

## Questionnaire

*XXII<sup>nd</sup> Colloquium of the International Academy of Heraldry,  
arranged by Societas Heraldica Lundensis in cooperation with  
Societas Heraldica Scandinavica and The Swedish Heraldry Society*

# Heraldry and the Law

**We suggest that the heraldic institutions, associations and organizations in each country together appoint one or more reporter(s) to answer the questions. Please let us know by May 30<sup>th</sup>, 2022, who is the responsible reporter, and send in the answers by May 30<sup>th</sup>, 2023.**

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**[www.heraldik.org/colloquium-lund-2023](http://www.heraldik.org/colloquium-lund-2023)**

### Part 1. Overview of the historical development

#### *1.1. – A timeline of important changes*

Provide a brief overview of the history of the legal regulation of heraldry in your country. Focus on the important shifts between periods in heraldry, for example the establishment of a heraldic office, important statutes or cases, or changes in the political organization (states established and dissolved). The information should serve as a background to the answers to the following questions.

There was no heraldic authority in the narrower sense at the time of the Habsburg Monarchy. The granting of coats of arms and nobility was an imperial privilege. Its competence extended to the newly granted coats of arms of the nobility, coats of arms of the municipalities and provinces, the coat of arms of the House of Habsburg and of the state in general. The agendas were handled by the Imperial Chancellery (until 1806) and the United Court Chancellery (until 1848) and then by the Imperial and Royal Ministry of the Interior until the end of the Habsburg Empire. In the Republic (from 1918), only coats of arms for municipalities were granted, since the use of noble coats of arms, including civic arms, was prohibited. The competence to award municipal coats of arms was transferred to the several provinces. The design of the national coat of arms is the responsibility of the Federal Ministry of the Interior.

#### *1.2. – Heraldry as part of the law*

Provide a brief overview of whether, and to what extent, heraldry historically has been considered being part of law, or has been dealt with outside law (for example has been treated as custom or a tradition, rather than as part of law). Consider whether different parts or aspects of heraldry have been treated differently.

At the time of the Habsburg Monarchy, there was no written set of rules according to which officials could have proceeded, much was based on traditions, much was influenced by foreign factors. Heraldry was not part of the legal system.

## **Part 2. International law on armorial bearings, flags, and other state emblems**

### *2.1. – Paris Convention for the Protection of Industrial Property of 1883, art. 6<sup>ter</sup>*

Is your country contracting party to the Paris Convention for the Protection of Industrial Property of 1883? Has your country registered armorial bearings, flags, and other state emblems according to art. 6<sup>ter</sup> of the convention? Which armorial bearings, flags, and other emblems are registered?<sup>1</sup>

Austria is a contracting party to the Paris Convention for the Protection of Industrial Property of 1883. There are all Austrian provinces' coats of arms in color in this database, Salzburg is only entered in black and white. The federal coat of arms is shown in black and white only.

### *2.2. – Legal protection of the coats of arms of other states and of international organizations*

How is art. 6<sup>ter</sup> of the convention implemented in national law, in order to protect armorial bearings, flags, and other emblems of states and of intergovernmental organisations legally?

The Patent Office is responsible for the protection of industrial property. It is part of the Federal Ministry for Climate Protection, Environment, Energy, Mobility, Innovation and Technology.

## **Part 3. National heraldry**

### *3.1. – National coat of arms – definition*

Is the national coat of arms (or various national coats of arms, if there are different ones, such as a greater and a lesser national coat of arms) defined and described in statutory law? If so, in heraldic terms (blazon) or with reference to a picture?

There is only one coat of arms of the Republic of Austria (federal coat of arms) and was last formally incorporated into the Federal Constitution in 1981 as part of a reform as Article 8a: Federal Law Gazette 350/1981. Three years later, the more detailed regulations, such as description of the coat of arms, the seal, the flag and penal sanctions against the unauthorized use of emblems of sovereignty were then enacted in the Coat of Arms Act of 1984, where they were also reproduced in the annex to Federal Law Gazette No. 159/1984.

### *3.2. – National flag – definition*

Is the national flag (or various national flags, if there are different ones) defined and described in statutory law? If so, through a description or with reference to a picture?

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<sup>1</sup> Information about article 6<sup>ter</sup> and a link to the database are available here:

<https://www.wipo.int/article6ter/en/> or <https://www.wipo.int/article6ter/fr/>

Under “Structured search”/“Recherche structurée”, choose your country under “State”/“État”.

The colours and flag of the Republic of Austria were included in the Federal Constitution as Article 8a: Federal Law Gazette 350/1981. The colours and flag were described and also depicted in the Coat of Arms Act of 1984 in the annex to Federal Law Gazette No. 159/1984. In addition to the flag of the Republic of Austria, there is also a Federal official flag of the Federation. The Federal official flag corresponds to the flag of the Republic of Austria, but has the federal coat of arms in the centre, which extends evenly into the two red stripes.

