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RULE OF LAW AND THE USE OF STATE AND MINORITY SYMBOLS IN THE MACEDONIAN AND SERBIAN CASE

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Abstract: *The rule of law implies that all individuals, as subjects of law, are equal before the law in terms of their rights and obligations, as well as in the limitations imposed on certain forms of behavior. This equality and these limitations should not discriminate on any national, religious, gender, or official basis. The subject of this paper is a comparative analysis of the rule of law in North Macedonia and Serbia, conducted through an examination of the implementation of constitutional and legal regulations regarding the use of state symbols and community symbols. The aim of the research is to determine whether the application of these principles is in accordance with the rule of law. Practice shows that the rule of law is not always fully implemented in either case. The use of official authority and the free will of individuals can be regarded as among the causes of non-compliance with the rule of law. In the conclusion, two assessments are offered: one concerning the adequacy of the existing regulation and the other proposing possible future solutions that would be in accordance with the rule of law.*

Keywords: *rule of law, state symbols, minority symbols, North Macedonia, Serbia*

INTRODUCTION

The elements of state identity encompass various aspects, such as geographical location, the state's name and symbols, including the anthem, coat of arms, and flag. Another key component is the population, whose language and religion significantly contribute to shaping state identity. While religion typically remains separate from the state and does not serve as an element of state identification, the language spoken by the people often becomes the official language of the country, used both at the national and international level, thus becoming one of the foremost markers of identification.

Regarding symbols, state emblems like the flag, coat of arms, and anthem hold significance for both national and international representation. At the national level, flags of cities, municipalities, regions, federal units, military divisions, as well as flags representing minority groups, are also used. The flag, along with language, usually serves as a crucial element of ethnic identification for individuals belonging to a particular ethnic group. There are cases in which the ethnic affiliation of minority groups differs from that of the majority, whose identification symbols are the same as the state symbols.

Considering the diversity of the population living in North Macedonia and Serbia, these two societies are examples of multicultural

societies in which the law guarantees rights related to state symbols, as well as rights to cultural expression and the use of minority symbols.

According to the latest Census data from 2022 (Statistical Office of the Republic of Serbia, 2022), the total population of Serbia is 6,647,003, divided by ethnicity into: Serbs 80.64%, Hungarians 2.77%, Bosniaks 2.31%, Roma 1.98%, Albanians 0.93%, Slovaks 0.63%, Croats 0.59%, Yugoslavs 0.41%, Romanians 0.35%, Vlachs 0.32%, Montenegrins 0.30%, Macedonians 0.22%, ethnic Muslims 0.20%, Bulgarians 0.19%, Bunjevci 0.17%, Rusyns 0.17%, Russians 0.16%, Gorani 0.12%, Ukrainians 0.06%, Germans 0.04%, Slovenians 0.04%, others 0.33%, regional affiliation 0.18%, undeclared 2.05%, and unknown 4.84%.

According to the latest Census data from 2021 (State Statistical Office, 2022), 1,836,713 of the population in the Republic of North Macedonia are resident citizens and 260,606 are non-resident citizens. The total enumerated population is 2,097,319, of which 54.21% declared themselves as Macedonians (58.44% of resident population and 24.45% of non-resident), 29.52% as Albanians (24.30% of resident population and 66.36% of non-resident), 3.98% as Turks (3.86% of resident population and 4.79% of non-resident), 2.34% as Roma (2.53% of resident population and 1.02% of non-resident), 1.18% as Serbs (1.30% of resident population and 0.35% of non-resident), 0.87% as Bosniaks (0.87% of resident population and 0.81% of non-resident), 0.44% as Vlachs (0.47% of resident population and 0.19% of non-resident), 0.98% as members of other ethnic communities (non-specified), 0.02% as non-stated, and 0.03% as unknown.

Given the ethnic diversity in both countries, this discussion focuses on a review of the national symbols of Serbia and North Macedonia, along with an examination of the legal framework governing the symbols of minority groups residing within these states.

1. CONSTITUTIVE ACTS AND LEGAL NORMS REGULATING SYMBOLS IN THE SERBIAN AND MACEDONIAN CASES

The Republic of Serbia and the Republic of North Macedonia share a common 47-year history as parts of the Yugoslav Federation, which was established in 1943 during the Second World War. The Anti-Fascist Council for the National Liberation of Yugoslavia (AVNOJ) was a deliberative and legislative body established in November 1942 by the armed resistance movement, led by the Communist Party of Yugoslavia and the partisan leader Tito. During the second session of AVNOJ, held in Jajce on November 29–30, 1943, it declared itself the supreme legislative body in the country and the representative of Yugoslav sovereignty. It affirmed a commitment to forming a democratic federation and recognized the equal status of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia in the future federation.

On August 2, 1944, the First Anti-Fascist Assembly for the National Liberation of Macedonia (ASNOM) convened, marking the establishment of ASNOM as the supreme legislative and executive representative body of Macedonia and the Macedonian state. It was declared that the Macedonian state would be constituted as an equal federal unit within the newly formed Democratic Federal Yugoslavia.

The constitutive peoples of the Yugoslav states were Serbs, Croats, Slovenes, Macedonians, and Montenegrins (later joined by ethnic Muslims in 1974). Alongside these, other ethnicities, nationalities, and ethnic groups—such as Albanians, Hungarians, Romani, Turks, Slovaks, Romanians, Aromanians, Bulgarians, Ruthenians, Czechs, Italians, Rusyns, Germans, Russians, Jews, Poles, Greeks, Megleno-Romanians, and Istro-Romanians—were guided by the slogan of “brotherhood and unity”.

The first federal constitution of Yugoslavia was adopted in 1946, with its fundamental principles outlined in the first five constitutional articles (<https://www.arhivyu.rs>, 1946).

These principles declared that the Federal People's Republic of Yugoslavia was a federal people's republic, a republican state, and a community of equal peoples based on the right to self-determination, including the right to secession and free expression of their will to live in a federal state (Art. 1). Yugoslavia consisted of the People's Republic of Serbia (including the Autonomous Province of Vojvodina and the Autonomous Region of Kosovo and Metohija), the People's Republic of Croatia, the People's Republic of Slovenia, the People's Republic of Bosnia and Herzegovina, the People's Republic of Macedonia, and the People's Republic of Montenegro (Art. 2). The other three fundamental principles outlined the state coat of arms¹, the state flag (a tricolor of blue, white, and red placed horizontally, with a red five-pointed star in the middle), and Belgrade as the capital city.

