

SYMBOLS OF NATIONAL MINORITIES IN THE CZECH REPUBLIC, THEIR USE, AND LEGAL PROTECTION

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ABSTRACT

The article focuses on the issue of symbols of national minorities in the Czech Republic. The issue of symbols of national minorities, their use and legal protection is not given an attention in the Czech Republic—neither in literature nor in case law. Czech legislation is also silent in relation to this issue. Even so, we cannot give up on solving that issue. Therefore the article tries to include the right to use the symbols of national minorities under some of the explicitly enshrined rights of members of national minorities and subsequently derive from the general legislation the basic principles and rules for the use of these symbols by members of minorities in practice. In the next part of the article, the author tries to point out the means of protecting the symbols of national minorities and their use—both from the point of view of constitutional, administrative and criminal law. However, even here, the legal regulation is very unsystematic and very fragmented. Based on the above analysis, problematic aspects of the current legislation and practice are pointed out in the conclusion, and proposals and recommendations de lege ferenda are formulated.

KEYWORDS

*national minorities
rights of national minorities in the Czech Republic
symbols of national minorities in the Czech Republic
use and legal protection of symbols of national minorities in the Czech Republic*

1. Introduction

It is characteristic for every organized community to identify itself in some way, both externally and internally. Its members share common goals, values, and attitudes, and they respect and protect them. It is the symbols that serve as one of the important means to embody the existence of a particular community externally—in relation to other entities—and simultaneously the affiliation of its member to this group. Symbols also reflect solidarity among the members of the community and their internal and emotional ties

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to it. The symbols express the history and traditions, values, and ideas of the community. All this applies regardless of whether such a community is a state or another important community in its territory, especially a territorial self-governing unit—a municipality or a region—, a national minority, a religious community, and others.

The existence, use, and protection of such symbols are usually the object of national legislation—i.e., also Czech legislation. In this respect, state symbols quite logically occupy a supreme position due to the necessity of their existence for every state and their importance and functions both inside the state and outside—in the international environment. This corresponds to their legal regulation, which typically has a constitutional character²—further specified in laws—, is relatively detailed—at the level of laws—, and regulates both the use and—public and private law—means of their legal protection.

However, for every state, including the Czech Republic, the various other communities that exist in it are also important; they fulfill certain roles and contribute to the development and formation of values, fulfillment of rights and freedoms, and achievement of other goals and needs in society. These communities and their members always share certain common goals, values, and attitudes. They are also often connected by a common history, traditions, or cultural and other customs. All these elements identify a certain community both internally and strengthen its internal structure, and simultaneously characterize and define it externally. The status and mission of these communities reflect the symbols used by these communities—internally and externally. Among the most significant communities of people in the above-mentioned sense, national minorities can currently be ranked in the Czech Republic.

The article, therefore, focuses in detail on the issue of symbols of national minorities in the Czech Republic. Even though the protection of national minorities and the rights of their members is generally enshrined in constitutional legal norms, no attention is paid to the issue of symbols of minorities, their use, or legal protection—neither in the framework of Czech legislation, nor in the framework of doctrine or practice. Therefore, the article tries to subsume the right to use the symbols of national minorities in the existing legislation and to abstract from this general regulation the basic principles and rules of the use of these symbols by members of minorities in practice. Another goal is to try to actualize the means of the legal protection of this right in the Czech legal system. This question has not been resolved in detail based on partial and fragmented legislation. Nevertheless, the author's effort is to define the means of protection within the framework of constitutional law as well as administrative and criminal law. Based on the above-mentioned analysis, problematic aspects of the existing legislation or practice will also be pointed out, and proposals and recommendations *de lege ferenda* will be formulated. The article is based on the relevant legislation, publications, and opinions of legal doctrine, as well as jurisprudence—namely Czech courts and ECtHR.

2 | The state symbols are regulated in Art. 14 of the Constitution of the Czech Republic, which stipulates that the state symbols of the Czech Republic are the large and small state coat of arms, state colors, state flag, flag of the president of the republic, state seal, and state anthem.

