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The role of justice in shaping historical memory

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Abstract. The right of peoples to know and remember their history is inviolable. In today's information-rich world, knowledge and beliefs are shaped by many sources. One unconventional and underexplored source in this context is a judicial act. This study aims to demonstrate that judicial acts can serve as sources of knowledge and that judicial bodies influence the formation of historical memory in various ways. The methods employed include logical-historical analysis, which helps identify trends and patterns leading to specific conclusions; the inductive method, which allows to generalize the empirical material accompanied by concrete conclusions and proposals; and analytical methods that consider the roles of individual stages and functions within judicial processes. The main findings reveal the significant impact of judicial processes on the formation of historical memory, which can be both direct and indirect. The study identifies the forms of this influence and outlines the functions of judicial bodies relevant to the topic under consideration. Within the adversarial process, participants, depending on their procedural status, provide explanations or testimony while pursuing their own interests. The accounts and statements of eyewitnesses to historical events are crucial for how these events are perceived by future generations. Such explanations and testimonies are recorded in court hearing minutes and final judicial acts, which cannot be erased from history due to their legal authority.

Key words: Judicial process, tribunal, judicial mechanisms, history, historical memory, formation of memory

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Роль правосудия в формировании исторической памяти

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Аннотация. Право народов знать и помнить свою историю стало незыблемым. В современном полиинформативном мире знания и убеждения формируются из множества источников. Одним из нетрадиционных и мало описанных в литературе в данном контексте является судебный акт. В связи с чем определена цель доказать, что судебный акт может служить источником знаний, а судебные органы в различных формах влияют на формирование исторической памяти. Среди используемых методов: логико-исторический, позволивший уяснить тенденции, закономерности и приведший к отдельным выводам; метод индукции, позволивший обобщить эмпирический материал, сопровождаемый конкретными выводами и предложениями, метод анализа, основанный на рассмотрении роли отдельных стадий и функций судебных процессов, и др. Основные результаты выражаются в доказанности влияния судебных процессов на вопросы формирования исторической памяти, которое может быть как прямым, так и косвенным, выделение форм такого влияния и конфигурация перечня функций судебных органов в рамках рассматриваемой темы. В рамках состязательного процесса участники в зависимости от их процессуального статуса дают объяснения или показания, будучи вынужденными преследовать в процессе собственный интерес. Мысли и речи очевидцев исторических событий крайне важны для их восприятия будущими поколениями. Такие объяснения и показания находят свое закрепление в протоколах судебных заседаний и итоговых судебных актах. Их невозможно в силу наличия законной силы судебных актов вычеркнуть из истории.

Ключевые слова: судебный процесс, трибунал, судебные механизмы, история, историческая память, формирование памяти

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Res judicata pro veritate habetur
(A court decision must be taken as the truth)

Introduction

Due to the complex nature of social relations, contradictions in opinions, views, positions and theories are naturally observed. As the classic thesis suggests, each person engages in numerous legal relationships daily, which cannot always be properly executed (Argunov, Borisova & Bocharova et al., 2014). This leads to a confrontation of ideas and thoughts, resulting in disputes about the law and creating obstacles to the implementation of citizens' rights¹.

When two or more parties cannot agree on a course of action, many see the solution as involving the court – a state authority capable of determining and establishing appropriate behavior.

The court is perceived by members of society as both a law-making body (to some extent) and a law enforcement body. These two roles are expressed through various mechanisms that ultimately contribute to the development of rules of conduct. However, this development is impossible without another key mechanism within judicial activity: the analysis of social situation (Petrova, 2016).

It is well-known that within national models, judicial bodies often serve not only as arbiters in legal disputes but also as authorities in other situations where no other authorized body exists. An example of this is special proceedings in domestic civil cases.

This context suggests the universality of these mechanisms and their applicability to other areas. One such area may involve the implementation of a general prevention function. By examining historical events and their consequences in various contexts, states can gain knowledge and understanding that may help prevent similar occurrences in the future. Preserving and documenting the memories of victims of illegal actions, as well as articulating the elements of offenses can serve as a foundation for historical, legal and political dialogues. We believe that courts should play a key role in this process.