In 1963, the Yugoslav Parliament approved the second constitution, renaming the country the Socialist Federal Republic of Yugoslavia (<http://srpskaenciklopedija.org/>, 1963). The constitution was amended in 1968 to recognize the Muslim national group of Serbo-Croatian-speaking Muslims. Amendments VII–XIX, adopted on December 26, 1968, also renamed the Autonomous Province of Kosovo and Metohija as the Socialist Autonomous Province of Kosovo. The provinces were granted the right to adopt their own constitutional laws (Todorović, 2022).

However, the constitution of 1963 was replaced 11 years later, when the parliament approved a new constitution in 1974 (<https://www.worldstatesmen.org/>). One significant difference between the second and third constitutions was the strengthening of the position of the autonomous provinces and the introduction of self-management. According to the new constitution, the Socialist Federal Republic of Yugoslavia was a federal state in the form of a state community of voluntarily united nations and their Socialist Republics

and the Socialist Autonomous Provinces of Vojvodina and Kosovo, which were constituent parts of the Socialist Republic of Serbia, based on the power and self-management of the working class and all working people. The Socialist Federal Republic of Yugoslavia consisted of the Socialist Republic of Bosnia and Herzegovina, the Socialist Republic of Croatia, the Socialist Republic of Macedonia, the Socialist Republic of Montenegro, the Socialist Republic of Slovenia, the Socialist Republic of Serbia, the Socialist Autonomous Province of Vojvodina, and the Socialist Autonomous Province of Kosovo (Art. 2). Regarding state symbols, there were no changes, except for the number of torches in the coat of arms, which increased to six in 1974, set obliquely with flames merging into a single flame.

Additionally, all three federal constitutions stipulated that each people's republic had its own constitution, allowing it to regulate its internal organization independently. These constitutions had to reflect the specific characteristics of the republic and comply with the Federal Constitution. On this basis, Macedonia and Serbia adopted their own constitutions.

1.1. MACEDONIAN CONSTITUTIVE ACTS AND LEGAL NORMS FOR SYMBOLS

In the first Constitution of 1946, the People's Republic of Macedonia was defined as a nation-state with a republican form of government. It was united with the other Yugoslav peoples and their national republics² in a common federal state—the Federal People's Republic of Yugoslavia. In the Constitution of 1963, the state was renamed the Socialist Republic of Macedonia, and in the Constitution of 1974, Albanian and Turkish nationalities were, for the first time, explicitly mentioned as a constituent part of the state. According to this constitution, the Socialist Republic of Macedonia was described as a national state of the Macedonian people and a state of the Albanian and Turkish nationalities living within it.

¹ A field encircled by ears of corn tied with a ribbon on which is inscribed the date 29-XI-1943. Between the tops of the ears is a five-pointed star. In the center of the field five torches are laid obliquely, their several flames merging into one single flame.

² People's Republic of Serbia, People's Republic of Montenegro, People's Republic of Bosnia and Herzegovina, People's Republic of Croatia and People's Republic of Slovenia

Regarding the symbols of the Macedonian state, the flag was mentioned in the first constitutive acts of the ASNOM Presidium. In the Decision approving the issuance of a proclamation to the Macedonian people on the occasion of the capitulation of Bulgaria, it was stated that “the red Macedonian flag is raised, and Macedonian people’s democratic authority is established—the sovereign authority of free Macedonia in democratic and federative Yugoslavia.”

In the first adopted constitution in 1946 (J.П. Службен весник, 1947), Article 4 stipulated that the state flag of the People’s Republic of Macedonia was red with a five-pointed star. The star was red with a golden (yellow) border and had a regular five-pointed shape. In the second constitution (J.П. Службен весник, 1963) and third constitution (J.П. Службен весник, 1974), the words “state flag of the People’s Republic of Macedonia” were replaced with “the flag of the Socialist Republic of Macedonia”. In the first two constitutions, the use of any other flag (of national minorities or nationalities) besides the state flag was not mentioned. For the first time, a provision regarding the flags of nationalities appeared in the Constitution of 1974 (Art. 178), which stipulated that nationalities had the right to use the flag of their nationality, and members of ethnic groups had the right to use the flag of their ethnic group (Art. 222).

In 1989, the Constitution was amended by Amendment LVI (J.П. Службен весник, 1989), which stipulated that the Socialist Republic of Macedonia was a national state of the Macedonian people, founded on the sovereignty of the people and on the power and self-management of the working class and all workers, and a socialist self-managing democratic community of workers and citizens, of the Macedonian people and of the other nations and ethnicities living within it on an equal basis. With this amendment, the words “and a state of the Albanian and Turkish nationality within it” were removed from paragraph 2 of Article 1 of the Preamble; paragraph 1 of Article 1 was replaced; Article 2 was

abolished; and the words “members of other nations” were added to Articles 3 and 4 of the Constitution of the SRM.

Two years later, a referendum on the independence of Macedonia was held in September 1991. In November of the same year, the first Constitution of the Republic of Macedonia as an independent state was adopted, constituting it as a sovereign, independent, democratic, and social state (J.П. Службен весник на РМ, 1991). According to the Preamble of the Constitution, the Republic of Macedonia was constituted as a national state of the Macedonian people, ensuring full civic equality and permanent coexistence of the Macedonian people with Albanians, Turks, Roma, Vlachs, and other nationalities living in it.

This Preamble has been amended twice: in 2001 by Amendment IV and in 2019 by Amendment XXXIV. According to Amendment IV, the citizens of the Republic of Macedonia include the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romani people, the Bosniak people, and others, who, in accordance with the tradition of the Krushevo Republic, the decisions of ASNOM, and the Referendum of September 8, 1991, decided to establish the Republic of Macedonia as an independent and sovereign state. Amendment XXXIV deleted the words “as well as citizens living within its borders who are” and “have decided to”, replaced the words “the decisions of ASNOM” with “the legal decisions cited in the Proclamation of the First Session of ASNOM to the Macedonian people about the said session of ASNOM”, and added the words “which expressed the will to create an independent, sovereign state and the Ohrid Framework Agreement” after the word “year” (www.sobranie.mk, 2019).