2. National minorities and their position in the Czech Republic

The most important minorities—not only—in the Czech Republic are national minorities. The Czech Republic and other European countries are aware of the importance of national minorities and strive to protect their rights, needs, and values. As stated by the European Court of Human Rights,

[...] there is a consensus among the Contracting States of the Council of Europe that the special needs of minorities and the obligation to protect their security, identity, and way of life should be recognized, not only to protect the interests of minorities themselves but also to preserve the cultural diversity that benefits society as a whole...³

The support and protection of national minorities is important not only for the existence and development of the minority itself, but also for society at large.⁴

The Czech Republic understands the importance of national minorities and their existence. Their rights and protection are reflected and protected directly at the constitutional level. Article 3 of the Charter of Fundamental Rights and Freedoms states that everyone ‘has the right to decide freely on their nationality’. Simultaneously, it explicitly forbids influencing a person’s decision-making about their nationality; all forms of coercion leading to denationalization are also prohibited.⁵ However, as Bobek rightly points out, the Charter does not specify what is meant by the terms nationality and nation.⁶ The legal doctrine primarily tries to interpret these terms. One of the most important works of the 20th century on this topic defines the nation and belonging to it—i.e., nationality—through two elements: subjective—volitional—and objective—cultural.⁷ The point is that a certain group of people must share common objective features of the community—e.g., language, tradition, religion—, which can be termed culture. Simultaneously, the individual must identify with this community—the individual’s will to be a member—and the community must accept the individual as its member. Czech doctrine understands nationality as belonging to a nation in a cultural-linguistic-ethnic sense, not in a political sense.⁸ The nationality is

[...] a group of inhabitants of a state that is in the minority compared to the rest of the majority population, lives on the territory of the state, and its members maintain traditional, strong and permanent relations with each other, have common ethnic, cultural, religious or linguistic features that distinguish them from the rest of the population, and at the same time they officially expressed their subjective wish to be socially perceived as a national minority.⁹

3 | Judgment of the Grand Chamber of the ECtHR in the Case of Chapman vs. The United Kingdom of 18 January 2001, Complaint No. 27238/95.

4 | For more details see Potočný, 1996, pp. 233–237; or Malenovský, 1998, pp. 169 et seq.

5 | Jílek, 2000, pp. 12–24.

6 | Wagnerová et al., 2012, p. 112.

7 | Gellner, 2006, pp. 52–57.

8 | Petráš, Petrův and Scheu, 2009, pp. 18–30. Compare also Art. 3 of the Framework Convention for the Protection of National Minorities.

9 | Hendrych and Fiala, 2009.

The right to a free choice of nationality represents a negative obligation of the Czech state to respect this choice and not interfere with it. Similarly, the state—public authority—is prohibited from carrying out any targeted denationalization, for example, in the form of pressure on individuals not to declare their nationality or preventing them from observing cultural or linguistic traditions, using symbols and signs associated with nationality, etc. At the same time, it follows a positive commitment consisting on the one hand in the creation of a certain legal framework that will enable the free choice of nationality from the aforementioned provision. This will subsequently enable the use of minority rights guaranteed by Article 25 of the Charter—see these rights in more detail below. The state also has an obligation to protect individuals from possible coercion or the influence of their free decisions by private persons—for example, the adoption of anti-discrimination legislation or the provision of criminal protection of individuals against nationally motivated crimes.¹⁰

The Charter deals with national minorities and their rights in more detail in Title Three. The Charter states—in Article 24—that belonging to any national minority must not be detrimental to anyone. The concept of a national minority is not defined by the Charter.¹¹ We find this definition only in the Act on the Rights of Members of National Minorities.¹² According to this Act, a national minority is a community of Czech citizens living in the Czech Republic, who differ from other citizens usually by common ethnic origin, language, culture, and traditions, form a large minority of the population, and simultaneously demonstrate the will to be considered a national minority. The purpose of their existence is a joint effort to preserve and develop their own identity, language, and culture, as well as to protect their interests. Therefore, a member of a national minority is a citizen of the Czech Republic who declares themselves to be of a nationality other than Czech and expresses a desire to be considered a member of a national minority together with others who declare themselves to be of the same nationality.¹³ A national minority is a community of persons that meets all the above criteria, 'it is not enough that a certain community of persons shows a will to be considered a national minority'.¹⁴ Article 24 of the Charter is broad. We can therefore consider that the right of a minority member to not be harmed by the use of minority symbols can be subordinated to it.

The Charter further stipulates that the citizens forming national minorities are guaranteed all-round development, in particular, the right to develop their own culture together with other members of the minority, the right to disseminate and receive

10 | Husseini et al., 2021, pp. 177–178.

11 | In this respect, it is not only a problem in the Czech Republic. The court states that it is not its task to express an opinion on whether or not the Silesians are a national minority, let alone to formulate a definition of this term. Undoubtedly, creating such a definition would be a difficult task, especially since none of the international treaties—not even the Council of Europe's Framework Convention for the Protection of National Minorities—define the term national minorities. Judgment of the Grand Chamber of the ECtHR in the Case of the Party of Freedom and Democracy (ÖZDEP) v. Turkey of 8.12.1999, Complaint No. 23885/94.

12 | Act No. 273/2001 Coll., On the Rights of Members of National Minorities.

13 | Critically on the narrowing concept of the minority according to this Act versus the broad concept of the minority according to the Charter, see Wagnerová et al., 2012, p. 543.

