

CONSIDERATIONS REGARDING THE LEGAL STATUS OF HERALDIC REPRESENTATIONS IN THE ROMANIAN SYSTEM OF LAW

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Abstract

Heraldry is a science that studies and governs the use and regulations of certain symbols utilized for distinguishing persons, legal entities, legal bodies etc. Sometimes heraldry is defined as an art, when it comes to the visual representations of the aforementioned symbols on flags, seals, shields etc. In the actual Romanian System of Law, heraldic representations, both ancient and modern may be considered as intellectual property rights or cultural rights or eventually as elements related to the legal status of a person, namely as identification attributes of a person. In many European countries, as well as in other civilized countries, there are legal frameworks that strictly regulate the use, display and rights over heraldic insignia. In the Romanian legal system, such a framework does not yet exist, and for that reason, this article addresses the possibility of creating such a legal framework within the Romanian System of Law and tries to answer to the following questions: 1) Is it possible for such a legal framework to be enacted and enforced in the Romanian System of Law? 2) What purpose would be served by the enactment and enforcement of such a legal framework? 3) What should be the legal nature of the rights pertaining to such a legal framework? 4) Is it possible to create within this framework an armorial which will comprise all the heraldic representations, of ancient and modern origins, belonging to moral or natural persons? 5) What kind of legal protection would be appropriate for the successful implementation of the framework? Hopefully, the contents and conclusions of this article will be able to answer at least some of these questions and perhaps will lay the first bricks in a future project that would lead to practical and tangible results concerning the protection of rights related to heraldic representations.

Keywords: *cultural rights, legal status, intellectual property rights, heraldry, coat of arms, heraldic insignia, coat of arms, legal system*. Introduction

1. Introduction

Heraldry represents a system in which inherited symbols, called charges are displayed on a shield, or escutcheon, for the purpose of identifying individuals of families¹.

These symbols are known as armorial bearings or coat of arms² and serve to identify individuals or families, even legal entities such as religious orders, public authorities, professional bodies, universities etc. Sometimes, an armorial bearing may distinctively identify an individual within a family, such as a child born from an illegitimate line or a certain line itself within a family, such as a senior line.

The graphic representations are usually displayed through various methods and conventions and the science of literally describing armorial bearings is called blazonry³.

This article addresses the issues regarding the legal status of heraldic representations or armorial bearings as we defined them earlier, from the perspective of the Romanian System of Law. In Romanian Law, certain armorial bearings are protected, specifically the state armorials, the coat of arms of cities, municipalities and villages and also coat of arms pertaining to some public institutions. These armorial

bearings are clearly within the public domain of Romanian law and should be treated as public property. The legal situation of these coats of arms is governed by the Law no. 102 of 21st September 1992, which regulates the legal status of the coat of arms and seal of Romania. The same law contains provisions regarding the coats of arms of public authorities, districts, municipalities, cities and villages⁴. The methodology for drafting and adopting coat of arms for administrative regions was enacted by the Government Decision no. 25 of 16th January 2003 concerning the establishment of the methodology of drafting, reproduction and use of coat of arms of districts, municipalities, cities and villages. There are also some Decisions edicted by various State Departments concerning the same issue, which shall be detailed in the content section of this paper. The aforementioned norms only regulate today's public symbols, although these symbols evolved from princely coat of arms of belonging to ancient rulers of medieval Romanian States. Many of these symbols which have not been incorporated in current coat of arms have no legal protection at all. Moreover, private coat of arms, both ancient and modern do not benefit from a law that directly regulate their use. The matter researched in this paper presents a significant importance, as the coats of arms of medieval times are part of the Romanian

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¹ *The Columbia Encyclopedia*, 6th ed. (Columbia University Press, 2018), s.v. "Heraldry,"

² <https://www.britannica.com/topic/coat-of-arms>

³ *The Columbia Encyclopedia*, 6th ed. (Columbia University Press, 2018), s.v. "Blazonry,"

⁴ Article 10 of Law no. 102 of 21st September 1992

Cultural Heritage and a component of the immaterial cultural patrimony of Romania. The fact that these coats of arms are no longer in use does not mean that they should not have any legal protection whatsoever.