1.1.1. INTERNATIONAL AND INTERNAL ISSUES RELATED TO FLAGS

The 1991 Constitution stipulates that state sovereignty is indivisible, inalienable, and non-transferable (Art. 1); that sovereignty

emanates from and belongs to the citizens (Art. 2); and that the territory of the state is indivisible and inalienable (Art. 3). Regarding the other constitutive elements of the state, the Constitution provides that the state symbols are the coat of arms, flag, and anthem, and that a law shall provide an accurate description of these symbols and regulate their use (Art. 4). In this Constitution, the term “nationalities” is used for minorities, and there are no provisions regarding other flags, unlike the Constitution of 1974.

The vote on the first Constitution of independent Macedonia was not supported by the Albanian parties PDP–NDP, due to several demands raised during parliamentary debates. One of the issues discussed was the use of national flags. Namely, the PDP demanded that the right to use national symbols be included in the Constitution, explaining that the flag for which a constitutional solution was sought would not be treated as the flag of the Albanian state. However, this demand did not become part of the constitutional text. Long debates also arose during the selection of state symbols that had to be legally regulated and adopted (Докмановиќ, 2021, p. 169).

Regarding the determination of the new symbols of independent Macedonia, a parliamentary commission was formed in May 1992 with the task of selecting state symbols. As to the flag, the commission voted with 18 votes in favor of a red flag with a golden sun, in contrast to another proposal—a red and white flag without a symbol—which received 8 votes. A golden-yellow sun with 16 rays, known as the Star or Sun of Vergina (Kutlesh), a symbol of the ancient Macedonian rulers, was accepted. This symbol, among other things, was found on the golden larnax containing the remains of the ruler Philip II, discovered in the Greek part of Macedonia in the 1970s (Докмановиќ, 2021, p. 193).

After the acceptance of this proposal, on August 11, the Assembly of the Republic of Macedonia passed the Laws on the Flag and Anthem of the Republic of Macedonia, with a two-thirds majority (88 votes) (Ј.П. Службен

весник на РМ, 1992). However, this choice of flag was not supported by the representatives of the PDP–NDP, who did not attend the session, nor by Greece.

The new Greek Foreign Minister, Michalis Papakonstantinou, declared on August 13, 1992: “I am Macedonian, and I am particularly affected by the latest provocation of Gligorov and the adoption of the Sun of Vergina as the symbol on the flag of Skopje.” He added that foreign embassies in Athens would be informed about this issue, and that, through Greek embassies abroad, the entire world would be informed (Докмановиќ, 2021, p. 193).

For this reason, on April 8, 1993, when Macedonia was admitted as a member of the United Nations, its official name and flag were not accepted. Membership in the UN was granted under the provisional reference “the Former Yugoslav Republic of Macedonia” (FYROM), while the official flag was placed in front of the UN building only on October 22, 1995, after its amendment. Following the signing of the Interim Accord between Macedonia and Greece on September 13, 1995, in New York, the Macedonian Law on the Flag was adopted on October 5, 1995 (Ј.П. Службен весник на РМ, 1995), according to which the official flag is red with a yellow sun and eight sunbeams³.

Once the international issue had been resolved, a new internal problem emerged. In July 1997, following the display of Albanian flags in front of municipal buildings in Gostivar and Tetovo—which resulted in injuries and one fatality—the Law on the Use of Flags by Which the Members of Nationalities in the Republic of Macedonia Express Their Identity and National Characteristics was adopted. However, the Decree on the Proclamation of

³ Art.2 The flag of the Republic of Macedonia is red with a golden-yellow sun. The sun has eight sun signs that extend from the sun disk extending to the edges of the flag. The sun's rays cross diagonally, horizontally and vertically. The diameter of the sun's disk is one-seventh of the length of the flag. The center of the sun coincides with the point where the diagonals of the flag intersect. The ratio of the width to the length of the flag is one to two. The use of the flag of Macedonia is regulated by the Law on the use of the coat of arms, flag, and anthem of the Republic of Macedonia (Ј.П. Службен Весник на РМ, 1997).

this Law and the Law itself were declared invalid after a procedure before the Constitutional Court to assess constitutionality. The procedure was initiated by several political parties⁴. In its decision of November 18, 1998 (Decision No. 141/97 and No. 146/97), the Court held, among other things, that Article 48 of the Constitution—which guarantees the right of members of nationalities to express, foster, and develop their identity and national characteristics—relates to the cultivation, expression, and development of their customs, culture, language, and traditions through cultural and artistic institutions, scientific and other associations. This does not imply that the rights to state symbols of the respective countries, such as coats of arms, flags, and anthems, are encompassed within this group. Accordingly, the constitutional guarantee of protection of the ethnic, cultural, linguistic, and religious identity of members of nationalities cannot be expressed by providing the possibility of or adopting special laws on the use of flags.

Four years later, in 2001, the largest constitutional revision was carried out through the adoption of 15 amendments derived from the Ohrid Framework Agreement (OFA) (Organization for Security and Co-operation in Europe, 2001).

According to point 7 of OFA, entitled “Expression of Identity”, with regard to emblems, alongside the emblem of the Republic of Macedonia, local authorities shall be free to place, in front of local public buildings, emblems marking the identity of the community in the majority in the municipality, respecting international rules and customs. Pursuant to this provision, the Law on the Use of Flags of the Communities in the Republic of Macedonia was adopted in 2005 (J.П. Службен весник, 2005).

According to Article 2 of that Law, communities in the Republic of Macedonia have the right to use a flag chosen and used by them as a means of expressing their identity and characteristics. Article 3 provides that communities

in the Republic of Macedonia may use the flag that expresses their identity and characteristics in public, official, and private life, in the manner determined by law. The council of the unit of local self-government decides on the use of the flag in public and official life. Article 8 regulates the manner of displaying the flags of communities, while Article 8a stipulates that the flag of the Republic of Macedonia is to be displayed alongside other flags in accordance with the law and must be at least one-third larger than the other flags.