14 | Decision of the Supreme Administrative Court of the Czech Republic of 17 August 2021, No. 7 As 324/2020-42.

information in their mother tongue, and to associate in national associations.¹⁵ Under the conditions laid down by statutory regulation, they are also guaranteed rights to education in their language, use their language in official communication, and participate in resolving matters concerning national and ethnic minorities. The implementation of these rights is regulated in more detail in the Act on the Rights of Members of National Minorities, but also in other acts—e.g., the Act on Municipalities, the Act on Regions, the Education Act, the Act on Czech Television, and others.

The above-mentioned rights typically take the form of a positive status, that is, they guarantee certain claims of individuals towards the Czech state.¹⁶ The concrete implementation of these rights is then regulated and fulfilled by the aforementioned laws. It should be emphasized that Article 25 of the Charter binds the rights of members of national minorities to citizenship in the Czech Republic. It is therefore not about the rights of foreigners, only of citizens of the Czech Republic who do not claim Czech nationality, but others—for example, Slovak, Roma, etc. It is questionable whether this narrowing concept is appropriate from a *de lege ferenda* point of view. Regarding membership of the Czech Republic in the European Union, it would be desirable to consider whether to grant at least some of these rights to foreigners who have settled in the Czech Republic for a long time.¹⁷ However, the law that Article 25 of the Charter implements in practice must be strongly criticized. This is the aforementioned Act on the Rights of Members of National Minorities. This Act applies some of the rights only to national minorities who traditionally and long-term live in the territory of the Czech Republic. It is questionable why these rights are limited only to these national minorities; furthermore, the law does not specify what the criteria are for determining such a minority. In the future, it would be appropriate to remove this restriction from the law.

3. Symbols of national minorities and their use from the point of view of Czech law

Therefore, the Czech Republic and its legal system clearly protect and support the all-round development of national minorities. This support covers several areas, such as the development of culture, traditions, and the use of the mother tongue. Undoubtedly, we can also include support for the use of various symbols and signs to identify and unite a particular national minority. However, specific legislation is lacking in this regard. This right can be subsumed as the more general right to all-round development, the development of the culture and traditions of the minority, and all-round support for its outward expression. Specific—and explicit—legal regulations that would relate to the use of symbols of national minorities and their protection are lacking in this regard. Despite this deficit, we cannot resign ourselves to solving this question. In general, the state always

15 | On the rights of national minorities, see Pospíšil, 2006, pp. 1–187.

16 | Bartoň et al., 2016, p. 209.

17 | The same opinion see Bartoň et al., 2016, p. 210.

has an obligation to respect, fulfill, and protect human rights,¹⁸ including the rights of members of national minorities.

Among the most numerous national minorities in the Czech Republic are the Slovak, Ukrainian, Polish, Vietnamese, German, Russian, and Roma minorities—this is data obtained from the census in the Czech Republic in 2021. Thus, it is clear that in addition to the Roma minority, the other minorities are citizens who claim nationality and are linked to another foreign state. This logically implies the assumption that these members of national minorities will usually use state or national symbols associated with their state—a member of the Slovak national minority in the Czech Republic will, on certain occasions, use Slovak state symbols, for example, the national flag. In relation to these members of national minorities, it is therefore necessary to primarily address the question of whether and how the state symbols of foreign states can be used—by them—in the Czech Republic, and subsequently whether these foreign state symbols and their use are protected by the Czech legal order.

Unfortunately, it must be stated at the outset that the use of foreign state symbols in the Czech Republic is not sufficiently regulated. The only exception is the regulation of hoisting the Czech national flag in the event that it is hoisted together with the flags of other states. The Act on the Use of State Symbols sets precise rules for the placement of the Czech flag in these situations. This issue has only been partially addressed by international agreements on consular and diplomatic missions. However, further adjustments are required. Similarly, the first Czechoslovak regulation, specifically Act No. 252/1920 Sb., did not solve this issue—neither did Regulation No. 512/1920 Sb., which regulated the use of state symbols in the Czechoslovak Republic and paid attention to it. However, the Supreme Administrative Court of the Czechoslovak Republic, in its judgment of 1926, prohibited the association from using a badge made in the colors of a foreign state.¹⁹ Most attention was probably paid to this issue under Act No. 269/1936 Sb., which stipulated that in the territory of the Czechoslovak Republic, state symbols of foreign states may be used permanently only by consuls of these states and extraterritorial persons. Other people could use foreign state symbols only with the permission of the provincial office. Permission could only be granted if the applicant has proven that the foreign state does not object to the use of its symbol in our territory. It should be emphasized that the Act on the Use of State Symbols of the Czech Republic and the rules set therein cannot be applied by analogy to the use of state symbols of foreign states in the Czech Republic. As the Supreme Court of the Czech Republic stated, 'it cannot be successfully concluded that the intention of the Czech legislator in this case should be to subject the use of all state symbols of foreign states to the regime of this Act.' The following legislation completely neglected this issue.