The coat of arms belonging to private persons are also important because they can be envisioned as means of identification for persons in the past and also for living individuals or active legal private entities. The coat of arms belonging to known historical families of Romania (other than the ruling ones) are also, to a lesser extent part of the cultural national heritage and more importantly an essential part of the legacy of that family for its members. It may be possible that the legal status of the armorial bearings mentioned before (the ones not in use anymore and the private ones) may be regulated through more general legislation, concerning intellectual or industrial property. Still, in the present, no legal framework exists that could encompass the rights over all the coat of arms, whether in use or not, public or private. In order to address this issue, at least theoretically, I proposed a series of questions within the abstract of this paper, concerning the possibility of enacting such a legal framework, namely: 1) Is it possible for such a legal framework to be enacted and enforced in the Romanian System of Law? 2) What purpose would be served by the enactment and enforcement of such a legal framework? 3) What should be the legal nature of the rights pertaining to such a legal framework? 4) Is it possible to create within this framework an armorial which will comprise all the heraldic representations, of ancient and modern origins, belonging to moral or natural persons? 5) What kind of legal protection would be appropriate for the successful implementation of the framework? I intent to answer to this matter by analyzing the actual regulations, and by proposing new measures which could improve the actual legal status.

Besides the analysis of the national legislation concerning the protection of heraldic representations, analysis from a comparative point of view may also prove useful. Certainly, the comparative analysis will also yield some contrasting approaches. For example, in states where the form of government is monarchy there will likely be more numerous and specialized laws that in countries which have a republican form of government.

In the specialized literature, there are numerous works that treat heraldry⁵ as a science and distinctively as an art. Also, there are bibliographical works⁶ that compile most of the works published in the field of heraldry. However, there are few studies that address the legal status of heraldic representations. This study comes as a continuation of some earlier works I have

written, some regarding the legal protection of coat of arms of the nobility⁷ and others concerning the heraldic insignia of institutions and companies in contemporary law⁸.

This paper aims to identify useful legal means by which the rights over the heraldic representation could be protected, and where no such means are identified, to propose directions which may be taken to achieve the goal of protecting these representations.

2. Content

At the present time, the Romanian system of law does not have a legal framework in which heraldic representations such as coat of arms, crests, insignia are regulated and protected. As shown above, only the state heraldic representations and some heraldic coat of arms belonging to public authorities are regulated and protected. All the other heraldic signs, whether new or ancient can only be protected through the civil law, although no specific regulation exist to specifically address the rights over these signs. Vaguely, the Romanian Civil code enumerates at article 1141 certain family memorabilia which could possibly include heraldic insignia, without specifically naming them. Thus, in the absence of specific legal rules, the protection of the rights arising from the creation and use of heraldic representations is difficult, the only sources of law available would be the general rules prescribed by the civil law and the general principles of law (*analogia juris*)⁹.

Newly created heraldic representations could be governed by some provisions contained in the Law no. 8 of 1996 which regulate intellectual property rights¹⁰. For example, article 7 of Law no. 8 of 1996 states that graphical works of art, like sculptures, paintings, engravings are the object of intellectual property rights. However, the field of heraldry is a vast one, spanning over at least eight centuries, and even more in Western Europe and defines itself as a highly specialized field, having codified images and a specialized language used in blazonry.

None of the laws mentioned above can sufficiently protect the entire field of heraldry, so a new system of laws and regulations should be adopted for this purpose. Having established the utility of such a framework, next comes the analysis regarding the possibility of its enacting and enforcing. From a comparative point of view, there are several countries which have such a legal framework such as England, Sweden, Denmark, Netherlands, Spain etc. All of these countries are constitutional monarchies, and as such

⁵ Dan Cernovodeanu, *Știința și arta heraldică în România*, Editura științifică și enciclopedică, București, 1977, p. 13

⁶ Maria Dogaru, *Bibliografia heraldicii românești*, Editura Ministerului Administrației și Internelor, București, 2004, p. 7

⁷ Claudiu Ramon D. Butculescu, *Aspecte propedeutice privind regimul juridic actual al stemelor nobiliare*, Editura Eikon, București, pp.

⁸ Claudiu Ramon D. Butculescu, *Prolegomena to the Study of Heraldic Insignia : from the Medieval Coat of Arms (XIV-XVI Century) to the Heraldic Insignia of Institutions and Societies in Contemporary Law. Evolution, Legal Regime, Effects, Legal Protection, Prohibitions, Diversity and Interdisciplinarity in Business Law*, pp. 11-18

⁹ Maria Luiza Hrestic, *Operational Rules of Application of the Formal Relations*, *Revue Europeenne du Droit Social*, pp. 160-167

¹⁰ Bujorel Florea, *Regleții despre plagiat. Comentarii practice*, Editura Hamangiu, București, 2018, p. 22

have a long tradition in maintaining and strictly regulating the use of heraldic symbols. Romania is today a semi-presidential republic, which means that for accurate comparative results, we should research if there are legal frameworks regulating heraldry symbols in countries which are not monarchies but have a republican form of government. In the Slovak Republic, for example, there is an official heraldic register¹¹, operated by the Ministry of the Interior in which there can be included coat of arms belonging to natural persons, moral persons and is not limited only to official or state coat of arms.