Article 5 determines the occasions on which the flags of communities are displayed in front of, and in, the buildings of state authorities, public services and legal entities established by the state, public services and legal entities established by the units of local self-government, as well as on streets, squares, and other infrastructure facilities. In 2011, the Law on Amendments and Supplements to the Law on the Use of Flags of the Communities in the Republic of Macedonia was adopted (J.П. Службен Весник, 2011). According to Article 4 of this Law, in units of local self-government where citizens belonging to a particular community constitute more than 50% of the population, the flag of the Republic of Macedonia and the flag of that community are permanently displayed in front of and in the buildings of the local self-government authorities. The council of the unit of local self-government decides on the use of the flag in public and official life where members of a community constitute more than 50% of the population.

In these units of local self-government, if the flag of a community is displayed, the flag of Macedonia must also be displayed at multilateral events, competitions, and other gatherings, as well as during celebrations, ceremonies, and other public cultural, sports, and similar events of importance for the unit of local self-government. The Law further stipulates that members of communities in Macedonia have the right to use the flag that expresses their identity and characteristics in private life and during cultural, sports, and other events organized by members of the communities.

⁴ Initiative for assessment was initiated by VMRO-DPMNE, the Liberal Democratic Party, the Democratic Party of Macedonia, the League of Democrats, the Macedonian People's Party, VMRO.

According to the Law, the flag of Macedonia, whenever displayed together with other flags of communities, must be at least one-third larger than the other flags. Under this Law, the Albanian, Serbian, Turkish, and Bosniak communities in Macedonia use the national flags of their respective kin-states, while the Roma and Vlachs, who do not have a kin-state, use flags that they have chosen to represent them.

1.2. SERBIAN CONSTITUTIVE ACTS AND LEGAL NORMS FOR SYMBOLS

The first Serbian Constitution, known as the Sretenje Constitution, was adopted in 1835, marking the establishment of modern Serbian statehood. Considered “too liberal”, it was the shortest-lived Serbian constitution, in force for only 55 days—from February 15 to April 11, 1835. This Constitution has been followed by twelve subsequent constitutions or constitutional texts (1838, 1869, 1888/1889, 1901, 1903, 1921, 1931, 1947, 1963, 1974, 1990, and 2006) (Ђојанић, 2016)⁵.

The constitutions of 1947, 1963, 1974, and 1990 were adopted while Serbia was part of

the People’s/Socialist Federal Republic of Yugoslavia. For the purpose of this paper, these constitutions and the last one, adopted in 2006, will be taken into consideration for the analysis and comparison with the Macedonian constitutions (Ђовановић, 2016).

The ninth Constitution, known as the Constitution of the People’s Republic of Serbia of 1947, was the first communist constitution defining Serbia as a national state with a republican form of government. It emphasized that the Serbian people, on the basis of the principle of equality, united with the other peoples of Yugoslavia and their republics in the SFRY. The tenth Constitution, adopted in 1963 and known as the Constitution of the Socialist Republic of Serbia, defined Serbia as a state of a socialist democratic community of the people of Serbia, based on the power of the working people and self-management. According to this Constitution, Serbia contained two autonomous provinces within its framework, Vojvodina and Kosovo and Metohija (in 1968, the term “Metohija” was dropped and the term “Socialist” was added).

The eleventh Constitution, known as the Constitution of the Socialist Republic of Serbia, was in force between 1974 and 1990 and represented the pinnacle of the system of self-management. Under this Constitution, Serbia included two autonomous provinces—the Socialist Autonomous Province (SAP) of Kosovo and the Socialist Autonomous Province (SAP) of Vojvodina—with their own constitutions and elements of statehood (Kuci, 2021). This meant that the two SAPs had an advanced legal status, being constituent parts of the Federation and defined as social, political, and self-governing communities of working people and citizens, in which the ethnic and political rights of all nations and nationalities living in their territory were respected. They were defined as having legal and political links with the Socialist Republic of Serbia and the SFRY.

The twelfth Constitution, adopted in 1990 (<https://www.worldstatesmen.org>, 1995) and known as the Constitution of the Republic of Serbia, defined Serbia as a constitutional

⁵ The official name of second Constitution was Sultan’s Hatt- I-Sharif, known as the Turkish Constitution, was adopted outside the borders of Serbia, abolishing the absolutism of Prince Miloš and establishing the Council as an exponent of Turkish interests in Serbia. It was effective from 1838 to 1869. The third Constitution for the Principality of Serbia was adopted in 1861 introducing a representative system of government for the first time in Serbia and was effective in the period between 1869-1888 and 1894-1901, known as the Regency, Spiritual, or Trinity Constitution. The fourth Constitution for the Kingdom of Serbia, known as the Radical Constitution, was effective in the period between 1888-1894 and 1903-1918 (with amendments from 1903), regarded as the most democratic Serbian constitution and one of the most advanced civil constitutions in Europe at that time. It introduced the principles of constitutional and parliamentary monarchy in Serbia and provided guarantees for the personal and political rights of citizens. The fifth Constitution of the Kingdom of Serbia, known as the April or Imposed Constitution, was effective between 1901-1903 and expressed the autocratic tendencies of King Alexander Obrenovic. It introduced a bicameral system, the Senate and the Assembly, for the first time. The sixth Serbian Constitution of the Kingdom of Serbia was effective between 1903-1918, represented a partial modification and supplement to the 1888 Constitution. The seventh Constitution is the Constitution of the Kingdom of Serbs, Croats, and Slovenes, known as Vidovdan Constitution. It was adopted in 1921 and prescribed a unitary and centralistic system, with a monarchy under the Karadjordjevic dynasty. The eighth Constitution of the Kingdom of Yugoslavia, known as the September or Imposed Constitution, was effective in the period between 1931-1945, defining the Kingdom of Yugoslavia as a constitutional, but not a parliamentary monarchy.

and parliamentary republic and proclaimed the principle of separation of powers and a multi-party system. The two SAPs lost their attributes of statehood and became territorial autonomies (the province of Kosovo was renamed the Province of Kosovo and Metohija). In January 2002, the Serbian parliament approved the restoration of Vojvodina's autonomy.