Currently, Czech legislation only includes laws regulating Czech state symbols and their uses. Specifically, it concerns Act No. 3/1993 Sb., On the State Symbols of the Czech Republic, and Act No. 352/2001 Sb., On the Use of State Symbols of the Czech Republic. Therefore, the question is whether the rules established by the Act on the Use of State Symbols of the Czech Republic can be applied in the situation of an explicit absence of legal regulation of the use of foreign state symbols. In other words, it is about answering

18 | Nowak, 2003, pp. 48–51.

19 | Decision of the Supreme Administrative Court of the Czechoslovak Republic, No. Boh. Adm. 5706/1926.

the question of whether analogy legis can be used. When searching for an answer to this question, it is necessary to begin with the essence and meaning of the institute of analogy. That is, what is the analogy for, and under what conditions can it be used?

According to constitutional requirements, the basic prerequisite for the exercise of public power is the existence of a legal basis—principle of legality. However, this does not exclude the possibility of supplementing the law with caselaw or with the decisions of administrative authorities, even with the use of analogy.²⁰ However especially in the field of public law, the doctrine adopts a very restrictive and cautious approach to the possibility of using the analogy.²¹ The prerequisite for using an analogy is the existence of a so-called open false—teleological—gap in the law.²² If we apply these conclusions to our situation, we must come to the clear conclusion that the Act on the Use of State Symbols of the Czech Republic and the rules set forth in it cannot be applied by analogy to the use of state symbols of foreign states in the territory of the Czech Republic. However, the existence of an open loophole in the law cannot be inferred here. In the Act on the Use of State Symbols of the Czech Republic, the legislator knowingly and deliberately regulated only the use of state symbols of the Czech Republic. This intention is evident not only from the name of the law itself but also from § 1 of this law, which defines the subject of its amendment. The same conclusions are drawn from the explanatory report on this law. It follows from this report that the purpose of the law is to clarify the legal regulation of state symbols (exclusively) in the Czech Republic and to solve the issue of insufficient regulation of their use by various institutions and entities, including citizens. It cannot, therefore, be inferred that the intention of the Czech legislator was to apply this law to state symbols of foreign states and subject their use to the same rules as apply to Czech state symbols. Czech courts also agree with this opinion. As stated by the Supreme Court of the Czech Republic, ‘it cannot be successfully concluded that the intention of the Czech legislator in this case should be to subject the use of all state symbols of foreign countries to the regime of this law.’²³

From the point of view of practice, some cases were resolved in the Czech Republic, which, although related to the use of symbols of foreign states, were not in connection with the realization of the rights of national minorities and their members. These were cases related to the use of these symbols in commercial relations, for example, to promote various services and products—e.g., marking a medical preparation with a symbol reminiscent of the Swiss national emblem and flag, which was supposed to forge a connection with this country in potential customers and increase confidence in the product. Even in these commercial disputes—i.e., in the field of private law—, civil courts do not apply the Act on the Use of State Symbols of the Czech Republic per analogy to the use of state symbols of foreign countries.²⁴

20 | The decision of the Constitutional Court of the Czech Republic of 26 April 2005, No. Pl. ÚS 21/04.

21 | Hajn, 2003, p. 123; or Kindl, 2003, p. 133.

22 | For more details, see the decision of the Constitutional Court of the Czech Republic of 25 June 2002, No. Pl. ÚS 36/01, the decision of the Constitutional Court of the Czech Republic of 8 February 2006, No. IV. ÚS 611/05, or the judgment of the Supreme Court of the Czech Republic of 1 June 2017, No. 32 Cdo 2422/2015.

23 | The judgment of the Supreme Court of the Czech Republic of 17 December 2019, No. 23 Cdo 184/2019.

24 | For more details, see the judgment of the Supreme Court of the Czech Republic of 17 December 2019, No. 23 Cdo 184/2019.

The Roma minority in the Czech Republic is also a significant national minority; its members are not nationals of any foreign country. This national minority also has its own symbols, typically the Romani flag and anthem. The Roma flag consists of a blue stripe in the upper half, a green stripe in the lower half, and a red chakra with 16 rays in the middle. Chakra refers to the Indian origin of the Roma. The flag was created in 1933 by the General Union of Romanian Roma, and in 1971, it was approved as the official Roma flag at the first International Roma Congress in London. The Romani anthem is considered to be the Romani song *Gejlem, gejlem*. This song was declared the Roma anthem at the first International Roma Congress in London—1971. There is no special legal regulation concerning the explicit use and protection of Roma symbols in Czech law. It is, therefore, the same situation as in the case of the use of state symbols of foreign states.

