

NON-TERRITORIAL AUTONOMY AND THE LEGAL PROTECTION OF THE SYMBOLS OF RELIGIOUS ORGANIZATIONS AND NATIONAL MINORITIES IN SERBIA

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ABSTRACT

This paper scrutinizes the history of legal rules that regulate the appearance and use of state symbols as well as the evolution of the legal protection of symbols of national minorities and religious organizations. Furthermore, it analyses the history of non-territorial cultural and religious autonomy arrangements in Serbia. It investigated to what extent the institutional arrangements of non-territorial autonomy contributed to the legal protection of the mentioned symbols. The first hypothesis is that certain rudimentary forms of non-territorial autonomy existed in Serbia during the 19th and the first half of the 20th century. However, the focus of legislators in this period was on the regulation and protection of state symbols. In the second half of the 20th century, the preconditions for the development of the protection of national minorities were created, while the scope of the rights of religious organizations was significantly reduced. It was only at the beginning of the 21st century that the collective right to non-territorial autonomy was constituted. At the same time, constitutional and legal provisions protected the right of national minorities to choose and use symbols, which leads to the conclusion that the existing institutional arrangement of non-territorial autonomy contributed to better legal protection of the symbols of national minorities. On the other hand, there is room for additional improvement in the legal protection and regulation of the use of the symbols of religious organizations.

KEYWORDS

*national minorities
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1. History of the legal protection of state, national, and religious symbols in the Principality and Kingdom of Serbia

Strict feudal organizations had not been established in Orthodox European countries for a long time. This is why the coats of arms and western heraldic customs appear relatively late. In Serbia, various heraldic influences became apparent only in the second half of the 14th century.² Two symbols were taken from Byzantium and were somewhat modified: a *crux quadrata* with furisons and a two-headed eagle.³ In later sources, the coat of arms of Serbia appears as a cross with four furisons: *crucem cum quatuor igniariis, quae fusilia dicioius*.⁴ The Serbian Orthodox Church also integrated it as a symbol in its coat of arms during the 18th century, and it has been on its coat of arms to this day.⁵ In contrast, the double-headed eagle was considered the coat of arms of the Nemanjić dynasty, the most prominent Serbian medieval ruling family.⁶ This is the reason this symbol later came into official use. In any case, during the 19th century, both heraldic signs came into use when the Serbian coat of arms and flag were made official.

During the First Serbian Uprising, which lasted between 1804 and 1813, no final decision was made as to which of the various coats of arms in use would be officially accepted.⁷ In contrast, the leader of the Second Serbian Uprising, Prince Miloš Obrenović, had no dilemmas. He used only the coat of arms of Serbia and made great efforts for Serbia's right to acquire and freely use its state symbols to be recognized. For this reason, the first draft of the Serbian constitution from 1820 contained a provision on the freedom of trade on land and water under the Serbian flag.⁸ This proposal was changed by Russian ambassador Stroganov, who believed that the provisions on the Serbian trade flag would create difficulties in negotiations with the High Porte and question the sovereignty of the Ottoman Empire.⁹

However, the use of the Serbian coat of arms has become widespread. During this period, Serbian state symbols found their place on stamps used by state bodies.¹⁰ Then, in 1830, at the personal initiative of a blacksmith from Zemun, the Serbian coat of arms was displayed on the prince's residence in Belgrade during the enthronement of Prince Miloš.¹¹ The state coat of arms of the Principality of Serbia was printed on the first issue of the official gazette—Serbian Newspaper—, published on January 5, 1834.¹² Finally, the

2 | Novaković, 1884, p. 42.

3 | Solovjev, 2000, p. 39.

4 | Du Cange, 1680, p. 293.

5 | Constitution of the Serbian Orthodox Church, Glasnik the official gazette of the Serbian Orthodox Church, No. 7-8/1947, Art. 3.

6 | Solovjev, 2000, pp. 85–91; Rajić, 1794, p. 683.

7 | In that period, the coats of arms of Serbia, Bosnia, Triballia, and Nemanjić were used, which were taken from Stematografia of Hristofor Žefarović, published in 1741 in Vienna. Stematografia of Pavle Ritter (Vitezović), published in Vienna in 1701, probably also had been used as a source.

8 | Gavrilović, 1908, p. 469.

9 | Ibid., p. 475; Prodanović, 1936, pp. 25–27.

10 | Gavrilović, 1908, pp. 705, 729.

11 | Ibid., p. 296.