The need for coordinated individual actions aimed at objects of interstate significance can serve as an analogue of special proceedings in international judicial activity. For instance, there have been attempts in Australia to ensure that monuments to seafarers and explorers, including J. Cook, are removed from urban areas. In this context, it is appropriate to propose a mechanism for coordination with the international community, represented by supranational judicial bodies, regarding issues that affect the

¹ Gurvich M.A. *Lectures on Soviet Civil Procedural Law*. M., 1950.

memory and history of many countries and nations, as such monuments can be considered part of universal history. Negative actions, on the other hand, can steer historical development in a direction different from the current trajectory. Consequently, this creates prerequisites for the variability of judicial mechanisms.

When discussing the category of “judicial process”, there is an inevitable association with sectoral affiliations – constitutional, civil, arbitration, administrative, and criminal law. However, what occurs when someone attempts to introduce an interstate element into generally harmonious national judicial forms? The judicial process, as a means of resolving disputes, contradictions, and disagreements, inevitably impacts various areas of public life, with the legal aspect being paramount. But what exactly does this process influence that is significant for more than one state? The initial points are easily identifiable: law enforcement practices, customs, and legislative improvements. Yet, is this list exhaustive? We believe not. As a hypothesis, we propose that the memory of individuals and nations as a whole should also be considered.

This influence can manifest both directly and indirectly. The nature of indirect influence is certainly debatable and does not lend itself to a definite conclusion from a legal standpoint. However, a conceptual relationship can be established when examining direct influence.

A judicial act is a legal fact that should influence the recovery of violated rights. It is assumed that following the consideration of a case, the violated right should be restored. If we assert that it is necessary to recognize and consider the subjective right to historical memory – akin to many other rights that can be violated – it follows that legal proceedings can indeed impact the historical memory of citizens and nations. M. Halbwachs noted: “The main work on the formation of collective memory should be directed precisely at the construction of social space and social time, rather than at the recording of individual memories» (Halbwachs, 2007).

One of the first to pose this question was R. Faurisson, whose publications led France to adopt several memorial laws to consolidate its official memory policy. Another significant contributor to related topics is N.E. Kuposov, who published *Memory of the Brutal Regime: History and Politics in Russia* in 2011, which included a classification of memorial laws (Kuposov, 2011).

The concept of “memory policy” emerged only in the second half of the last century, reflecting certain trends in the development of scientific knowledge and understanding of societal processes. Notably, postmodernists such as R. Barthes and M. Foucault proposed the theory that the past is constructed from the most favored ideas at both state and public levels, which are essential for forming social and group identity (Dorskaya & Pashentsev, 2021). A key aspect of this reasoning is defining one of history’s dimensions as a collection of historical events; without this “sum” of events, history cannot exist. The mechanism for establishing these events is the subject of this study.

However, the specific research area that examines the mutual influence between tribunals and the formation of historical memory has not been explored by legal scholars at a monographic level.

Individual institutions and related elements have become the subject of scholarly consideration in various publications. For example, I.T. Kasavin examined the philosophical foundations of truth at a high doctrinal level in his article *Truth: An Eternal Theme and Modern Challenges*. Within the field of jurisprudence, many scholars address issues of truth, particularly in the context of international legal proceedings; A.Yu. Klyuchnikov published the article titled *Right to Truth in International Justice*. M.M. Mubarakshin conducted a detailed study of empirical material, presenting his findings in *Well-Known International Court Proceedings and Their Effect on Formation of Legislation*. E.A. Petrova explored individual functions of judicial bodies in her work *Judicial Lawmaking Mechanism: Definition and Peculiarities*. The topic of memory policy is studied by A.A. Dorskaya, D.A. Pashentsev, with one of the most significant contributions being the article *The Official Remembrance Policy: A Comparative Analysis of Legislation and Judicial Practice of Modern States*. At the monographic level, E. Lezina conducted one of the most comprehensive studies in her work *“The 20th Century: Elaboration of the Past. Practices of Transitional Justice and the Policy of Memory in Former Dictatorships: Germany, Russia, Countries of Central and Eastern Europe*, which examines legal mechanisms and structures through specific historical events.