The current Serbian Constitution was adopted in 2006 (constitute.org, 2006), following the final breakup of the Yugoslav federation. From 1992 to 2006, Serbia had been part of a federation with Montenegro, regulated by two federal constitutions adopted in 1992 and 2003⁶. After a referendum held in Montenegro in June 2006, Montenegro declared independence, leading to the dissolution of the State Union of Serbia and Montenegro.

The new Serbian Constitution was adopted in October 2006. This constitution—the first of Serbia as an independent state after 103 years—designates Serbia as the state of the Serbian people and of all citizens living in it, based on the rule of law, social justice, civil democracy, human and minority rights and freedoms, and a commitment to European principles and values. It formalizes that Vojvodina and Kosovo and Metohija, as autonomous provinces, have certain extended financial powers, determining their position in the Preamble, while the details of their autonomy are regulated by law⁷. According to Article 12, state authority is limited by the right of citizens to provincial autonomy and local self-government, which is subject only to supervision of constitutionality

⁶ The constitution of 1992 established that the Federal Republic of Yugoslavia consists of the Republic of Serbia and the Republic of Montenegro as member republics, based on the equality of citizens and the equality of member republics. In 2003 was adopted the Constitutional charter state community of Serbia and Montenegro. According to article 2 of the Charter, Serbia and Montenegro are founded on the equality of the two member states, the state of Serbia and the state of Montenegro.

⁷ Considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia, Considering also that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations, the citizens of Serbia adopt Constitution of the Republic of Serbia.

and legality. Article 182 provides that the autonomous provinces—the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija—are autonomous territorial communities in which citizens exercise the right to provincial autonomy⁸.

In Articles 75–81 of the Constitution, additional individual and collective rights are guaranteed to members of national minorities, beyond those guaranteed to all citizens⁹.

Two years after the adoption of the Constitution, in February 2008, Kosovo declared independence from Serbia, proclaiming itself the Republic of Kosovo. This declaration remains contested by the Serbian state, and the new “country” is not recognized by all states in the world.

Regarding Vojvodina, in 2009 the Statute of the Autonomous Province of Vojvodina was adopted at the provincial level. According to its basic provisions, Vojvodina is recognized as

⁸ The substantial autonomy of the Autonomous province of Kosovo and Metohija shall be regulated by the special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution. New autonomous provinces may be established, and already established ones may be revoked or merged following the proceedings envisaged for amending the Constitution. The proposal to establish new, or revoke or merge the existing autonomous provinces shall be established by citizens in a referendum, in accordance with the Law. Territory of autonomous provinces and the terms under which borders between autonomous provinces may be altered shall be regulated by the Law. Territory of autonomous provinces may not be altered without the consent of its citizens given in a referendum, in accordance with the Law.

⁹ Equality before the law is guaranteed, discrimination is prohibited, and the possibility of introducing special regulations and temporary measures to achieve full equality is provided (Article 76). The right to participate in the management of public affairs and to hold public office under the same conditions as other citizens is guaranteed, with the stipulated obligation to take into account the national composition of the population and the corresponding representation of members of national minorities when employing in state bodies, public services, bodies of autonomous provinces, and local self-government units (Article 77). The prohibition of forced assimilation is prescribed (Article 78), rights to preserve specificities are guaranteed in accordance with the law (Article 79), the right to associate and cooperate with compatriots is provided (Article 80), and the state is obligated to encourage the spirit of tolerance and intercultural dialogue and to take effective measures to promote mutual respect, understanding, and cooperation among all people living on its territory, regardless of their ethnic, cultural, linguistic, or religious identity (Article 81). Article 97, paragraph 2, of the Constitution, among other things, stipulates that the Republic of Serbia regulates and ensures the realization and protection of freedoms and rights of citizens.

an autonomous province of citizens living in it, within the territory of Serbia and as an integral part of it. It represents a region in which multiculturalism, multiconfessionalism, and other European principles and values are traditionally nurtured (Art. 1).

Five years later, at a session held on May 22, 2014, the Autonomous Province of Vojvodina adopted a new Statute (<https://www.skupstina-vojvodine.gov.rs>, 2014). According to this Statute, Vojvodina is defined as an autonomous territorial community and an integral part of the Republic of Serbia in which citizens exercise the right to provincial autonomy in accordance with the Constitution and the law. Citizens of AP Vojvodina are guaranteed equal rights, irrespective of race, gender, national origin, social background, birth, religion, political or other beliefs, property, culture, language, age, or mental or physical disability, in accordance with the Constitution and the law (Art. 6). Within its rights and responsibilities, AP Vojvodina contributes to the realization of full equality for Hungarians, Slovaks, Croats, Montenegrins, Romanians, Roma, Bunjevci, Rusyns, Macedonians, and members of other numerically smaller national minorities/national communities living there, along with members of the Serbian people.

1.2.1. STATE SYMBOLS AND NATIONAL SYMBOLS OF SERBIA

According to Article 7 of the 2006 Serbian Constitution, the Republic of Serbia has a coat of arms, flag, and national anthem. The coat of arms of the Republic of Serbia (a double-headed white eagle) is used in the form of a large and a small coat of arms. The flag of the Republic of Serbia (red–blue–white) exists and is used as the national flag and as the state flag. The appearance and use of the coat of arms, flag, and national anthem are regulated by law.

This tricolor flag was also used during the Second World War, but after the victory of the communist partisan movement and the creation of the SFRY, the coat of arms on the flag was replaced by a red five-pointed star. This remained in force until 1991, when the star was

removed. The double-headed eagle on the tricolor was restored in 2004.

The first Law on the Appearance and Use of the Coat of Arms, Flag and Anthem of the Republic of Serbia was adopted in 2009 and amended in 2023 (<https://pravno-informacioni-sistem.rs>, 2023). Section 3, titled “State and National Flag”, regulates the use of the Serbian flag as the state and national flag.