12 | Novaković, 1884, p. 123.

state coat of arms and the flag were made official in the Constitution adopted on February 2, 1835. The second chapter of the Constitution is entitled 'Color and coat of arms of Serbia' and it regulates the appearance of the national flag and coat of arms. The folk color—flag—is light red, white, and steely dark.¹³ The coat of arms of Serbia was actually taken as the national coat of arms, that is, Cross on red field, and between the arms of the Cross, in four equidistant places, furisons facing the Cross are planned. The novelty is that the coat of arms has green mantling on the right side of an oak and on the left side of an olive leaf.¹⁴ The day after the adoption of the Constitution, at the service in Kragujevac, the Metropolitan of Serbia consecrated not only the text of the new Constitution but also the flag with the coat of arms and colors of Serbia.¹⁵ All the above shows how much importance was attached to the new state symbols, which were raised to the sacred level, as symbols of statehood and freedom. Unfortunately, international circumstances did not support the new Serbian Constitution. Under pressure from Austria, Russia, and the Ottoman Empire, Prince Miloš suspended the 1835 Serbian Constitution, only six weeks after it was adopted. Although briefly implemented, this Constitution had a significant impact on the development of Serbian constitutionalism.¹⁶

Although the struggle to adopt the new Constitution did not give the expected results, efforts continued toward the official recognition of state and legal features. These efforts yielded the first results when, in 1835, by Sultan's decree, the Serbian people were given a tricolor flag with horizontal stripes: red, blue, and white.¹⁷ These colors were already known in Serbia because they are national Russian colors, placed in reverse order. The choice of colors was not by accident. Russian diplomacy opposed the use of the Serbian coat of arms and flag, believing that this violated the sovereignty of the Ottoman Empire. The argument of the Serbian side was that the prince's coat of arms on the national flag does not violate the sovereignty of the sultan any more than the coats of arms of Russian barons and princes violate the sovereignty of the Russian tsar.¹⁸ The choice of the flag, with colors similar to those of the Russian flag, was supposed to make it easier to gain Russian support in the struggle for the legalization of Serbian state symbols.

Although there was a need for a new constitution, its drafting progressed extremely slowly. The High Porte and Russia insisted that provisions on the coat of arms and flag should not be included in the text of the new constitution. Realizing that the issue of state flags would not be resolved by the Constitution, the Serbian delegation applied a tactic similar to that of Prince Miloš a few years earlier.¹⁹ The new Constitution was adopted in 1838 in the form of a solemn order of the Sultan's edict (*hatt-i sharif*), while the issue of the flag and coat of arms was regulated by a special Sultan's decree (*ferman*) from December of the same year. Thus, finally, the Serbian coat of arms, taken from the old Stemmatalogy, became a recognized coat of arms of the Principality of Serbia with the addition of the prince's crown and purple, and a mantling of olive and oak twigs. In addition, the

13 | This provision was written under the influence of the theory of national colors (*Nationalfarben*), according to which the colors of the flag should correspond to the colors of the coat of arms. Solovjev, 2000, p. 59.

14 | Constitution of the Principality of Serbia, Second chapter.

15 | *Новине Србске* (Serbian Newspaper), No. 6 of 9. 02.1835, p. 43.

16 | Mirković, 2017, p. 130.

17 | Solovjev, 2000, p. 372.

18 | Cuniberti, 1901, p. 435.

19 | *Spomenik Srpske Kraljevske Akademije*, No. 6, pp. 47–48.

arrangement of colors on the flag remained the same, with the addition of four stars on the red field, which, according to some interpretations, marked the vassal status of Serbia as the fourth vassal principality in the empire, along with Wallachia, Moldavia, and Samos.

Despite the fact that several constitutional projects were drafted and the Constitution was passed,²⁰ after the adoption of the *ferman* which determined the appearance of the Serbian coat of arms, the provisions on the flag in the coat of arms were not included in any of those texts. From 1838, Serbia's coat of arms remained in use until the proclamation of the Kingdom of Serbia in 1882. All this shows that the struggle for independence was conducted not only at the military, diplomatic, and international level, but also at the level of state and legal symbols. The great importance of this issue is best shown by the difficult negotiations that went on for several years between the representatives of Russia, the Ottoman Empire, and the Principality of Serbia. The recognition of national and state symbols was indeed an introduction to the final gain of international legal subjectivity and international recognition of the independence of the Principality of Serbia. This occurred at the Berlin Congress in 1878.

The first Constitution of the Kingdom of Serbia was adopted in 1888. In the first part of the Constitution, Article 2 is Article 1 of the Law on the Coat of Arms of the Kingdom of Serbia. In regard to the flag, the Constitution prescribes that the national colors are red, blue, and white.²¹ The 1901 Constitution prescribes the appearance of the coat of arms in a very similar way, but regulates the appearance of the flag in more detail: 'The national flag is tricolor with red on top, blue in the middle, and white on bottom.'²² The last constitution of the Kingdom of Serbia was adopted in 1903, and with regard to constitutional regulations on the coat of arms and the flag, it does not differ at all from the Constitution of 1888.²³ Special regulations regulated the appearance of military flags in various units of the Serbian army.²⁴