Among authors studying foreign experiences, A.Yu. Salomatin stands out for his monograph *The US Supreme Court: Judicial Legal Policy from J. Jay to J. Roberts*. This study introduces a novel perspective on preserving historical memory today, where the primary legal instrument for achieving this goal is the periodic adoption of normative and legal acts of various natures. Thus, the official policy of historical memory is implemented. However, this study argues for an expanded role for courts, judicial bodies, and tribunals in recording, forming and protecting historical memory.

The pursuit of truth in legal cases

Trials often have a specific task or set of tasks united by a common purpose, typically reflecting the leadership of a country or group of countries. This is particularly evident in the history of the post-war period. The military tribunals aimed to “cleanse” society from Nazi personnel (Lezina, 2021) by identifying individuals responsible for war crimes, holding them criminally accountable, and fulfilling the objectives of military command. These tasks were understandable within the context of their time and circumstances. However, another task related to the formation of historical memory was carried out more subtly without conscious awareness for the extended period.

This is especially true for quasi-judicial bodies, which can be established based on the will of one or several governing entities. The formation process for these bodies is generally simpler and less formalized. For instance, “the military governor was given the right to arrest and hold in custody pending trial by the relevant quasi-judicial body, which he was to create” (Lezina, 2021:24). Consequently, this leads to the establishment of a stable public perception regarding participants’ opinion and events, often imbued with emotional significance. It is important to note that we are not

passing judgment on either aspect: rather, we are highlighting inherent and indirect consequences of presenting information that shapes public opinion and “spreads” over decades.

The question of the truth regarding such tribunals remains open. It is challenging to “close” this question in the context of tribunals, especially since it is often difficult to do so in ordinary judicial proceedings. Traditionally, two concepts of truth are distinguished: absolute and relative. Absolute truth posits that all phenomena in nature and society are knowable, allowing for the establishment of actual events with certainty. In contrast, relative truth recognizes that the court’s understanding is achieved indirectly through various means, making it impossible to assert unequivocally that truth has been attained. It is worth noting that this latter theory may be more acceptable because, through the use of evidence, courts can approach the truth more closely: however, it remains difficult to classify any finding as an objective fact. It seems impossible to establish the moment at which such truth is reached, even if it occurs.

In legal literature, various perspectives have emerged regarding the nature of truth established through the consideration of specific civil and criminal cases. Scholars debate whether the truth determined during legal proceedings is absolute or relative. A. Rivlin, for instance, argued that framing the question in this way results from the “mechanical transfer of philosophical concepts of absolute and relative truths to the workings of the court”. He contended that criminal procedural activity establishes what he termed “material truth,” which cannot be classified as either absolute or relative; it is simply objective truth (Bonner, 2009:162).

This discussion is further illuminated by comments from S.V. Kurylev and A.T. Bonner: “Interestingly, none of the examples provided by S.V. Kurylev can be classified as absolute truth. For instance, while it is a fact that Napoleon Bonaparte died on May 5, 1821, this event encompasses various aspects. Knowledge of this fact, which might seem like an absolute truth, can be clarified and supplemented under certain circumstances. We must remember that we are discussing one of the few individuals in history whose life and death continue to captivate descendants and spark long-term debates. When exactly did the deposed emperor die? Did he pass away from natural causes such as acute heart failure, as official documents state, from stomach cancer as some doctors suggest, or was he murdered, potentially poisoned?

For many years, scientists – doctors, chemists, historians – and ordinary people have debated whether Napoleon died a natural death or was poisoned. To support both conclusions, there are certain facts rooted in objective reality. Consequently, disputes over this issue remain unresolved to this day” (Bonner, 2009:162).