According to Article 18, the state flag is a horizontal tricolor with fields of equal height, from top to bottom: red, blue, and white, with the small coat of arms¹⁰ placed above all three fields and shifted toward the hoist by one-seventh of the total length of the flag. The state flag is flown continuously at the main entrances to the buildings of state organs (except the National Assembly) and in their official premises; at the main entrance to the building of the National Assembly during sessions and on the national holiday of the Republic of Serbia; and at the main entrance to the buildings of organs of provincial autonomy, local self-government, and public services on the national holiday of the Republic of Serbia. If several state organs have official premises in the same building, only one flag is flown (Art. 20).

According to Article 19, the national flag is a horizontal tricolor with fields of equal height, from top to bottom: red, blue, and white. The national flag is flown continuously at the main entrance to the building of the National Assembly and at the main entrances to the buildings of organs of provincial autonomy, local self-government, and public services. If several such organs have official premises in the same building, only one flag is flown. The national flag is displayed at polling stations on the day of elections for organs of provincial autonomy and local self-government. If elections for state organs and organs of provincial

¹⁰ The Small Coat of Arms is a red shield with a two-headed silver eagle between two golden crowns at the bottom, with the same kind of tongues and legs, with a red shield on the chest with a silver cross between four of the same kind of eyes turned by the edges towards the vertical axis of the cross. The shield is crowned with a golden crown (art. 12). The coat of arms of the Republic of Serbia is the coat of arms established by the Law on the Coat of Arms of the Kingdom of Serbia of June 16, 1882, and is used as the Great Coat of Arms and as the Small Coat of Arms (art. 10).

autonomy or local self-government are held simultaneously, the state flag is displayed at polling stations (Art. 28).

1.2.2. SYMBOLS OF VOJVODINA AND TRADITIONAL SYMBOLS

Regarding the symbols of AP Vojvodina, Article 9 of the Statute of AP Vojvodina determines its symbols-the flag and the coat of arms-and the manner of their use, on the basis of the Constitution. The flag of AP Vojvodina consists of three colors-red, blue, and white-arranged horizontally in proportions of 1:8:1. In the center of the blue field, three yellow stars are arranged in a circle. The coat of arms of AP Vojvodina is a shield composed of three fields, two vertical and one horizontal, on which the historical coats of arms of Bačka, Banat, and Srem are placed from left to right¹¹.

The same Article explains the traditional symbols of AP Vojvodina¹². A provincial assembly decision on the appearance and use of symbols and traditional symbols of AP Vojvodina regulates the detailed appearance and use of these symbols (<https://www.skupstinavojvodine.gov.rs/>, 2016). The detailed manner of use is further regulated by the Instruction on the Detailed Regulation of the Use of Symbols of AP Vojvodina. The flag and the traditional flag of AP Vojvodina are displayed alongside the flag of the Republic of Serbia whenever it is required by law or other regulations to display the flag of the Republic of Serbia, with the flag of AP Vojvodina placed to the right of the Serbian flag.

1.2.3. SYMBOLS OF NATIONAL MINORITIES IN SERBIA

¹¹ The Small Coat of Arms is a red shield with a two-headed silver eagle between two golden crowns at the bottom, with the same kind of tongues and legs, with a red shield on the chest with a silver cross between four of the same kind of eyes turned by the edges towards the vertical axis of the cross. The shield is crowned with a golden crown (art. 12). The coat of arms of the Republic of Serbia is the coat of arms established by the Law on the Coat of Arms of the Kingdom of Serbia of June 16, 1882, and is used as the Great Coat of Arms and as the Small Coat of Arms (art. 10).

¹² The flag of AP Vojvodina is a traditional tricolor with horizontal fields of equal height in red, blue, and white, from top to bottom. The ratio of the flag is 3:2 (length to height). The coat of arms of AP Vojvodina is a traditional coat of arms from 1848.

According to Article 16 of the Law on the Protection of Rights and Freedoms of National Minorities of 2018, members of national minorities have the right to choose their national symbols and signs (<https://ravnopravnost.gov.rs>, 2018). Under this Law, national symbols and signs may not be identical to the symbols and signs of other states. National councils may propose national symbols, signs, and holidays of national minorities.

Alongside the symbols and signs of a national minority, when marking a public holiday of the Republic of Serbia and a recognized holiday of the national minority, the state flag of the Republic of Serbia must also be displayed, as well as the small coat of arms of the Republic of Serbia. At the entrance to the official premises of a national council, symbols of the national minority may be displayed throughout the year, along with the state symbols of the Republic of Serbia.

According to the Law on the Appearance and Use of the Coat of Arms, Flag and Anthem of the Republic of Serbia, Serbian national symbols represent the state and express belonging to Serbia (<https://www.paragraf.rs>, 2023). They may be used only in the forms and with the content specified by the Constitution and related laws (Art. 2). The Law further provides that when the Serbian coat of arms or flag is displayed alongside other domestic or foreign symbols, it must be given a place of honor (Art. 3). It also stipulates that the coat of arms or flag of a foreign state may be displayed in Serbia only together with the Serbian coat of arms or flag, unless otherwise provided by an international agreement ratified by the Republic of Serbia (Art. 8).

According to Serbian law, the National Council of the Hungarian National Minority in Serbia has chosen the official tricolor flag of Hungary (red–white–green) with the coat of arms in the middle¹³. The Bulgarian national minority currently uses a tricolor (white–green–red) with the coat of arms in the middle,

¹³ This flag was not used in territory of Hungary was informal for a period, and later became the formal flag of the Kingdom of Hungary within the Austro-Hungarian Empire, and after 1919, it became the state flag of Hungary under the dictatorship of Miklós Horthy.

featuring a crowned lion. The lion bears a smaller shield on its chest depicting a golden lily and a black eagle. Croats and Slovaks introduced minor changes to their flags, which are otherwise identical to the national flags of their kin-states. Croats removed the crown above the coat of arms from the Croatian flag, while Slovaks changed the white border of the Slovak coat of arms on the flag to gold. The national council of the Albanian minority in Serbia decided in 2012 that their flag should be identical to the flag of Albania (Slobodna reč, 2022).

2. EXAMPLES OF NON-COMPLIANCE WITH LEGAL NORMS REGARDING THE USE OF FLAGS

Instances of violations of laws related to flags have occurred in both countries. Some examples are outlined below.