The aforementioned regulations on state symbols that were passed in this period of Serbian history regulate only the appearance of state flags but not the manner of their display and their use in general. As there are no rules on the use of state flags, there are no penalties for the possible misuse or desecration of state symbols. If we see that the monarch himself—prince or king—is also a symbol of statehood, it should be noted that the Criminal Code of 1860 prescribed the death penalty for acts directed against the person of the ruler—such as attempting to take the life, handing over the ruler to the enemy, and violent overthrow—, while any violence against the ruler or heir to the throne without the intention of depriving him of life was punishable by imprisonment for 15 years.²⁵ In addition, insulting civil servants and officials when they were performing their official duties was particularly punished.²⁶ Taking into account all the above, it can be concluded that the issue of state symbols in the principality and Kingdom of Serbia had a special weight as part of the overall struggle for liberation. More detailed regulations on their use

20 | Pržić, 1924, pp. 42–48; Pržić, 1925, pp. 207–219. 1869 Constitution of the Principality of Serbia.

21 | Constitution of the Kingdom of Serbia, *Srpske novine*, No. 282/1888.

22 | Constitution of the Kingdom of Serbia, *Srpske novine*, No. 76/1901.

23 | Constitution of the Kingdom of Serbia, *Srpske novine*, No. 127/1903.

24 | Decree on the flags of our army, *Srpske novine*, No. 177/1884. Decree on the flags of our army, *Srpske novine*, No. 269/1906.

25 | The 1860 Criminal Code, Arts. 85, 86 and 89.

26 | The 1860 Criminal Code, Art. 93.

have not been enacted, but the focus has been on their design and detailed regulation of their appearance.

In the Principality and Kingdom of Serbia, there were no rules regulating the use and protection of national symbols of different national groups and minorities. Although the legislation mentions the symbols of the Serbian Church,²⁷ the use and protection of the symbols of religious communities were not regulated in detail. The legislator focused on national and state symbols that were regulated for the very first time in this period.

During Ottoman rule over Serbia, a specific institutional arrangement of non-territorial autonomy was established. This is the Ottoman Millet System. In the Ottoman Empire, 'there was a parallel system of non-territorial governance based on the coexistence of religious/cultural communities called the millets, literally 'nations', which were given religious and cultural autonomy.'²⁸ The Ottomans conferred autonomy to religious groups on a non-territorial basis, while religious leaders were functionaries of the Ottoman state. In the Principality and Kingdom of Serbia, two types of non-territorial autonomy can be identified. The first is the Gypsy tax collector, who retained juridical and administrative jurisdiction over the nomadic Roma.²⁹ The second is religious and educational autonomy, which was important for the development of the Serbian Jewish community.³⁰

2. The Kingdom of Yugoslavia

The Kingdom of Serbs, Croats, and Slovenes was officially declared at the end of 1918 and internationally recognized during the Paris Peace Conference in 1919–1920.³¹ The 1921 Constitution of the Kingdom of Serbs, Croats, and Slovenes regulated the appearance of the state coat of arms and flag. The coat of arms was a combination of Serbian, Croatian, and Slovenian coats of arms placed on the chest of a double-headed eagle.³² A short provision regulates the appearance of the state flag: 'The state flag is blue, white, red, in a horizontal position to the upright spear.'³³ Unlike the coat of arms, the flag was not a combination of previous national flags, although they were composed of the same colors. The flag of the new state was new in that respect, although it was identical to the tricolor adopted at the Pan-Slav Congress in Prague in 1848.³⁴ The shape and dimensions of the flag were not prescribed in detail, except for ship flags, which will be discussed later. The military flag was the same color as the state flag, and its use was regulated by the Decree on the Flags of the Army of the Kingdom of Serbs, Croats, and Slovenes from 1924.³⁵

27 | Law on eastern-orthodox church authorities, Art. 224.

28 | Erk, 2015, p. 127.

29 | Janković, 2016, p. 323.

30 | Đurić, 2019, pp. 12–13.

31 | Radojević and Dimić, 2014, p. 274.

32 | Constitution of the Kingdom of Serbs, Croats, and Slovenes, Art. 2.

33 | Art. 2, para. 2 of the Constitution from 1921.

34 | Mønnesland, 2013, p. 36.

35 | Decree on the flags of the army of the Kingdom of Serbs, Croats, and Slovenes, Official Military Gazette, No. 2515/1924.

The legal status of minorities in the Kingdom of Yugoslavia was regulated by international treaties concluded at the Paris Peace Conference in 1919,³⁶ by bilateral agreements between Yugoslavia and a small number of European states, and by its internal law.³⁷ The 1921 Constitution and a large number of laws and by-laws regulated the rights of minorities in the fields of education, publishing, sports, etc. Apart from the rights guaranteed to minorities by general legislation,³⁸ certain minorities were additionally protected by bilateral agreements concluded by the Kingdom of Yugoslavia with several neighboring countries.³⁹ Although international treaties—bilateral and multilateral—recognized certain rights of members of a certain number of minorities, the legal subjectivity of the minorities themselves and their collective rights were not recognized. Therefore, non-territorial autonomy based on ethnic criteria was not established during this period. This is probably why there were no specific regulations regulating the legal protection of the symbols of various minorities in the Kingdom of Yugoslavia.