However, the right to use symbols representing the relevant national minority must be understood as part of a broader catalog of the rights of the members of national minorities—see above. The Czech Republic recognizes these rights and guarantees their realization at the constitutional level. However, this right also corresponds to the obligation of the members of national minorities to use the symbols and other signs of their minority only in a legal manner—that is, to respect the rules of the legal system of the state—i.e., the Czech Republic.²⁵ Although neither theory nor practice focuses on this issue, the following basic rules can be deduced:

The symbols of national minorities always embody the important values, ideas, and traditions of the community—just like the state symbols of any state. Therefore, when using them, the requirement of appropriateness and a dignified way of using the symbol should be respected. A member of a national minority should use the symbol appropriately and with dignity, always regarding the specific situation or occasion in which the symbol is used.²⁶ These conditions must be carefully weighed for each case and regarding the specific circumstances of the situation.

Furthermore, it must be emphasized that even if it is a right of a member of a national minority, its realization must not consist of the abuse of such a right. The realization of every subjective right must always follow a legitimate goal and must be realized legally. The leading theoretician of Czech law, V. Knapp, states that abuse of law means the use of a certain legal norm in contradiction—not in accordance—with its purpose.²⁷ Therefore, it is a seemingly permissible act intended to achieve an illegal result. The principle of the prohibition of abuse of law permeates the entire legal system and is one of the most important principles on which the legal system is built.²⁸ For private law, the principle of prohibition of the abuse of rights is explicitly enshrined directly in the Civil Code, according to which an obvious abuse of rights does not enjoy legal protection. Although

25 | This can be deduced by analogy, for example, from the judgment of the Supreme Administrative Court of the Czech Republic, where the court stated: 'the right of a member of a national minority to use the language of a national minority in official communication, resp. the right to the assistance of an interpreter may not be abused to intentionally and purposefully prolong the proceedings.' Judgment of the Supreme Administrative Court of the Czech Republic of 30 October 2014, No. 6 As 149/2014–21.

26 | The judgment of the Supreme Court of the Czech Republic of 17 December 2019, No. 23 Cdo 184/2019. The court stated that the state symbols and their imitations can also be used for commercial purposes, but this must be done appropriately and with dignity.

27 | Knapp, 1995, p. 184.

28 | Hurdik, 2019, pp. 1077–1090.

this principle is not explicitly enshrined in public law, it is applied here. The Supreme Administrative Court stated:

[...] the prohibition of abuse of law is a rule of Czech national law, including public law, which results from the nature of the Czech Republic as a material legal state based on certain guiding values, which, in addition to respect for individual freedom and the protection of human dignity, include the respect for the harmonious social order created by law and the denial of the protection of actions that consciously and deliberately use law contrary to its meaning and purpose.²⁹

Furthermore, the manner of using the symbol of a national minority must not violate the other legal norms of the Czech legal order. For example, if certain buildings are prohibited by Czech law from displaying flags other than those specified by law—e.g., the president’s residence—, these rules cannot be violated and justified by the exercise of the right of a member of a national minority. Symbols of national minorities cannot be used in such a way that would, damage cultural monuments or other people’s property rights in general, or which would, violate the prohibition of entering certain areas. Czech administrative practice did not deal with many cases that would concern illegal realization of the right to use the symbols of the national minority; however, several cases can be mentioned here as illustrative.

The case of the activist Miroslav Broř, who hoisted the so-called Czech-Roma flag on his balcony on April 8, 2021, is relevant in this respect.³⁰ The man placed a red chakra on the state flag of the Czech Republic. In essence, he combined the Czech and Roma flags. Although he wanted to point out the importance of the Roma community and its connection with the Czech state, he did so illegally. The Act on the Use of State Symbols of the Czech Republic stipulates that there must be no text, images, emblem, etc., on the state flag. Thus, the man grossly despised the state flag as a state symbol and committed an administrative offense. He was fined CZK 1,000.³¹ If a person hoisted the Czech national flag and the Roma flag next to it properly and in accordance with legal rules, his actions would be legal—the national flag must always be flown in the most honest place.

The Czech Republic dealt with a similar case in 2013. At that time, artist T. Rafa organized an exhibition of flags in Prague entitled ‘Tender for the Czech-Roma flag’. The Czech Republic state flags issued here were combined into various forms with the Roma flag. The author and organizers wanted to symbolize the coexistence of the Roma minority and the Czech nation with their proposals. The police of the Czech Republic had all seven flags assessed by an expert, and in three cases, they concluded that this was an administrative offense. The artist was fined CZK 2,000. However, on appeal, this decision was annulled, and the misdemeanor proceedings were terminated. It was stated that this was

29 | The decision of the extended senate of the Supreme Administrative Court of the Czech Republic of 27 May 2010, No. 1As 70/2008, or the decision of the extended senate of the Supreme Administrative Court of the Czech Republic of 16 October 2008, No. 7 Afs 54/2006.