In August 2023, during the visit of the Macedonian and Serbian presidents to Vranje, there was an irregular and unlawful use of the Serbian flag. Flags positioned at the entrance to the city were mistakenly hung upside down. Similarly, in September 2020, an 18-meter mast bearing the flag of Serbia was placed at the entrance to Vranjska Banja, but the flag had incorrect proportions—it was nine meters long, and the small coat of arms was placed in the middle of the flag instead of being shifted toward the hoist (Slobodna reč, 2023).

In Vojvodina, two decisions were adopted regarding the use of symbols: one on the coat of arms in 2002 and another on the flag in 2004. These decisions remained in effect even after the adoption of the 2006 Serbian Constitution and the Statute of the Autonomous Province of Vojvodina in 2008. Interestingly, the 2008 Statute did not introduce or describe the symbols, despite being enacted after the Constitution. However, in 2009, through a form of legal reclassification, the unconstitutional decisions of 2002 and 2004 were transformed into “provincial assembly decisions” (Orlović, 2016).

The new Statute introduced in 2014, in line with constitutional norms, explicitly introduced and described the symbols of AP Vojvodina in Article 9. It also stipulated that certain issues related to the appearance and use of symbols and traditional symbols shall be regulated by a provincial assembly decision. Two years later, in September 2016, a decision was adopted regarding the parallel use and application of the flag and coat of arms of AP Vojvodina and its traditional flag and coat of arms. Although the deadline for implementation was April 2017, the first notice was issued only on August 31, 2017, and by December of the same year, 45 municipalities had not fully adapted to the new regulations. None of them consistently implemented the decision on the use of AP Vojvodina symbols (<https://vojvodjanskevesti.rs/>, 2017).

Regarding the flags of minorities living in Serbia, there is an example of a violation of Article 49(3) of the Law on National Minorities by the president of the municipality of Preševo. This violation occurred in June 2023, when the Albanian flag was displayed in a public place contrary to the Law. The former president of the National Council, Ragmi Mustafi, referred to Article 79 of the Constitution in his statement to Al Jazeera Balkans but failed to take into account the Law on the Protection of the Rights and Freedoms of National Minorities, which stipulates that minority symbols and signs may not be identical to the symbols and signs of other states (Slobodna reč, 2022).

On November 28, 2023, in municipalities in Serbia with a majority Albanian population, Albanian flags were once again prominently displayed to mark Albanian Flag Day. In Bujanovac, the Albanian flag was positioned alongside the flags of the European Union and the state flag of Serbia. Similarly, in Preševo, the Albanian flag was displayed on the building of the National Council of Albanians. As a consequence of the use of the Albanian flag, the police have consistently filed misdemeanor charges against municipal officials, presidents of the National Council of Albanians, public officials, and directors of public institutions.

They have been fined for violations under Article 41(1) (3) of the Law on the Appearance and Use of the Coat of Arms, Flag and Anthem of the Republic of Serbia. Despite these legal repercussions, Albanians have remained steadfast in their refusal to modify their national symbols in any way, invoking the Serbian Constitution as guaranteeing their right to use their own symbols (Lazić, 2021).

There are also cases in which Croats in Serbia continue to face difficulties in exercising some of their rights (Žigmanov, n.d.). According to the decision of the Croatian National Council and in accordance with positive legal regulations, the Croatian community has four holidays during which Croats in Serbia organize various events. On such occasions, the flag of the Croatian community should be raised on all buildings and premises of local authorities and organizations with public authority. However, this practice has not been observed in Subotica and its surroundings, in Tavankut or Bajmok, on October 16, when Croats in Serbia celebrate the birthday of Ban Josip Jelačić.

In the Macedonian context, examples of non-compliance with the law relating to the use of flags include the following: in 2012, a six-meter Albanian flag was placed on a 35-meter-high pole in Kičevo to mark Albania's Independence Day (<https://mkd-news.com>, 2012). Similarly, in 2013, an Albanian flag of the same dimensions as the Macedonian national flag was placed illegally along the Kičevo–Zajas road and remained there for three months. In addition, in front of the municipal building in Aračinovo, next to a memorial center for the victims of 2001, 20-meter Albanian flags were erected. Furthermore, during public holidays of the Albanian community in the municipality of Čair and in Struga, the Macedonian flag is almost never displayed.

These experiences have revealed a notable gap in the law concerning such violations. The State Administrative Inspectorate has no jurisdiction over the use of community flags, while the State Inspectorate for Local Self-Government oversees the legality of decisions

adopted by local self-government bodies (including schools and streets), but lacks the authority to impose sanctions regarding the use of flags.

Another incident took place in Ohrid during the Easter holidays in 2019. A folklore group unfurled an Albanian flag at Samuel's Fortress, after which a high-ranking official of Albanian nationality publicly claimed that the Albanian flag could be displayed anywhere without consequences. In response, the government clarified that adherence to the law is mandatory and pointed to a court ruling on this issue (<https://a1on.mk>, 2019).

The most recent events occurred in March 2024, when unidentified individuals placed an Albanian flag on top of the dome of the church of Saint Athanasius in the fortress of Tetovo. In addition, a flag of the Kosovo Liberation Army (UCK) was prominently displayed on a banner at the entrance to the fortress (<https://m.makpress.m>, 2024).

The only known legal action taken in Macedonia to address violations regarding the use of flags appears to involve lawyer Toni Menkinoski (<https://mkd.mk>, 2024). In 2019, Menkinoski displayed a flag featuring the Sun of Kutlesh in the center of Ohrid for the Epiphany holiday. The misdemeanor proceedings against him, based on charges of disturbing public order, were concluded earlier this year before the Basic Court in Ohrid. A misdemeanor report was filed for the display of a flag that did not conform to the legally prescribed attributes.

In his final statement, Menkinoski declared: "I do not feel guilty, and I wish to state before the court that my actions are not prohibited by any law or regulation in Macedonia. Furthermore, I am proud to display a symbol that has cultural and national significance for Macedonians. Regardless of the court's decision, I intend to continue displaying the Macedonian flag from Kutlesh, and I am committed to advocating for its recognition as the national flag of Macedonia," he concluded (<https://novamakedonija.com.mk>, 2024).