Also, in the Republic of Moldova, the use of heraldic symbols is regulated by the Law no. 86 of 28th of July 2011. Article 7 of the aforementioned law states that private symbols are: the personal coat of arms or the family coat of arms; the banner and other personal or family vexillary insignia; the family hymn and the personal or family armorial seal. All these heraldic symbols are officially recognized as public symbols and are registered in the General Armorial of the Republic of Moldova, following the request of the owner and based on the decision of the National Heraldry Committee. The decree regarding the establishment of the General Armorial Regulation of Republic of Moldova was enacted in 2014¹².

In Canada, there is a Canadian Heraldic Authority that creates coats of arms, flags and badges. The authority was created in 1988 and all the coats of arms granted, registered, approved or confirmed are included in the Public Register of Arms, Flags and Badges of Canada¹³.

Some countries have laws that protect the creation and use of coat of arms but have no official bodies to register them. Still, in many of these countries there are reputed private associations which register and publish coat of arms. For example, in the French legal system, armorial bearings are considered a form of incorporeal property, having an accessory nature and being irrevocably attached to family name¹⁴. However, there is no state body that registers the coat of arms and the usage and protection of arms is regulated according to the French Civil Code.

Similarly, in Germany, the published personal armorial bearings are protected under article 12 of the German Civil Code, which regulates the name rights. The coat of arms is considered closely linked to the surname and as such it enjoys the same protection.

There are also countries in which there is no official body to regulate the use and protection of heraldic insignia and also the legal protection is scarce, but there are associations which draft and register

newly created coat of arms, such as Poland, Russia, Portugal etc.

Having shown that there are several countries which successfully regulate the field of heraldry, concerning the drafting, use and protection of heraldic representations, it is logically to assume that such a framework is also possible to establish in Romania.

The purpose of such a framework would be to regulate the use of heraldic insignia and to protect the bearers from usurpers. The state symbols are protected, as I shown earlier, by the provisions of the Law no. 102 of 21st September 1992, however the historical heraldic symbols are not. If the use of such heraldry symbols would be placed under the Romanian copyright law, then most of them would be practically in the public domain and may be used freely. However, such symbols are part of national history and as such, should be protected by law against abusive use. The historical coat of arms, whether bore by the ancient princes or rulers of past Romanian kingdoms should be included in a newly formed patrimony of significant heraldic symbols of Romania. Also, excepting scientific or historical research, their use should be prohibited. Another exception in which their use could be permitted should concern cases where such symbols were inherited or transmitted through generations to contemporaneous holders. Similarly, historical heraldic insignia used by various nobles, individuals and even corporations, if they are not claimed by rightful users (descendants, inheritors etc.), should also be places in this patrimony, with a strict prohibition of use.

The family or personal coat of arms, whether newly created or inherited should be protected also, by strictly regulating their use, the rights of their bearers, including the prohibition of unlawful use by other persons, publicly or privately. Only by enacting a legal system that will regulate the drafting, use and protection of armorial bearing an adequate protection will be provided.

As to the nature of the rights pertaining to a legal framework regulating heraldic representations, firstly, the protection should be provided by a special law, with specific rules, and not by the Civil code or the copyright law. Although the Romanian Civil Code, which entered into force on 1st of October 2011 contains modernized¹⁵ provisions which may apply to heraldic representations, the complexity of the heraldic system requires a specific law to regulate the rights and obligations arising from the creation and use of coats of arms. Such a law, which comes from the legislative power of the State¹⁶, should define the heraldic representations and should classify them in heraldic representations of significant importance and heraldic

¹¹ <http://ives.minv.sk/heraldreg/>

¹² <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=354932>

¹³ <https://www.gg.ca/en/heraldry/public-register-arms-flags-and-badges-canada>

¹⁴ Jean Silve de Ventanvon, *La legitimite des lys et le Duc D'Anjou*, Fernand Lanore, Paris, 1989, p. 220

¹⁵ Denisa Barbu, *Tradition and innovation in legal sciences, Logos Universality Mentality Education Novelty*, vol. IV, issue 1, Lumen Publishing House, 2015, p. 6

¹⁶ Maria Luiza Hrestic, *Considerations on the Formal Sources of International Law*, *Journal of Law and Administrative Sciences*, no. 7/2017, p. 104

representations belonging to private persons, which could be recognized if they abide by the strict rules of heraldry. The nature of the rights should follow the nature of the heraldic representations themselves: for heraldic representations of significant importance, the rights should be placed in the public domain of the law, while the heraldic representations of private persons should be placed in the private domain of the law.