### *3.3. – Legal protection?*

Is it forbidden to use the national coat of arms or flag without a permission, in some contexts or situations? Which authority grants permissions? Are there sanctions within criminal law or other types of law such as administrative regulations etc. for someone who uses the national coat of arms or flag without permission or in a wrongful manner?

The federal coat of arms may be used only by those who use it in the exercise of governmental functions. In the Coat of Arms Act, there is a taxative list of officials and institutions that may use it. The Federal Ministry of the Interior is the authority that prosecutes unauthorized use of the federal coat of arms. There are also penal sanctions for the unauthorized use of the federal coat of arms, seal or official flag. The penalty is up to 50,000 Austrian Schillings, which would be EUR 3633.65 converted into EURO.

## **Part 4. Heraldry of the head of state and other central office holders**

### *4.1. – The head of state*

Are there specific rules about the armorial bearings or flags for the head of state? Do such rules extend to other persons close to the head of state, for example a royal family?

The Federal President bears the Federal official flag and has no special coat of arms or flag.

### *4.2. – The prime minister and other central office holders*

Are there specific rules about the armorial bearings or flags for the prime minister or other central office holders like ministers, the supreme commander, etc?

The Prime Minister, who in Austria is called the Federal Chancellor, and all other high officials and institutions listed taxatively in the Coat of Arms Act bear the Federal official flag.

## **Part 5. Heraldry and seals of courts and state authorities**

(Below are separate sections for military, regional, municipal, ecclesiastical, and academic authorities and institutions.)

### *5.1. – Adoption, grant or registration?*

Are these arms and seals adopted by the court or authority itself, or granted or registered by some other authority? How do these procedures work?

The courts, authorities, civil and military, use the federal coat of arms, as specified in the Coat of Arms Act 1984.

### *5.2. – Heraldic competence involved?*

When a court or state authority wants to develop new symbols of any sort, is heraldic competence normally involved? Is advice or permission from heraldically competent persons, such as a state heraldic office, compulsory or not?

Since courts or other state agencies use the federal coat of arms, there is no need for them to develop a new symbol. There is no state coat of arms office.

### *5.3. – Legal protection?*

Are coats of arms of courts or state authorities legally protected? How?

The penal regulations are laid down in the Coat of Arms Act 1984. See point 3.3. legal protection.

## **Part 6. Heraldry and seals of military authorities**

(If military authorities follow the same rules and procedures as civil authorities, the answers can be merged with the answers in part 5.)

### *6.1. – Adoption, grant or registration?*

Are these arms and seals adopted by the authority itself, or granted or registered by some other authority? How do these procedures work?

See point 5

### *6.2. – Heraldic competence involved?*

When a military authority wants to develop new symbols of any sort, is heraldic competence normally involved? Is advice or permission from heraldically competent persons, such as a state heraldic office, compulsory or not?

See point 5

### *6.3. – Legal protection?*

Are coats of arms of military authorities legally protected? How?

See point 5

## **Part 7. Regional and municipal heraldry**

(If regional and municipal authorities follow the same rules and procedures as civil authorities, the answers can be merged with the answers in part 5.)

### *7.1. - Adoption, grant or registration?*

Are arms adopted by regions, cities, towns, communities etc. themselves, or granted or registered by some authority? How do these procedures work?

Regions do not have their own coat of arms. The coats of arms of cities and municipalities are granted by the several governments of the provinces.

#### *7.2. – Heraldic competence involved?*

When a region, city, town, community etc. wants to develop new symbols of any sort, is heraldic competence involved? Is advice or permission from heraldically competent persons, such as a state heraldic office, compulsory or not?

The procedure, consultation and execution for a new municipal coat of arms is carried out by the respective provincial archives.

#### *7.3. – Legal protection?*

Are coats of arms of regions, cities, towns, communities etc. legally protected? How?

The coats of arms of the cities and municipalities are legally protected by the provincial Law on provincial Symbols.

### **Part 8. Ecclesiastical and academic heraldry**

(If ecclesiastical and academic institutions follow the same rules and procedures as civil authorities, the answers can be merged with the answers in part 5.)

#### *8.1. – Adoption, grant or registration?*

Are arms adopted by ecclesiastical and academic entities themselves, or granted or registered by some authority? How do these procedures work?

Churches and academic institutions carry out the granting of coats of arms in their own domain, if they see a need to use such symbols at all.

#### *8.2. – Heraldic competence involved?*

When an ecclesiastical and academic entity wants to develop new symbols of any sort, is heraldic competence involved? Is advice or permission from heraldically competent persons, such as a state heraldic office, compulsory or not?

There is no authority that designs coats of arms of churches or academic institutions.

#### *8.3. – Legal protection?*

Are coats of arms of ecclesiastical and academic entities legally protected? How?