3. CONCLUSION

Ideas about the rule of law have been central to political and legal thought since at least the 4th century BCE, when Aristotle distinguished “the rule of law” from “the rule of any individual” (Choi, n.d.). The rule of law is defined as the mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a non-arbitrary form of government, and more generally prevents abuses of power.

According to the Serbian Constitution (Art. 3), the rule of law is a crucial foundation upon which the entire constitutional framework is built, emphasizing inalienable human rights. This principle is upheld through free and direct elections, constitutional guarantees of human and minority rights, the separation of powers, the independence of the judiciary, and observance of the Constitution and laws by public authorities. Article 19 stipulates that guarantees of inalienable human and minority rights in the Constitution serve to preserve human dignity and ensure the full freedom and equality of each individual in a just, open, and democratic society, based on the principle of the rule of law.

In the Preamble to the Macedonian Constitution, it is stipulated that the citizens have decided to constitute Macedonia (after 2019, North Macedonia) as an independent, sovereign state with the intention of establishing and consolidating the rule of law. In Article 8, the rule of law is listed among the fundamental values of the constitutional order.

At the international level, there is an independent, multidisciplinary organization—the World Justice Project—which each year publishes a ranking of states according to the Rule of Law Index, based on eight factors and 44 sub-factors (<https://worldjusticeproject.org>, 2024). One of these factors is the “Fundamental Rights” factor, which focuses on a relatively limited set of rights firmly established under the United Nations Universal Declaration of Human Rights and closely related to rule-of-law concerns.

According to the global ranking for 2023, North Macedonia is ranked 67th out of 142 countries. Its score for the “Fundamental Rights” factor is 0.60, placing it 54th globally and 4th regionally (Eastern Europe and Central Asia). Regarding the sub-factor “Equal Treatment and Absence of Discrimination”, North Macedonia has a score of 0.65, ranking 38th globally and 3rd regionally. Serbia ranks lower—93rd globally. Its score for the “Fundamental Rights” factor is 0.55, placing it 72nd globally and 9th regionally. For the sub-factor “Equal Treatment and Absence of Discrimination”, Serbia scores 0.62, ranking 45th globally and 5th regionally.

Considering these data, we may infer that North Macedonia occupies a better position than Serbia with respect to the overall ranking, fundamental rights, and the sub-factor of equal treatment and absence of discrimination.

Regarding the results of the legal analysis and their use in practice, the analysis leads to the conclusion that in both cases the constitutions support and promote the rule of law, including fundamental rights and minority rights. Both constitutions guarantee rights relating to the expression, protection, and promotion of minority identities, including the use of symbols. At the national level, fundamental symbols include the flag, coat of arms, and anthem, while language and flags serve as expressions of affiliation for minorities.

This study conducted a detailed analysis of the flag as a symbol in both the Macedonian and Serbian cases. Historically, the two countries have followed different paths, but they share a common history as parts of the former Yugoslavia. After the breakup of Yugoslavia in 1991, Macedonia became independent, while Serbia declared its independence in 2006 after the dissolution of the federation between Serbia and Montenegro.

As independent states, both face certain difficulties. Macedonia, under international pressure, changed one of its national symbols—the flag—and later even the name of the state. Furthermore, internal dissatisfaction on the part of the Albanian minority regarding

ethnic symbols posed additional challenges. In the Serbian case, one of the biggest issues was the declaration of Kosovo as an independent state, which, under the Serbian Constitution, remains part of Serbia. However, the Kosovo issue does not form part of this research. The use of symbols in Serbia was analyzed through legal norms relating to the Autonomous Province of Vojvodina and norms relating to minorities.

There are differences between the Macedonian and Serbian legal frameworks. Although both constitutions guarantee the right to express identity through symbols, Macedonian legislation allows communities to choose their symbols without restrictions, whereas Serbian legislation does not permit, for example, the use of kin-state flags as official symbols of minorities living in Serbia.

The analysis revealed violations, non-compliance, and abuses of the law in both countries, primarily in relation to the Albanian minority. In the Macedonian case, violations concern the use of the Albanian flag without the accompanying Macedonian flag, or the use of Albanian flags of inappropriate dimensions.

In the Serbian case, Albanians use the state flag of Albania as their symbol, contrary to the law, and often without the accompanying Serbian flag. Other examples include non-compliance with the law in failing to display the flag of Vojvodina and the flag of the Croatian community in Serbia.

The results of the research show that, despite the existence of legislation, the norms concerning symbols and their use are frequently abused or disregarded. Even if Serbia were to amend the provision concerning the use of the symbols of other states, the experience of North Macedonia shows that, despite such a right, violations continue (for example, by displaying ethnic flags without the state flag or with larger dimensions than the state flag).

The most relevant recommendation in these cases is that laws aimed at promoting culture and diversity should be respected and implemented, rather than being used to mark territories or provoke tensions. In this context, responsibility lies not only with state inspectorates but also with the personal responsibility of officials, who are expected to serve as examples of compliance with legal norms.

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ВЛАДАВИНА ПРАВА И УПОТРЕБА ДРЖАВНИХ И МАЊИНСКИХ СИМБОЛА У МАКЕДОНСКОМ И СРПСКОМ СЛУЧАЈУ

Резиме: Владавина права погразумева да су сви појединци, као субјекти права, једнаки пред законом у погледу својих права и обавеза, као и у ограничењима која намећу одређена понашања. Ова једнакост и ограничења не би требало да дискриминишу на било којој националној, верској, полној или службеној основи. Предмет овог рада је упоредна анализа владавине права у С. Македонији и Србији спроведена кроз испитување примене уставних и законских прописа у вези са употребом државних симбола и симбола заједнице. Сврха истраживања је да се утврди да ли је примена ових принципа у складу са владавином права. Пракса показује да се владавина права не спроводи увек у потпуности у ова два случаја. Коришћење службених дужности и слободна воља појединаца могу се сматрати узроцима непоштовања владавине права. У закључку су дате две оцене: једна у вези са адекватношћу постојеће регулативе и друга која сугерише могућа будућа решења која би била у складу са владавином права.

Кључне речи: владавина права, државни симболи, симболи мањина, С. Македонија, Србија