Regarding religious organizations, special laws regulated their legal status, and constitutions regulated the issue of their internal organization. The constitutions were drawn up by the competent authorities of religious organizations, and they came into force after publication in official journals. Although five constitutions of recognized religions in the Kingdom of Yugoslavia were adopted,⁴⁰ only the Constitution of the Serbian Orthodox Church contained a provision about its coat of arms.⁴¹ However, it does not contain more detailed rules on the display, use, and legal protection of that coat of arms. Generally speaking, the use of religious symbols in public spaces was common, but at the same time, unregulated. The same applies to the symbols of religious organizations and their organic parts. From everything stated in this part of the paper, clearly, the use of national symbols within the framework of religious activities has attracted greater public attention and somewhat greater resistance among members of different nations. This clearly indicates that tensions between different nations in the Kingdom of Yugoslavia had a dominantly national and only then—and not always—religious character.

For the use of new state symbols to come to life in a multinational state, it was necessary to regulate their use and the use of earlier state symbols. The statement of the Ministry of Internal Affairs of the Kingdom of Serbs, Croats, and Slovenes on how the state authorities and public institutions act arbitrarily regarding the display of flags during

36 | Treaty between the Principal Allied and Associated Powers and the Kingdom of Serbs, Croats, and Slovenes. [Online]. Available at: <http://www.forost.ungarisches-institut.de/pdf/19190910-3.pdf> (Accessed: 27 August 2022).

37 | Obradović, 2018, p. 1172.

38 | E.g. The laws that regulated the election of deputies and senators guaranteed the political rights of minorities. The Law on National Schools regulated the education in the languages of minorities.

39 | Such bilateral agreements were signed with Czechoslovakia, Italy, and Romania.

40 | Constitution of the Serbian Orthodox Church, Official Gazette of the Kingdom of Yugoslavia, No. 86/1931; Constitution of the Reformed Christian Church of the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, No. 36/1933; Constitution of the Islamic Religious Community of the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, No. 036/1933; Constitution of the German Evangelical Christian Church of the Augsburg Confession in the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, No. 101/1930; Constitution of the Slovak Evangelical Christian Church of the Augsburg Confession of the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, No. 72/1932.

41 | Constitution of the Serbian Orthodox Church, Art. 2. 1963 Constitution of Socialist Federal Republic of Yugoslavia, Sec. I.

state ceremonies indicates that there was no uniform use of state symbols in the first period after the joint state of South Slavs was formed. It further states that some institutions display only the state flag, others only the tribal or provincial flag, and some display both. For this reason, it is ordered that state institutions display only the state flag during state and national ceremonies, while private persons and private institutions are explicitly allowed to act according to their own choices and display the flag or flags they wish.⁴² This decision was in line with the Corfu Declaration, which provided for the existence of only one state flag that had to be mandatory for all state institutions. It is important that the Ministry does not restrict the use of all other national and provincial flags by private individuals and institutions, but only seeks to regulate and unify the practice of using the state flag by state institutions.

The change came in 1929 when a special regime of King Alexander was introduced. The Law on Holidays of September 27, 1929, stipulates that only the state flag should be displayed on all buildings during public holidays. All state and self-governing authorities and owners of buildings in cities have an obligation to display state flags.⁴³ In accordance with this law, there are only two national holidays: the day of the king's birth and the day of unification, that is, the day the new state was created (December 1). The same law also prescribes religious holidays for civil servants, during which they are not obliged to be on duty.⁴⁴ Given that the number of public holidays has been reduced, the application of this law would not significantly impair the freedom to use other national symbols. The Law on the Name and Division of the Kingdom into Administrative Regions changed the official name of the state to the Kingdom of Yugoslavia. The same law stipulates that only state flags can be displayed and carried.⁴⁵ Both laws were published in the same issue of the official journal; therefore, it can be concluded that after their publication, only state flags were allowed to be displayed, excluding provincial or national flags. The intention of the legislator was to accelerate the transition to the use of the new state flag, which was supposed to strengthen the internal cohesion of the new state.

Apart from the flag and coat of arms, the issue of choosing and using the national anthem was of special importance. From the decision of the Minister of Faith on March 15, 1924, clearly the issue of the use of the anthem was unregulated. The act states that the Croatian and Slovenian anthems could not be sung in the church without restraint, and that the Serbian anthem does not correspond to 'the changed state-legal position and the constitutional name of our people and state.' The intention of the decision was probably to say that the Slovenian and Croatian anthems do not have a form that would be appropriate for their singing in religious buildings. On the other hand, the Serbian anthem indisputably had the form of a prayer and began with the invocation of God, but the text of the anthem conflicted with the constitutionally adopted principle of compromise on unitarism.⁴⁶ According to the Minister, the practice of singing all three national anthems

42 | Statement on the display of the state flag, Official Gazette of the Kingdom of Serbs, Croats and Slovenes, No. 80/1919.

