat of arms, or the Holy Crown of Hungary, or commits any other similarly slanderous act is guilty of a misdemeanour punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offense."*²¹

The Fundamental Law of Hungary states the following in the National Avowal: "We honour the achievements of our historic constitution and we honour the Holy

¹⁹ Halász and Schweitzer, "Nemzeti jelképek," 10.

²⁰ Halász and Schweitzer, "Nemzeti jelképek," 10.

²¹ Section 334 of the Act C of 2012 on the Criminal Code.

Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation."

From the last decades of the 14th century onwards, the crown appeared as a state symbol in international treaties. The contracting parties concluded the treaty not with the king, but with the crown. Seventeenth-century legal sources testify that the crown embodied the country, and in Act LXIII of 1741, it clearly represented the Hungarian state. The Hungarian crown was mentioned in the Compromise Act (Act XII of 1867), while the Croatian Compromise Act (Act XXX of 1868) highlighted the crown of St. Stephen. In the 19th and 20th centuries, the Holy Crown was a concept in public law that represented the entire sovereign Hungarian state with full legal capacity.²²

The development of the Holy Crown doctrine formed part of Hungarian public law thinking throughout the centuries, constituting one of the fundamental elements of the historical constitution. The historical constitution comprises constitutional laws, charters, and customs of outstanding importance relating to the exercise of state power and Hungary's independence, created in different historical eras but never recorded simultaneously in a single constitutional document.²³

The Holy Crown has a very special role in public law, as it can be regarded as both the source and subject of sovereignty. In this context, the Holy Crown is the supreme power, and citizens' loyalty is directed towards it.²⁴

The Holy Crown has been given a special role in the Fundamental Law of Hungary. It plays a much more important role than national symbols, which express identity and belonging to a political and cultural community. The Holy Crown embodies Hungary's constitutional continuity and national unity. Before the Fundamental Law of Hungary was adopted, the Ad-Hoc Parliamentary Constitution Drafting Committee led by László Salamon developed a constitutional concept. According to this concept, the Holy Crown merely "expresses" state continuity, but the Fundamental Law of Hungary uses a stronger term: it embodies it. Thus, the Holy Crown embodies state continuity in its material form.²⁵

The so-called Holy Crown Act²⁶ places the crown, which embodies the constitutional continuity and sovereignty of the state, in the most important building of sovereignty, the Parliament.

The outstanding importance of national symbols in expressing national identity, as well as the role of the historical constitution have already been mentioned. In addition, certain achievements of the historical constitution may also fall under

²² Halász and Schweitzer, "Nemzeti jelképek," 8.

²³ Zoltán Szente, "A historizáló alkotmányozás problémái – a történeti alkotmány és a Szent Korona az új Alaptörvényben," *Közjogi Szemle* 4, no. 3 (2011): 113.

²⁴ Szente, "A historizáló alkotmányozás problémái," 1–13.

²⁵ András Zs. Varga, "A Szent Korona a magyar Alaptörvényben," *Pázmány Law Working Papers*, no 1 (2018): 3.

²⁶ Act I of 2000 on the commemoration of the founding of the state by Saint Stephen and the Holy Crown.

protection as elements of constitutional identity, thus enjoying double protection. This is reflected in Decision 22/2016. (XII. 5.) of the Constitutional Court of Hungary, in which the body classified the recognition of judicial power and the protection of national minorities living among us as part of constitutional identity and as achievements of the historical constitution.²⁷ We can see an example of this in Decision 32/2021. (XII. 20.) of the Constitutional Court of Hungary. The court classified the facts that constitute Hungary's constitutional identity as legal facts and the results of historical constitutional development, which cannot be renounced.²⁸ It explained that the consolidation of sovereignty began with the establishment of the state and the development of its organizational structure.²⁹ In this context, in accordance with Article R(3) of the Fundamental Law of Hungary, it identified the Golden Bull of 1222, which limited royal power, as an achievement of historical constitutional development, in the same way as King Ladislaus I's charter of 1440, which declared the union of Hungary and Poland against the Turkish threat, as a result of which our country bore the title of "bastion of Christianity" for centuries. In its Decision 29/2015. (X. 2.), the Constitutional Court of Hungary also confirmed the classification of Werbőczy's Tripartitum as an achievement. In addition, the Constitutional Court of Hungary also identified Act XII of 1790/91 as an achievement of the historical constitution, based on which the monarch and the Hungarian National Assembly jointly exercise the right to legislate. The reasoning behind the decision refers to the extension of rights during the 1848-1849 War of Independence, the centralized state organization, and the government accountable to the National Assembly.³⁰ Finally, it emphasizes: "The elements of the historical constitution listed above, relating to sovereignty, population, linguistic, historical, and cultural traditions, are considered achievements in terms of Hungary's constitutional identity, pursuant to Article R) (3) of the Fundamental Law of Hungary."³¹