The desire to establish the truth in legal proceedings does not necessarily equate to its objective achievement. Despite the broad and somewhat controversial interpretation of the principle of objective truth – particularly by S.S. Alekseev, who defines it as “a requirement according to which the decision of the law enforcement

agency must fully and accurately correspond to objective reality” – the situation in practice often differs in the courts. This discrepancy may explain why practitioners, scholars, and legislators have increasingly distanced themselves from asserting objective truth as a guiding principle. N.I. Avdeenko aptly notes, “a conclusion drawn from a specific legal study may contradict the general theory of law not because it is incorrect, but because the position of the general theory of law is formulated inaccurately or incompletely. In such cases, there is a need to revise or clarify the general theory of law to align with conclusions drawn from studies of legal issues within specific branches of law” (Ryzhov, 2012:23).

The right to truth² represents, in our view, such a form of influence that judicial processes exert on historical memory through reformation, essentially changing previously established interpretations of historical events. Unlike national legal systems, international law allows for this possibility. Despite its controversial nature, certain patterns can be identified. Typically, alongside ordinary objectives, there emerges another goal: changing an observed regime, often authoritarian in nature. Consequently, the task becomes one of documenting as many facts as possible.

In this context, it may seem that the court functions merely as an entity that perceives information indirectly, which is a classic characteristic of evidence assessment. However, international law places significant emphasis on determining the fate of nations rather than individuals, which attracts close scrutiny from the global community. This scrutiny necessitates meticulous attention to all details involved in tribunal proceedings.

Often – though not always – judicial bodies (as opposed to quasi-judicial ones) examine not just a sufficient but an abundant volume of evidentiary material. They interrogate a wide range of individuals and consider various opinions and positions, typically involving a panel of judges rather than a single judge. This approach significantly increases the likelihood of approaching the truth.

Can we assert that establishing the truth is an overarching task? We believe so. In civil proceedings, the arbitrator’s role primarily involves assessing arguments from both parties while maintaining an observational stance. In contrast, criminal proceedings – especially within the framework of international tribunals – require judges to take a more active role. In these cases, judges are not merely passive recipients of evidence; they actively participate in evaluating and verifying facts.

The legal approach used by UN bodies is quite restrained and carefully considered by those who prepare the relevant projects. It is challenging to find a straightforward mention of the category “truth”. However, the term “truth” does appear in certain contexts. For instance, Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearances³ establishes: “Every victim has the right to know the truth about the circumstances of the enforced disappearance, the progress and

² For more details, see (Klyuchnikov, 2020).

³ International Convention for the Protection of All Persons from Enforced Disappearance. Adopted by General Assembly resolution 61/177 of 20 December 2006.

results of the investigation and the fate of the disappeared person.” The relationship between the concepts of “veracity” and “truth” can be intuitively understood as synonymous or closely related. In the Explanatory Dictionary, truth is defined as that which corresponds to reality⁴. Although definitions may vary across sources, they share a common criterion: conformity to objectivity and what actually exists. Thus, what exists can generally be considered truth. However, any truth contains a subjective element. The subjects involved in justice inevitably introduce a degree of subjectivity. Nonetheless, it is reasonable to consider truth as a goal.

The goal can either be achieved or not achieved. In cases where it is not achieved, there is no cause for alarm; it is more appropriate to discuss judicial truth, which emerges from a comprehensive consideration of facts and circumstances, coupled with accurate and correct application of legal norms. In this sense, the court evaluates facts and circumstances from a perspective that, although subjective, projects the norms of international and national law onto the factual components in order to discern what lies beyond mere coincidences and intersections.

In fact, it is not the task of the judicial body to assess historical events; their task is to determine what actually happened and what did not. This determination must be documented in a judicial act, which then serves as a source of knowledge for society. The interpretation of established facts and their assessment as historical events will be undertaken by scholars, authors of scientific and methodological works, specialists in various fields and others. Consequently, differing opinions among various figures are not only acceptable but also indicative of a healthy pluralism of views – provided there exists a reliably confirmed list of historical milestones.