43 | Law on Holidays, Official Gazette of the Kingdom of Yugoslavia, No. 096/1929.

44 | Law on Holidays, Official Gazette of the Kingdom of Yugoslavia, No. 096/1929, Art. 3.

45 | Law on the name and the administrative division of the Kingdom, Official Gazette of the Kingdom of Yugoslavia, No. 096/1929.

46 | The idea of a three-tribe nation was a kind of compromise unitarism, which represented a central path between an integral Yugoslavia that does not know special peoples or nations and the thesis of the existence of several nations. Mirković, 2017, p. 227.

is not in the spirit of national unity. For these reasons, the Minister of Faith, in agreement with representatives of all recognized religions, decided to omit the singing of national anthems at national holiday celebrations in religious buildings of all recognized religions until the adoption of a national anthem.⁴⁷ From this Decision of the Minister of Faith, it can be concluded that there were misunderstandings and intrusions during the performance of national anthems in religious buildings, as well as that there was an expectation that the issue of adopting the national anthem would be resolved quickly.

Contrary to such expectations, a new national anthem has never been adopted. Although no law or regulation regulated the use and text of the national anthem, the first verses of all three national anthems and the last verse of the Serbian anthem in which the word Serbian was replaced by our—king—were sung on ceremonial occasions.⁴⁸ This was a Solomonic solution, similar to the one used during the creation of the state coat of arms: the already existing symbols of all three nations served to form the symbols of the common state.

After the adoption of the Constitution in 1921, the focus of the legislator was not on changing or refining the appearance of state flags but on the detailed regulation of the use of these symbols. The Law on flags on warships, merchants, and private ships of 1922 prescribes the appearance and use of several different flags, such as war, trade, and reserve naval officers' flags, and port police flags. In summary, it was prescribed in which way and on which occasions all the mentioned flags were used. The basis of all flags are three horizontal fields of equal width, in colors blue, white, and red.⁴⁹ The display of flags on ships was regulated in much more detail by a special rulebook passed in 1934.⁵⁰ In that same year, the Instruction on the application of the provisions of the mentioned rulebook was passed, which regulated in great detail the display of flags on Yugoslav ships in various situations.⁵¹

World War II led to the collapse of the Yugoslavia kingdom. The king and government were in exile in London. Among the last decisions made by the Royal Government was the Decree with legal force on the amendment of the Law on flags on warships, merchants, and private ships from October 2, 1944.⁵² In accordance with that Decree, all the flags prescribed by the Law from 1922 remained the same, with the crown and the coat of arms being removed from those flags on which they were intended. The agreement between the Royal Government and the National Committee for the Liberation of Yugoslavia, which preceded the adoption of this Decree, provided that the issue of the political system would

47 | Decision on the ban on singing national anthems in churches and places of worship until the adoption of one national anthem, Official Gazette of the Kingdom of Serbs, Croats, and Slovenes, No. 126/1924.

48 | Mønnesland, 2013, p. 166.

49 | Law on flags on warships, merchant and private ships, Official Gazette of the Kingdom of Serbs, Croats and Slovenes, No. 13/1922.

50 | Rulebook on hoisting (displaying) flags on state, merchant, and private ships of the Kingdom of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, No. 028/1934.

51 | Instructions for the execution and application of the provisions of the Rulebook on the hoisting (display) of flags on state, merchant, and private ships of the Kingdom of Yugoslavia, promulgated in the Official Gazette of the Kingdom of Yugoslavia, No. 111 of 15 May 1934, Official Gazette of the Kingdom of Yugoslavia, No. 069/1934.

52 | Decree amending the Law on Flags on Warships, Merchant, and Private Ships, Official Gazette of the Kingdom of Yugoslavia, No. 020/1944.

not be raised during the war and that the decision on that issue would be made by the people.⁵³ The decision to amend the Law on Flags was probably made with the intention of opening space for talks with the National Committee for the Liberation of Yugoslavia without prejudging the future form of government. This Decree of the Yugoslav government, which was passed before the end of the Second World War, indicated that the issue of state symbols would be extremely topical after the end of the war and in the period of the formation of the socialist state.

3. The Socialist Yugoslavia

Although the first constitutions of socialist Yugoslavia regulated the state symbols, they did not regulate the issue of national anthem. Yugoslav last Constitution of 1974 contains a short provision stating that the SFRY has an anthem,⁵⁴ which is determined by the federation through federal bodies.⁵⁵ The Law on the Use of the Coat of Arms, Flag, and Anthem from 1977 stipulates that only a melody and a text determined by the Assembly of the SFRY can be performed as an anthem. The same law stipulates that, until the Assembly of the SFRY determines the national anthem in accordance with the Law, *Hej Sloveni* will be performed as the anthem, the unofficial anthem of the SFRY until then.⁵⁶ This solution was reached after a series of failed competitions and attempts to come up with a new national anthem that would be in line with the social order at the time.