6. Use of symbols of autocracy: Section 335 of the Hungarian Criminal Code

The use of symbols of autocracy is regulated by Section 335 of the Criminal Code, which stipulates that their dissemination, use, and display in public shall be punished by imprisonment, meaning that the penalty is lower than in the case of regulations concerning the violation of national symbols. These symbols (swastika, the insignia of the SS, the arrow cross, the sickle and hammer and the five-pointed red star) express the identity of totalitarian political systems and

²⁷ Decision 22/2016. (XII. 5.) of the Constitutional Court of Hungary, Reasoning [65].

²⁸ Csoma Pál Kecskés, *Nemzeti és alkotmányos identitás az Unió elsődleges jogában, valamint a német és a magyar alkotmánybíróági gyakorlatban* (Law degree thesis, Pázmány Péter Catholic University, Doctoral School of Law and Political Sciences, 2022), 51.

²⁹ Decision 32/2021. (XII. 20.) of the Constitutional Court of Hungary, Reasoning [104].

³⁰ Decision 32/2021. (XII. 20.) of the Constitutional Court of Hungary, Reasoning [102].

³¹ Decision 32/2021. (XII. 20.) of the Constitutional Court of Hungary, Reasoning [106].

played a significant role in maintaining them and creating group cohesion. Unlike national symbols, however, they served to express the identity of illegitimate political systems.

The use of symbols of autocratic rule is also a matter of freedom of expression, which can be exercised through words, writing, works of art, or symbols. The protection of human dignity is a clear limitation on the freedom of expression, and the prohibition of the use of these symbols serves to protect individual rights, public order, condemn autocratic ideologies, and curb extremist manifestations and hate speech.³² This prohibition cannot be a general prohibition; the relevant circumstances are to be specified in the statutory elements of the prohibited conduct, as a total prohibition would result in a disproportionate restriction of the freedom of expression.³³

7. Nation and State

Identity means identification and attachment. This attachment can be realized in relation to a certain community, in our case, the country, the nation, or the state, which are bound together by certain identity-forming factors (e.g., native language, culture, traditions, shared history).

In the following, I will analyse the concepts of nation and state, as well as the types and changes in attachment to them. Hungary is in a special situation, as belonging, attachment and loyalty to the state or the nation can be separated in public opinion. The state – as an “institutional entity” – can also evoke negative feelings in citizens (e.g. as someone to whom one has to pay taxes). In contrast, we tend to have a more positive connection to the nation as a “community of destiny.” Here, we must distinguish between the political and cultural concepts of ‘nation’. The political nation refers to all citizens living within the country’s borders who have an institutional relationship with the state, regardless of their ethnic origin, while the cultural nation is independent of state borders and is primarily held together by cultural and ethnic factors (such as a shared history or language).

8. The concept of nation in the Fundamental Law of Hungary

According to István Kukorelli, “[t]he Fundamental Law of Hungary has taken a very bold step towards a political or nation-state model, without denying the concept of a cultural nation, which is favoured by Pan-Slavism and also lives on in Hungarian political thinking.”³⁴ We must also consider whose identity and sovereignty these symbols represent. I believe that the national symbols protected

³² Péter Smuk, “Az önkényuralmi rendszerek jelképei és a használatukat tiltó jogi szankciók rendszere,” *In Medias Res* 8, no. 2 (2019): 230.