There is no legal protection.

### **Part 9. Family and personal heraldry**

#### *9.1. - Adoption, grant or registration?*

Are these arms adopted by the families or individuals themselves, or granted or registered by some authority? How do these procedures work?

In Austria, it is forbidden for private persons to bear a coat of arms according to the nobility abolition law of 1919.

### *9.2. – Legal protection?*

Are coats of arms of families and individuals legally protected? How? Is there a difference between granted and adopted coats of arms?

There is no legal protection, as no coats of arms may be used.

### *9.3. – Inheritance*

How are coats of arms of families inherited and how may they be used by an armiger's spouse? Is there a difference between granted and adopted coats of arms? Have changes occurred because of changed family and gender structures?

There is no inheritance, as no coats of arms are allowed.

## **Part 10. General assessment of the status of heraldry in a legal context**

### *10.1. – Institutions and knowledge*

Is the level of knowledge about heraldry on a reasonable level within state authorities and regional or municipal authorities? Are there enough institutions that deal with heraldry professionally? Are there many different institutions having similar responsibilities, and how does the coordination and cooperation work?

The level of knowledge about heraldry is very low in state authorities and regional municipal authorities. There are very few institutions that professionally deal with heraldry, with the exception of the respective provincial archives.

### *10.2. – Legal uncertainties*

Are there legal uncertainties relating to heraldry? For example, is there a lack of legal protection of state symbols, or difficulties in adapting heraldic rules to new family and gender structures?

There is no state protection of the coats of arms of private individuals.

### *10.3. – Recent disputes or proposals*

Have there been recent disputes or law proposals highlighting the interest in heraldry and the law? If so, what was the case or proposal about, and what was the outcome? Was the issue reported in the media, and was there a public involvement?

The Coat of Arms Act 1984 no longer meets today's requirements for several reasons and has led to a parliamentary question in 2022. The reasons are:

1. the law contains templates that are heraldically incorrect and unusable as paper templates for the production of coats of arms, flags and banners. Correct digital templates are urgently needed.

2. Since the Coat of Arms Act of 1984, it has become apparent that in Austria - probably the only country in the world - at least three different representations of the national coat of arms are in official use.

3. During this period, the practice has also developed of using the red-white-red colours, called the "federal official flag" by law, with the federal coat of arms displayed, as the national flag - especially at major sporting events, demonstrations and electoral events. In a modern democratic state, the distinction between a flag/flag reserved only for the "authoritarian state" and one accessible to ordinary citizens has become obsolete. Of course, this does not apply to the use of the federal coat of arms in official use.

#### *10.4. – Strengths and weaknesses*

If you would make an over all assessment of the status of heraldry in your country, what are the main strengths and weaknesses related to the legal status of heraldry and the legal regulation of coats of arms? What could be used as a model for other countries and what could be improved?

The status of heraldry in Austria cannot be a model for other states.

### **Part 11. Bibliography**

Please provide full references to the most relevant statutes, cases and literature referred to in the answers.

Laws:

Staatsgesetzblatt 1919, Nr. 211 (Nobility Abolishment Act/ Adelsaufhebungsgesetz)

Staatsgesetzblatt 1919, Nr. 237 (Executive Order of the Nobility Abolishment Act/ Vollzugsanweisung des Adelsaufhebungsgesetzes)

Bundesgesetzblatt 350/1981 (Correction of the Federal Constitutional Law as amended in 1929/ Änderung des Bundes-Verfassungsgesetzes in der Fassung von 1929)

Bundesgesetzblatt Nr. 159/1984 (Coat of arms law/ Wappengesetz)

The provincial laws on the symbols of the provinces: Vienna, Lower Austria, Burgenland, Upper Austria, Carinthia, Styria, Tyrol, Salzburg and Vorarlberg.

Literatur:

Reinhard Binder-Krieglstein: Österreichisches Adelsrecht 1868-1918/19 (Frankfurt a.M. 2000)

Peter Diem: Die Symbole Österreichs. Zeit und Geschichte in Zeichen (Wien 1995)

Michael Göbl: Heraldik in der Republik Österreich und ihre Zukunft. (=Herold-Studien Band 9, Berlin 2014)

Norbert Leser/ Manfred Wagner (Hg.): Österreichs politische Symbole. Historisch, ästhetisch und ideologiekritisch beleuchtet (Wien/ Köln/ Weimar 1994)

Berthold Waldstein-Wartenberg: Das Adelsaufhebungsgesetz von 1919. In: Mitteilungen des Österreichischen Staatsarchivs 25(1972), S. 306-314.

Manfried Welan und Peter Diem: Ihr Recht geht vom Volk aus. 100 Jahre österreichische Bundesverfassung – Staatssymbolik und Staatsziele (Perchtoldsdorf 2021)