The heraldic representations of significant importance should be inalienable whether conventionally or forced and imprescriptible. The use of such heraldic representations by private persons should be prohibited, with the exception of scientific historical research. If such symbols are inherited from legitimate holders, the rules of inheritance stated by the Romanian Civil Code should apply. When there are no inheritors, the heraldic representations should become property of the state and used only for historical researches.

In order for the legal protection to be adequately ensured, registries should be created, containing all the coat of arms, whether ancient or contemporaneous, belonging to public or private persons, natural or moral. Firstly, a national registry, called "armorial" should be established and strictly administered by a public entity. Considering that according to the Law no. 102 of 21st September 1992, within the Romanian Academy there is a national committee which certifies the coat of arms of administrative units of Romania, this national armorial could be kept and administered by this committee. Aside from the national registry, regional registries should be kept by local subsidiaries of the Romanian Academy: for example, for the Moldavian Region, a prestigious institution like the Institute for Heraldry and Genealogy "Sever Zotta" could accomplish such a task. Likewise, for Transylvanian heraldry, the Center for Transylvanian Studies could accomplish such a task. In a more detailed view, all the districts of Romania should have regional registers, but these should be kept by private associations, as bodies of research in heraldry and accredited by the Romanian Academy.

The protection given to the rights arising from the creations and use of coat of arms should be civil and penal. For minor breaches of law, the punishments should include only pecuniary measures, but for major breaches of the law and abusive use of heraldry symbols of significant importance, the penalty should consist of substantial fines and even deprivations of privileges or liberty, with the limits set by the European Union Law and the European Court of Human Rights, regarding the proportionality of the punishment, the equality of arms, an equitable trial¹⁷ etc. Similar

punishments exist in Romanian laws for the unauthorized use of distinctive signs, such as emblems, logos etc. For example, the Law no. 11 of 29th January 1991 on combating unfair competition states in article 5 that the use of an emblem which is likely to cause confusion with that legitimately used by another trade is punishable by imprisonment from 3 months to 2 years or by fine. Although the provision mentioned above concerns unfair competition, as an infringement of the freedom of trade¹⁸, its essence could be successfully translated, *mutatis mutandis*, as a conceptual basis for future regulations regarding heraldic representations.

3. Conclusions

The main outcome resulting from this study addresses the need to design and enact a legal framework that may be able to offer protection to heraldic representations, regardless of the time they were drafted and incorporated into coats of arms, within the Romanian system of law. The arguments presented in the main contents of this paper strongly suggest the need to implement such a legal framework, which should include rules regarding the protection of existing coats of arms, the registration of new ones, the establishment and development of a national armorial to include all armorial bearings and specific rules regarding the drafting and use of such armorial bearings.

The expected impact of this study concerns the possibility of enacting legal provisions concerning the protection and use of heraldic representations. The first step in the road to achieving the goal of a heraldic legal framework will be the creation of professional, dedicated associations, which will hold registries in every district of Romania and will oversee the creation, use and protection of heraldic representations. These associations should be recognized by law and accredited by the National Heraldry Committee of the Romanian Academy. The national registry or national armorial should comprise the heraldic representations included in the district registries and also the heraldic insignia of state authorities.

This paper tackles the possibility of creating a legal framework regarding heraldic representations in the Romanian system of law and tries to set a few directions for the establishment of such a legal framework. The future studies should research the concrete ways in which such a legal framework will be successfully established, implemented and administered.

¹⁷ Denisa Barbu, *Importanța predictibilității procedurilor penale în faza de urmărire penală*, in *Dreptul românesc la 100 de ani de la Marea Unire. Dimensiuni și tendințe*, București, 2018, p. 500

¹⁸ Vlad Teodor Florea, *Dreptul concurenței. Punerea în aplicare a regulilor de concurență*, Editura Hamangiu, București, 2018, pp. 2-3

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