³³ Smuk, “Az önkényuralmi rendszerek jelképei és a használatukat tiltó jogi szankciók rendszere,” 245.

³⁴ István Kukorelli, “Az Alaptörvény és az Európai Unió,” *Pro Publico Bono* 1, no. 1 (2013): 9.

as constitutional identity, recognized in the Fundamental Law of Hungary but existing already before it, express not only the identity of Hungarian citizens (political concept of nation), but also that of all those who identify with this national identity, regardless of whether they live within or outside the state borders, regardless of citizenship (cultural concept of nationhood).

Many pages could be written about the complex concept of ‘nation’ in the Fundamental Law of Hungary, and lively academic and political debates have erupted in the years since its adoption, as the text of the law refers to cultural, political, and ethnic concepts of ‘nation’.

*“WE, THE MEMBERS OF THE HUNGARIAN NATION, at the beginning of the new millennium, with responsibility for all Hungarians, hereby proclaim the following:”*³⁵ – is stated at the beginning of the preamble of the Fundamental Law of Hungary. It is a general observation that the text of the Fundamental Law of Hungary contains the first-person plural pronoun “we” in several places. The question may reasonably arise as to on whose behalf the constitution-maker is speaking. There are various possible answers to this question, without claiming to be exhaustive: 1) on behalf of the Hungarian nation (however, the Fundamental Law of Hungary is inconsistent in who it considers to form part of the Hungarian nation) 2) on behalf of the constitutional parliamentary majority, or on behalf of the representatives who adopted the Fundamental Law of Hungary in a regular parliamentary vote 3) on behalf of the representatives and contributors who effectively participated in the drafting of the Fundamental Law of Hungary. József Szájer, one of the key figures in the drafting of the Fundamental Law of Hungary, defines the subject of constitution-making as the representatives of the Hungarian National Assembly who are creating the text and presume that other members of the Hungarian nation share their ideas as expressed in the text.³⁶ In my personal opinion, the subject of constitution-making is in fact and primarily the parliamentary majority that adopted the Fundamental Law of Hungary, and indirectly, based on the principles laid down in Article B)(3) and(4) of the Fundamental Law of Hungary, the citizens of the political nation.³⁷ As stated in the postamble to the Fundamental Law of Hungary: *“We, the Members of the National Assembly elected on 25 April 2010, being aware of our responsibility before God and man and in exercise of our constituent power, hereby adopt this to be the first unified Fundamental Law of Hungary.”*³⁸ Despite all this, unlike the communist constitution of 1949, the Fundamental Law of Hungary places great emphasis on expressing the unity of the Hungarian nation, on the fate of

³⁵ Monday First Sentence of the National Avowal of the Fundamental Law of Hungary.

³⁶ Péter Smuk, “Nemzetfogalom és történeti narratíva az Alaptörvényben,” *Doktori műhelytanulmányok*, 2013, 263.

³⁷ Iván Halász, “A nemzetfelfogás kérdése az Alaptörvényben és a hatályos magyar közjogban,” in *Rendhagyó kommentár egy rendhagyó preambulumról*, ed. András Patyi (Budapest: Dialóg Campus, 2019), 24.

³⁸ Postamble of the Fundamental Law of Hungary.

Hungarians living outside its borders, their communities, their aspirations, and the enforcement of their rights.³⁹

9. European symbols – European identity?

“We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago.”

“We are proud that our nation has over the centuries defended Europe in a series of struggles and enriched Europe’s common values with its talent and diligence.”