30 | International Roma Day.

31 | Mne, TK (2022) *Vyvsil eskou vlajku upravenou romskm symbolem. Dostal pokutu* [Online]. Available at: https://www.idnes.cz/zpravy/domaci/romove-vyveseni-vlajka-magistrat-pokuta.A220113_084812_domaci_mgn (Accessed: 18 February 2022).

a manifestation of freedom of art and freedom of expression, not an illegal act—i.e., it was not denigration or damage to the national flag).³²

4. Legal protection of the symbols of national minorities and their use in the Czech Republic

Regarding the legal protection of the use of symbols of national minorities, the same applies, as has already been said in relation to the legal regulation of their use. The Czech legal system lacks more comprehensive legal regulations focused on this issue. Even so, it cannot be said that the realization of this right is not provided with legal protection. It can be found at the levels of constitutional law and administrative and criminal law.

As far as constitutional law is concerned, it has already been said that the Charter explicitly regulates the rights of members of national minorities. These are therefore public subjective rights, that is, the rights of an individual in relation to the state, respective to public authority. Certainly, these rights require judicial protection. The most important instrument for legal protection is the possibility of an individual to submit a constitutional complaint to the Constitutional Court of the Czech Republic. A natural or legal person is entitled to file a constitutional complaint if they claim that their fundamental right or freedom guaranteed by the constitutional order was violated by a final decision in a proceeding in which they were participants, a measure, or other intervention by a public authority. Thus, a constitutional complaint represents a specific means of protecting the constitutionally guaranteed rights and freedoms of natural and legal persons. These fundamental rights and freedoms represent the material object of the proceedings and are therefore the focus of the Constitutional Court's attention. The procedural object of the proceedings is the decision, measure, or other intervention of a public authority, which can disrupt this material object, and against which the constitutional complaint is directed.³³ The defect of a decision or other intervention must always fundamentally consist of disregarding the constitutionally guaranteed rights and freedoms of the complainant—in this case, the rights of members of national minorities guaranteed by the Charter. Simultaneously, it is a subsidiary legal remedy—its application must fundamentally precede the exhaustion of all procedural means provided to the complainant by the Czech legal order to protect their right or freedom.

Administrative law also provides protection. It protects the exercise of the rights of persons belonging to national minorities in the form of liability for administrative offenses. The use of symbols by minorities—of course in a lawful manner; see above—can undoubtedly be considered an integral part of the exercise of their rights. An offense is committed by a person who restricts or prevents a member of a national minority from exercising their rights. For example, this could be a situation in which a member of the Roma national minority would be prevented from using Roma flags on certain occasions. A fine of up to CZK 20,000 or a reprimand may be imposed for such an administrative

32 | iDNES.cz and ČTK, 2015.

33 | Filip, Holländer and Šimíček, 2007, p. 491.

offense against a civil cohabitation.³⁴ Instead of a fine, a sanction of a moral nature can also be imposed, namely, a reprimand. However, a fine and reprimand cannot be imposed at the same time.

In addition, liability for other types of offenses is not excluded, but they are no longer explicitly linked to belonging to a national minority. These may be offenses against property –intentional destruction or damage to the Roma flag–, public order, etc. Administrative authorities decide on guilt and punishment for offenses. Infringement proceedings are always initiated *ex officio*. Classical criminal law principles are applied in the proceedings, such as the principles: *nullum crimen sine lege*, *nulla poena sine lege*, the presumption of innocence, *ne bis in idem*, *in dubio pro reo*, and others.³⁵ After the proper remedies—typically an appeal—have been exhausted, the decision regarding the offense can be an object of judicial review, based on an action against the decision of the administrative body in proceedings before the administrative courts.³⁶

If the infringement reaches a higher degree of social harm or higher damage is caused, liability for the crime may also arise. Means of protecting the existence of national minorities as well as exercising their rights can also be found in Czech criminal law. The idea of the criminal law protection of these communities and their rights cross-cuttingly permeates the Criminal code.³⁷ The Criminal Code states that if a crime is committed out of national hatred, it is an aggravating circumstance.³⁸ In the case of a number of criminal offenses, the commission of a criminal offense on the grounds of belonging to a certain nationality means the fulfillment of a qualified factual basis and the associated higher, that is, stricter, punishment.³⁹ Specific criminal offenses relating to the given issue are the criminal offense of defaming a nation, race, ethnicity, or other group of persons⁴⁰ and the criminal offense of inciting hatred towards a group of persons or restricting their rights and freedoms.⁴¹

A positive fact in the Czech Republic is that the protection of the rights of members of national minorities is institutionalized. The Government Council for National Minorities operates at the national level. It is an advisory body of the Government of the Czech Republic, whose members are also members of national minorities. The Council monitors compliance with the Constitution of the Czech Republic, the Charter, international treaties on human rights and fundamental freedoms to which the Czech Republic is bound, laws, and other legal norms related to members of national minorities. The Council comments on draft legislation and other measures concerning the rights of persons belonging

34 | Art. 7 of Act No. 251/2016 Coll., On certain offenses.