The use, detailed appearance, and protection of the coat of arms, flag, anthem, and other state symbols of the federation were regulated in detail by international treaties, federal laws, and other regulations as well as by laws and regulations of the republics and provinces. Among them, the most important was certainly the Law on the Use of Coats of Arms, Flags, and Anthems from 1977.⁵⁷ The analysis of all the mentioned regulations would go beyond the scope of a shorter historical analysis, adequate for the needs of this study.

After 1946, minorities were equated with nations that lived in the territory of the Federal People's Republic of Yugoslavia in many spheres of social life.⁵⁸ With the adoption of the Constitution of 1963, there were also changes at the level of terminology, so that the term nationalities was used instead of the term minorities. The 1963 Constitution proclaimed the equality of nations and nationalities in Yugoslavia.⁵⁹ The 1974 Constitution of Yugoslavia provides that nationalities, as collectivities, exercise their rights in republics, provinces, and municipalities, as a basic socio-political community.⁶⁰ In 1974, Vojvodina

53 | Agreement between the Royal Government and the National Committee for the Liberation of Yugoslavia, Official Gazette of the Kingdom of Yugoslavia, No. 020/1944.

54 | SFRY 1974 Constitution, Art. 8.

55 | SFRY 1974 Constitution, Art. 281 para. 1 item 9.

56 | Law on the Use of the Coat of Arms, Flag and Anthem of the Socialist Federal Republic of Yugoslavia and on the Use of the Face and Name of the President of the Republic Josip Broz Tito (abbr. Law on the Use of Coats of Arms, Flag and Anthem), Official Gazette of SFRY, No. 21/77.

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

58 | Bogetić, 2018, pp. 160–205.

59 | 1963 Constitution of Socialist Federal Republic of Yugoslavia, Sec. I.

60 | The Constitutional Development of the Socialist Yugoslavia, p. 470.

and Kosovo, both Serbian provinces, enacted constitutions that permitted the free use of symbols of nationalities. It should be noted, however, that none of these provinces have adopted detailed regulations in this regard. Although the system of protection of minorities has significantly improved, in accordance with the general progress of the protection of national minorities at the international level, there were no special regulations on symbols of nationality as a collectivity.

Regarding religious organizations, it is first necessary to mention that there was a change in the model of the relationship between the state and religious organizations after the Second World War. Churches and religious communities were separated from the state,⁶¹ they lost their public-legal character, and they 'faced serious legal restrictions and permanent state control' over their activities.⁶² Special regulations did not protect the right to use religious symbols or symbols of religious organizations, that is, their coats of arms, flags, and similar signs. In practice, people who used religious symbols and thereby publicly expressed their commitment to a certain religious organization often suffered certain consequences or were prevented from exercising the rights available to others.

After the collapse of the Socialist Federal Republic of Yugoslavia, five states were created, including the Federal Republic of Yugoslavia. Of all the newly formed states, FR Yugoslavia inherited the largest number of members from various minorities. The declaration of the people's representatives of Serbia and Montenegro on the basic, immediate, and permanent goals of the common state, adopted at the same time as the Constitution of the Federal Republic of Yugoslavia in 1992, emphasized the determination to ensure the highest standards of protection of the rights of national minorities.⁶³ The 1992 Constitution recognized national minorities as subjects of collective rights, which was a preparation for the introduction of non-territorial autonomy into the Serbian legal system.

4. Non-territorial autonomy in Serbia

After gaining independence in 2006, the Republic of Serbia improved its inherited system of protecting the rights of national minorities. The legal framework governing the legal position of minorities in Serbia consists of the 2006 Constitution, the Law on the Protection of the Rights and Freedoms of National Minorities,⁶⁴ the Law on National Councils of National Minorities,⁶⁵ and a series of laws regulating the rights of national minorities in the fields of education, information, representation in local self-government, etc.

The 2006 Constitution guaranteed the national minorities their collective right to self-government and provided for the establishment of National Councils of national minorities: 'Persons belonging to national minorities shall take part in decision-making

61 | 1946 Constitution of the Federative People Republic of Yugoslavia, Art. 25. Law on Amendments to the Law on the Legal Status of Religious Communities, Art. 3.

62 | Božić, 2019, p. 59.

63 | Obradović, 2018, pp. 1180–1181.

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

65 | Law on National Councils of National Minorities, Official Gazette of the Republic of Serbia, No. 72/2009, 20/2014, 55/2014, 47/2018.

or decide independently on certain issues related to their culture, education, information and official use of languages and scripts through their collective rights in accordance with the law.' Persons belonging to national minorities may elect their National Councils to exercise the right to self-governance in the field of culture, education, information, and official use of their language and script, in accordance with the law.⁶⁶ In addition, the Constitution specifies the rights guaranteed to national minorities, predicting that their circle can be expanded. The right of members of national minorities to use their symbols in public places is among the rights mentioned in the Constitution.⁶⁷ Therefore, in the Republic of Serbia, the right of national minorities to use their symbols in public spaces is guaranteed by the Constitution, which represents significant progress in the legal protection of national symbols.