“We believe that our national culture is a rich contribution to the diversity of European unity.”⁴⁰

These passages from the National Creed section of the Fundamental Law of Hungary clearly refer to Hungary’s European identity, as it is also pointed out in the reasoning of Decision 32/2021. (XII. 20.) of the Constitutional Court of Hungary.⁴¹

Hungary has been a member of the European Union since 2004, and as an EU member state, it is not only a participant in the integration, but also an active shaper of it. Member state identity also influences European identity, and vice versa. In his work, János Martonyi writes that without accepting national identity, it is impossible to understand European identity, as it is the understanding of the former as a primary affiliation that can lead to European identity. In his opinion, the essence of European identity is easier to understand by going out into the streets and looking at what surrounds us than by reading historical-philosophical works. We see crosses on top of churches, in public spaces, along main roads, and in cemeteries, and we hear bells ringing at noon, which gives a stranger the initial impression that the cross carries some important meaning. Next to the cross, we encounter human figures, images, and statues, which – in the wake of the Renaissance – are imprints of ancient Greek heritage. Thus, alongside Christianity, it identifies ancient Greek culture as an element of European identity.⁴²

Defining European identity means finding the common ground that EU citizens accept as such and that we present to the world. This raises the often-debated question as to whether there is such a thing as a European demos, a European people, to which we can express our attachment through symbols.⁴³

It is often said, and nowadays considered almost archaic, that Europe’s cultural and spiritual identity rests on three hills: Golgotha (Judeo-Christian tradition), the

³⁹ Article D) of the Fundamental Law of Hungary.

⁴⁰ National Avowal of the Fundamental Law of Hungary.

⁴¹ Decision 32/2021. (XII. 20.) of the Constitutional Court of Hungary, Reasoning [96].

⁴² János Martonyi, “Európai identitás – Nyitni vagy bezárkózni,” *Európai Tükör* 24, no. 2 (2021): 141.

⁴³ Marcel Szabó, “Az Európai Unió keresztény gyökerei – Európai identitás és a Lisszaboni Szerződés,” *Iustum Aequum Salutare* 8, no. 2 (2012): 263.

Acropolis (Greek philosophy) and the Capitol (Roman Law). These are the so-called three pillars of Europe.

In the 20th century, European cooperation was given an institutional framework. The initial, exclusively economic cooperation gradually expanded to include a political dimension, culminating in the adoption of the constitutionally significant Treaty of Lisbon. Although the European Union does not have its own constitution, and attempts to move in this direction failed in the Dutch and French referendums, there is significant overlap between the text of the Lisbon Treaty and that of the planned Constitutional Treaty.

In the 1950s and 1960s, at the beginning of economic integration, there was no need for a common identity or common values, as the emphasis was on market-based cooperation. With the deepening of political cooperation, joint decision-making developed, the effectiveness of which is crucial in the 27-member European Union. At the national level, minorities can submit to the will of the majority, but at the EU level, stronger political unity and a more unified, common identity are necessary for the EU to function.⁴⁴

Defining European identity is no easy task, and there are several approaches to doing so. First, we need to distinguish between different concepts of Europe. Timothy G. Ash and Václav Havel identify three separate dimensions: cultural, political, and geographical Europe. The geographical concept of Europe considers the area within the continent's borders to be Europe, but these borders may depend on both political and cultural factors. According to French researcher Jean-Marc Ferry, cultural Europe is linked to the canonized values accumulated over thousands of years in the so-called "qualitative Europe" and expresses the cultural unity of Europe.⁴⁵ The political concept of Europe focuses on "institutional Europe", i.e., the institutional and political system of the European Union itself, rather than on quality. According to other opinions, cultural and political Europe cannot be separated from each other at this level, but together they form "European consciousness."⁴⁶

Almost all European countries regulate national and state symbols and their protection in their constitutions. It can be said that German, Italian, Portuguese, and Polish criminal laws afford the same protection to the national symbols of foreign states as they do to domestic national symbols.⁴⁷ The United Kingdom is an exception, as it has neither a written constitution nor a separate criminal code. Overall, however, it may be stated that the constitutional and criminal law protection of these symbols can be considered a fundamental European principle.⁴⁸

In the following, I will analyse the most important symbols of the European Union as expressions of European identity. One such symbol is the European

⁴⁴ Szabó, "Az Európai Unió keresztény gyökerei," 261.

⁴⁵ Aladár Dér, "Európai Unió – európai identitás," *Politikatudományi Szemle* 14, no. 1 (2005): 127.

⁴⁶ Dér, "Európai Unió – európai identitás," 128.