35 | As the Supreme Administrative Court of the Czech Republic stated in its decision, ‘the criminality of administrative offenses is governed by the similar principles as the criminality of criminal offences.’ The judgment of the Supreme Administrative Court of the Czech Republic of 31 May 2007, No. 8 As 17/2007.

36 | Act No. 150/2002 Coll., Code of Administrative Justice, Arts. 65 et seq.

37 | Act No. 40/2009 Coll., Criminal Code.

38 | Art. 42 of the Criminal Code.

39 | The ECtHR also calls for a strong investigation of every racially, nationally, or religiously motivated crime. See Judgment of the ECtHR in the Case of *Lakatošová a Lakatoš vs. Slovakia* of 11 December 2018, Complaint No. 655/16, or Judgment of the ECtHR in the Case of *Balázs vs. Hungary* of 20 October 2015, Complaint No. 15529/12.

40 | Art. 355 of the Criminal Code.

41 | Art. 356 of the Criminal Code.

to national minorities and prepares various recommendations for the government, ministries, and other administrative authorities to meet the needs of persons belonging to national minorities, especially in the fields of education, culture and media, mother tongue, and social and cultural life. It also proposes the distribution of funds spent by the state budget to support the activities of the members of national minorities.⁴²

Members of the Council are representatives of national minorities and public authorities, with at least half of the members of the Council being representatives of national minorities who were nominated by associations of members of national minorities.⁴³ It is headed by a member of the government—i.e., a minister. It is through the Council that members of national minorities realize one of their core rights, namely, the right to participate in the resolution of matters concerning the national minority. This right includes several sub-rights, including the right to active participation in cultural, social, and economic life and in public affairs, especially those concerning the national minorities to which they belong. In practice, the use of symbols of the national minority and its external presentation—for example, celebrations of various important events associated with the minority, cultural events organized by the minority, etc.—are often associated with the realization of these partial rights.

In addition to the Government Council for National Minorities, the Government Council for the Affairs of the Roma Minority was established in the Czech Republic. It is a permanent advisory body of the Czech government in the area of Roma integration. This Council approves Roma integration strategies, proposes partial measures in Roma integration, approves regular evaluations of the position of the Roma minority in the Czech Republic, proposes state subsidy policy priorities in this area, and ensures international cooperation of the Czech Republic in the area of Roma integration.⁴⁴ In this context, the question is whether it is appropriate to establish a separate body for only one national minority. Representatives of this minority group are also members of the second advisory body of the government of the Czech Republic, the aforementioned Government Council for National Minorities. Individual national minorities are fairly represented within the Government Council for National Minorities. Therefore, it is questionable whether the establishment of another separate body for only one of these minorities violates the principle of equal access to all minorities. On the other hand, we can understand the effort to provide the greatest possible cooperation and help in relation to this minority, when the ECtHR also emphasizes its specific status. For example, we can mention the well-known judgment of the ECtHR Grand Chamber 27238/95, *Chapman v. United Kingdom*, wherein

42 | Government of the Czech Republic (2009) Council for National Minorities [Online]. Available at <https://www.vlada.cz/cz/ppov/rnm/historie-a-soucasnost-rady-15074/> (Accessed: 17 May 2022).

43 | Currently, the following national minorities are represented in the Council (1 to 2 members): Belarusian, Bulgarian, Croatian, Hungarian, German, Polish, Roma, Ruthenian, Russian, Greek, Slovak, Serbian, Ukrainian, Vietnamese. Members are also representatives of selected ministries, regions or municipalities, the public defender of rights and others. For more details, see the Statute of the Government Council for National Minorities [Online]. Available at: <https://www.vlada.cz/assets/ppov/rnm/RVNM-final.pdf> (Accessed: 17 May 2022).