The use of national symbols of national minorities is regulated in more detail by the Law on the Protection of the Rights and Freedoms of National Minorities. It guarantees members of national minorities the right to choose and use their national symbols. National symbols are proposed by the National Councils and endorsed by the Council for National Minorities. The law stipulates that the approved national symbols are officially displayed during public holidays of the Republic of Serbia, as well as during holidays of the national minorities,

[...] on buildings and in the premises of local bodies and organizations exercising public powers, in areas in which the language of the national minority is in official use, i.e., in the manner set forth by the decision on ratification of symbols.⁶⁸

The legislator also provided certain restrictions. It is stipulated that the national symbols of minorities may not be identical to those of other countries.⁶⁹ This legal provision was contested before the Federal Constitutional Court, but the said court took the position that this prohibition is not in contradiction with the Constitution and the International Covenant on Civil and Political Rights because

[...] by choosing and using the symbols and signs of a foreign country, members of a national minority would express their belonging to another country, and thereby they would ignore the belonging of that territory to the sovereign state of which it is a part.⁷⁰

Regarding the use of national symbols, a whole series of situations are prescribed in which they are used exclusively with the state symbols of the Republic of Serbia: during public holidays, the State Flag and the Small Coat of Arms of the Republic of Serbia shall be displayed, whereas when celebrating the holidays of national minorities, the National Flag and the Small Coat of Arms shall be displayed, in both cases in the manner prescribed by the Law on the Appearance and Use of the Coat of Arms, Flag, and Anthem of the Republic of Serbia.⁷¹ In addition, the Law on the Protection of the Rights and Freedoms of National

66 | Constitution of the Republic of Serbia, Art. 75.

67 | Constitution of the Republic of Serbia, Art. 79.

68 | Law on the Protection of Rights and Freedoms of National Minorities, Art. 16.

69 | Law on the Protection of Rights and Freedoms of National Minorities, Art. 16.

70 | IU 196/2002.

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

Minorities stipulates that at the entrance to the official premises of the National Council, the symbols of the national minority may be displayed, but with the obligation to display the state symbols of the Republic of Serbia.⁷²

In accordance with the Law on National Councils of National Minorities,

[...] the National Council is an organization legally entrusted with certain public competences to participate in decision making or to independently make decisions about certain issues in the area of culture, education, information, and official use of languages and scripts in order to achieve the collective right of a national minority to self-government in those areas.⁷³

The National Council members are elected in direct elections to a four-year term and they are obliged to participate in the work of the council.⁷⁴ There have been many discussions about the legal nature of the National Councils,⁷⁵ which is not surprising, given the doubts that arise when it comes to non-territorial autonomy in general. The Constitutional Court of Serbia offered a solution in its Decision on the challenge to the constitutionality of the Law on National Councils of National Minorities. The court noted the dual nature of National Councils, which on the one hand are non-state bodies, but on the other hand have a public legal character and are entrusted with public powers.⁷⁶ Currently, 23 National Councils are registered in Serbia, including the Federation of Jewish Communities of Serbia.⁷⁷ Regarding national symbols, the National Councils decide on their symbols and determine the proposal of national symbols for national minorities.⁷⁸ The final decision on the symbols of national minorities is made by the Council for National Minorities, 'ratifying the symbols, signs, and holidays of national minorities.' Members of the Council for National Minorities are presidents of the National Councils of national minorities and heads of state administration bodies—ministers—whose scope of authority includes issues concerning the position of national minorities.⁷⁹

Special decisions of the Council for National Minorities from 2006 have endorsed the national symbols of the Bunjevac,⁸⁰ Bosniak,⁸¹ Hungarian, and Croatian national minorities in Serbia.⁸² Then, there was a halt in the work of the Council for National Minorities due to the inconsistency of the 2002 Federal Law, with the newly created situation after

72 | Law on the Protection of Rights and Freedoms of National Minorities, Art. 16.

73 | Law on National Councils of National Minorities, Art. 2.

74 | There are exceptions to this rule, that are necessary due to the non-existence or lack of updated special voter lists.

75 | Jovanović, 2013, p. 256; Korhec, 2016, p. 190; Đurić, 2013, p. 55.

76 | IUz – 882/2010.

77 | National Councils of National Minorities [Online]. Available at: <https://www.rik.parlament.gov.rs/tekst/103/nacionalni-saveti-nacionalnih-manjina.php>. (Accessed: 27 August 2022).

78 | Law on the Protection of Rights and Freedoms of National Minorities, Art. 18.