⁴⁷ Decision /2000. (V. 12.) of the Constitutional Court of Hungary, Reasoning III.2.

⁴⁸ Tóth, "A nemzeti szimbólumok büntetőjogi védelme," 195.

anthem, which has been Beethoven's Ode to Joy since 1985. Europe Day, the anniversary of the historic Schuman Declaration, is observed every year on May 9, celebrating peace and unity in Europe. Other important symbols include the flag of the European Union, which symbolizes European unity and identity based on a 1983 resolution of the European Parliament, and the Union's famous motto since 2000: "United in diversity". Florian Bieber and Roland Bieber (2021) argue that the EU needs symbols because mere bureaucracy and legislation are not enough to inspire loyalty among citizens. The purpose of symbols (flag, anthem) is to make the otherwise abstract union visible, to form an emotional bridge between distant Brussels decision-making and everyday life, and to show unity to the outside world.⁴⁹ Michael Billig's concept of "banal nationalism" is applied to the EU, according to which European identity is reinforced not by grand political speeches, but by small, unnoticed signs in everyday life, such as blue license plates on cars, the EU logo on driving licenses and passports, or the presence of the European flag on public buildings alongside the national flag. This process makes "Europe" an unnoticed part of our lives.⁵⁰

The uncertainty and weaknesses surrounding European identity may be reflected in the fact that the symbols of the European Union, although being official symbols under Council and Parliament resolutions, do not enjoy constitutional or criminal law protection, unlike national symbols and emblems, which are protected by national constitutions and criminal codes.

An interesting international example is Latvia, where, in addition to the legislator granting constitutional and criminal law protection to national symbols and the flag, the interpreter of the constitution also considers certain elements (such as popular sovereignty, the protection of state territory, respect for the Latvian language and the national flag) to be "core elements of the Latvian constitution" as a kind of eternity clause, and includes sovereignty, national independence, Latvia's territorial integrity, the principle of democratic governance, respect for the Latvian language, fundamental human and Christian values, and respect for the Latvian national flag and national symbols among values of constitutional identity.⁵¹

A similar example is Malta, where although the constitution does not contain an explicit eternity clause, Article 66 can be considered a quasi-eternity clause, and the first and second chapters of the text of the norm can be considered the source of constitutional identity. This section regulates fundamental values such as

⁴⁹ Florian Bieber, Roland Bieber, *'Europe' as a Symbol: Symbols of Europe*, (Springer, 2021), chap. 6, 135. https://doi.org/10.1007/978-3-030-55016-5_6.

⁵⁰ Laura Cram, "Does the EU Need a Navel? Implicit and Explicit Identification with the European Union" *Journal of Common Market Studies* (2011): 80.

⁵¹ Norbert Tribl, "Az alkotmányos identitás funkciója és alkalmazhatósága a szupranacionális térben" (PhD diss., University of Szeged, Faculty of Law and Political Sciences, 2020), 93.

territorial integrity, religion and the national language, and – of particular relevance to our topic – respect for the flag and national anthem.⁵²

10. Summary

In summary, it can be concluded that the fundamental purpose of national and community symbols is to represent sovereignty externally and to strengthen and integrate community identity internally. The Fundamental Law of Hungary lists the most important state symbols – the coat of arms, the flag, and the anthem – while the Holy Crown enjoys a special status under public law as the embodiment of state continuity and national unity. In its decision 32/2021. (XII. 20.), the Hungarian Constitutional Court recognized the national holidays listed in Article J) of the Fundamental Law as part of Hungary's constitutional identity, as an expression of the struggle for sovereignty and national self-determination. Due to their significance, these symbols enjoy not only constitutional protection but also protection under criminal law. At the same time, the European Union also uses its own symbols – the European flag, anthem, motto, Europe Day, and the common currency – in order to bring the abstract institutional system closer to its citizens on an emotional level. However, it is important to note that, unlike Hungarian national symbols, EU symbols do not enjoy direct constitutional or criminal law protection, from which we can conclude the uncertainty of the content of European identity.

⁵² Tribl, “Az alkotmányos identitás funkciója és alkalmazhatósága a szupranacionális térben,” 94.