44 | For more details, see the Statute of the Government Council for Roma Minority Affairs [Online]. Available at: <https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/Statut-Rady-vlady-pro-zalezitosti-romske-mensiny.pdf> (Accessed: 17 May 2022).

the court emphasized that ‘special attention should be paid to the Roma population, their needs, and their way of life.’⁴⁵

The protection of minorities and their rights is implemented not only at the national level but also at the regional and local levels. A municipality in whose territorial district, according to the latest census, at least 10% of the municipality’s citizens belonging to non-Czech nationalities live, establishes a committee for national minorities if the association representing the interests of the national minority so requests.⁴⁶ At least half of the members of the committee must be members of national minorities. Regulations at the regional level are similar. According to the latest census, a region in whose territorial district at least 5% of the region’s citizens declare themselves to be of a nationality other than Czech live establishes a committee for national minorities if an association representing the interests of a national minority so requests.⁴⁷ At least half of the committee members must be members of national minorities.

If the above conditions are met, the establishment of a committee for national minorities is not an internal or organizational matter of the municipality–region–council, which the council can decide based on its discretion. Contrarily, the council is obliged to establish such a committee if the legal conditions are met. This obligation has a constitutional dimension because, among other things, it is through the committee for national minorities that members of a national minority can realize their constitutionally guaranteed rights, in particular, the right to participate in the resolution of matters concerning national and ethnic minorities, according to Article 25 of the Charter.⁴⁸ The association, which represents the interests of the national minority in this regard, is thus evidenced by the public’s subjective right to establish such a committee. In particular, committees established at the municipal level can be considered important tools for the all-round development of the national minority and for the real realization of its rights in practice (including the use of symbols and signs associated with the minority). At the local level, such a body knows best the local conditions as well as the needs of the minority, but also any problems that need to be solved.

5. Conclusion

The protection of national minorities and their status and rights are enshrined and guaranteed in the Czech Republic at the constitutional level. The lack of a legal definition of the concept of nation and nationality, as well as the relatively narrow interpretation of the concept of national minority in Czech legislation, in particular, the application of certain rights only to national minorities who ‘live for a long time and permanently on the territory of the Czech Republic’ proved to be a certain problem in this respect. This restriction has no justification nor are the criteria for its application specified in practice. *De lege*

45 | The same opinion – the judgment of the ECtHR Grand Chamber in the Case of D.H. and others against the Czech Republic of 13 November 2007, Complaint No. 57325/00.

46 | Art. 117 of Act No. 128/2000 Coll., On municipalities.

47 | Art. 78 of Act No. 129/2000 Coll., On Regions.

48 | The decision of the Supreme Administrative Court of the Czech Republic of 20 February 2018, No. 9 As 336/2017.

ferenda it would therefore be desirable to remove this legislative deficiency. It would also be desirable to consider whether the rights of members of national minorities should be granted to foreigners living in the Czech Republic for a long time—in addition to citizens of the Czech Republic. The rights of members of national minorities to use the symbols of these minorities are not explicitly enshrined in the Czech legal order. However, it can undoubtedly be subsumed as the more general right to all-round development, the development of the culture and traditions of the minority, including its outward expression.

As for the use of symbols for national minorities, there is no explicit legal regulation in the Czech Republic. Most members of national minorities in the Czech Republic claim nationality that is linked to some foreign states—Slovakia, Ukraine, Poland, etc. It is therefore obvious that these members will, in practice, mainly use the state and other national symbols of these foreign states. However, the Czech legislation does not contain legal regulations for the use of foreign state symbols. The same applies to a specific national minority, the Roma minority, which is not connected to any foreign state but has its own symbols. Czech law also does not explicitly reflect their use. In this regard, the above analysis concluded that even the Act on the Use of State Symbols of the Czech Republic cannot be applied to these situations based on analogy. Therefore, the author introduced basic rules and principles that should at least be respected. The principle of legality is primary, that is, these symbols must be used in such a way as not to violate the prohibitions or orders established by the Czech legal order—that is, the application of the rule that you can do anything that is not prohibited by law. Furthermore, this right should not be abused. Finally, the symbols of national minorities must be used in an appropriate and dignified manner, always with regard to each specific occasion. *De lege ferenda*, it would be desirable for Czech law to establish at least basic and minimum rules for the use of symbols of foreign states on the territory of the Czech Republic.

In the last part of the article, an analysis of the means of legal protection for the realization of the right to use the symbols of national minorities was carried out. The same applies here, as has already been said several times above. Legal regulation is quite austere and fragmented. Even so, protection cannot be waived, as the state—public authority—has an obligation to ensure the protection of the undisturbed exercise of this right. Legal protection is provided by constitutional law—especially in the form of a constitutional complaint—, administrative law—especially in the form of liability for misdemeanors—, and criminal law—liability for criminal offenses. Some means of protection are directly linked to the protection of the rights of national minorities, whereas others generally serve to protect the exercise of any right or freedom. A positive aspect of the protection of the rights and status of national minorities in the Czech Republic is the element of institutionalization of this protection, at the national, regional, and local levels.

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