79 | Law on the Protection of Rights and Freedoms of National Minorities, Art. 18.

80 | Decision on confirmation of national symbols and holidays of the Bunjevac national minority in the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 23/2006.

81 | Decision on Confirmation of the National Symbols and Holidays of the Bosniak National Minority in the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 23/2006.

82 | Decision on Confirmation of the National Symbols and Holidays of the Hungarian National Minority in the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 23/2006. Decision on Confirmation of the National Symbols and Holidays of the Croatian National Minority in the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 23/2006.

2006, when the Union of Serbia and Montenegro disintegrated, and Serbia became an independent state. On October 30, 2009, the Council was constituted in a new convocation, and it ratified the coat of arms, flag, and national holidays of the Bulgarian, Wallachian, Macedonian, Romanian, Ruthenian, and Ukrainian national minorities, while it only ratified the coat of arms and flag of the German and Slovak national minorities.⁸³ National Councils have regulated the issue of their symbols with their own statutes.

Regarding religious organizations, the 2006 Constitution and Serbian legislation do not regulate the right of religious organizations to use their own symbols. Although the right to the free expression of religious beliefs can also include the right to display religious symbols,⁸⁴ the issue of using the symbols of religious organizations as collectives remains largely unregulated in Serbian law. Religious symbols enjoy a certain degree of protection under criminal law, as their exposure to ridicule carries a 1 to 8 year prison sentence. However, the condition is that exposure to ridicule is done with the aim of 'causing or inciting national, racial or religious hatred, or intolerance among peoples or ethnic communities living in Serbia.'⁸⁵

5. Conclusions

The legal protection of national and religious symbols is closely related to the status and recognized rights of the collectivity to which these symbols belong. The establishment of non-territorial autonomy based on national and religious affiliation is generally perceived as a modern achievement. 'The difference between TA and NTA is that the transfer of authority is accomplished at the community level, not territorial level, and thus, theoretically, it does not make a difference where members of the respective community reside territorially.'⁸⁶ The paper has pointed out several examples of non-state organizations entrusted with public powers in the territory of Serbia in the past. An excellent example is the millets during Ottoman rule, but also certain ethnic-confessional organizations such as Jewish communities. Religious school communities had a similar position. However, during the 19th century and in the first half of the 20th century, non-territorial forms of autonomy existed only in rudimentary forms. During this period, the legislator's attention was focused on the regulation and legal protection of state symbols. It was a period of the construction and restoration of statehood, and for that reason, special attention was paid to the identity of the state, which is manifested through its symbols.

The position of minorities was not in the focus of the Principality and Kingdom of Serbia, except the Jewish community. The reason for this is the ethnic and religious homogeneity of the state. The situation changed significantly after 1918, when the Kingdom of Serbs, Croats, and Slovenes was pronounced. In the interwar period, members of minorities enjoyed certain rights, but minorities were not considered as subjects of collective

83 | Third report submitted by Serbia pursuant to Art. 25 para. 2 of the framework convention for the protection of national minorities, p. 110.

84 | Đukić, 2021, p. 155.

85 | Criminal Code, Art. 317.

86 | Kovács, 2020, p. 88.

rights, and the collective right to non-territorial autonomy was not constituted. It was only in the second half of the 20th century that the preconditions for the development of non-territorial autonomy were created, which will actually be established by the modern Serbian state at the beginning of the 21st century. From a historical point of view, the legal protection of symbols of national minorities was regulated in detail only at the beginning of the 21st century, coinciding with the establishment of non-territorial forms of autonomy in the Republic of Serbia.

This paper deals with the legal protection of symbols of two forms of non-territorial autonomy: national minorities and religious organizations. Ethnically based non-territorial autonomy in Serbia has a dual nature. National Councils are neither state bodies nor private associations of citizens. They are non-state bodies *sui generis* entrusted with particular public powers. In addition, in the Serbian legal order, religious organizations are not legal entities of public law, but they exercise certain public powers and cannot be classified as legal entities of private law. From the above, it can be concluded that religious organizations are also legal entities *sui generis* with inherent public powers. This similarity stems precisely from the fact that these are two forms of non-territorial autonomy.

Both forms of non-territorial autonomy have the right to determine symbols. National Councils freely regulate their own symbols, while they only propose the symbols of the national community they represent. Religious organizations, in accordance with their broad autonomy in the area of religious self-determination—which borders on sovereignty—, are completely free to prescribe their symbols. The difference is that in the case of National Councils, the law explicitly prescribes the protection and procedures for regulating their symbols, whereas in the case of religious organizations, such a conclusion can be reached based on a teleological interpretation of the provisions of the Law on Churches and Religious Communities. Based on the above, it can be concluded that there is room for *de lege ferenda* around regulating the symbols of religious organizations. It would be desirable if there were explicit legal protection and more detailed regulations on the use of symbols of religious organizations. This would improve the quality of protection of the rights of religious-based forms of non-territorial autonomy.

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