It is also impossible to deny that the court often transcends mere reproduction of a particular situation, providing legal and other assessments that reflect the state and (or) public perspective. For instance, the Nuremberg Tribunal not only established the crimes committed by the Nazi regime but also articulated the viewpoint of the victorious nations of World War II regarding the causes and essence of Nazism.

Understanding the functions of judicial bodies

Among the functions of the courts, several key roles can be highlighted: the actual consideration and resolution of cases, determination of the legal status of subjects, general and specific prevention, assistance to state bodies, and a form of indirect control over the activities of certain entities. The determination of the legal status of subjects can be comprehensive, including definitions of guarantees, rehabilitation mechanism, and compensation. Prevention efforts can also aim to minimize offenses of any kind, including violations of the right to historical memory. Regarding the function of exercising control over the activities of bodies, this may extend to those with responsibilities related to cultural heritage sites.

⁴ Kuznetsov S.A. Large explanatory dictionary of the Russian language. Gramota. Available at: <https://gramota.ru/biblioteka/slovari/bolshoj-tolkovyj-slovar#> [Accessed 06th May 2024].

Although the issuance of a judicial act is a legal fact – an action that has societal implications – these acts represent events that can be viewed as real facts. Consequently, the ongoing resolution of cases entails the establishment of a series of events that over time become elements of history. This illustrates how judicial bodies can influence historical narratives. If established means are employed to revise any facts, history itself is simultaneously subject to revision.

The functions mentioned above can be conditionally divided into two groups: those directly related to the administration of justice and those not directly related to it. The functions we are discussing likely fall into the second group. Often, when courts and other judicial bodies perform functions from the first group – particularly in considering and resolving cases – they can influence historical memory in various ways, such as by administering justice in accordance with officially enshrined legal concepts and contributing to the formation and reformation (correction) of historical narratives.

This conclusion arises from the analysis of another function within the second group: making requests to state bodies, which often serve as administrative managers implementing state memory policy. In response to these requests, state bodies provide information to the courts. Consequently, through the formation of judicial practice, the concept of historical memory is shaped. This is significant because supranational judicial bodies do not possess legislative initiative; however, the judicial practices they develop play a crucial role in establishing a general legal framework concerning history and historical memory.

In a sense, courts act as recorders of historical memory, although this process is reversible. Certain circumstances can be used as facts that are not subject to proof, effectively acknowledging that specific events occurred. However, within the context of their functions, this can take on different meanings. Well-known circumstances may not be recognized as such based on judicial discretion, prompting the court to investigate them further. By examining a case in this manner, the court also creates a circumstance that may not be subject to proof in the future – not as a well-known fact but as a fact previously established by the court in a similar case. Given that a judicial body's decision carries legal force and is mandatory for all relevant subjects, it effectively records a specific historical event.

The reasoning outlined above highlights the functions of judicial bodies when considering such cases. One of these functions – albeit concomitant and optional – is the acquisition of new knowledge. This stems from a focused yet relevant approach to defining truth as a relationship between knowledge and reality. Defining the moment when verification is achieved can be particularly challenging; subjective elements, such as the subject-predicate mechanism, come into play here. The law enforcement officer acts as an authorized subject in this process, leading to the emergence of knowledge with relatively objective characteristics. Sources include various aspects of reality: written and material evidence, audio, video recordings, explanations from the parties, and witness testimonies. Together, this knowledge forms a comprehensive body of information that can be used narratively in the future.

The second function of judicial activity in this context is directly related to this. As previously mentioned, judicial bodies often do not evaluate historical milestones but rather assess the legality of actions taken by various subjects. This distinction allows us to assert that what occurs is not “arbitration of history”, but rather the recording of historical memory is a function that is both sought after and significant. While historians excel in research and analytical work, they typically lack two critical tools: the authority to collect evidence and the legal force conferred upon judicial acts. Judicial bodies possess the ability to examine evidence that private subjects cannot obtain independently. Moreover, their conclusions do not carry legal weight for an extensive number of individuals.

A.A. Dorskaya and D.A. Pashentsev present an intriguing perspective regarding the structure of historical research. D.A. Pashentsev notes, “if for centuries historical research was the domain of professionals who had access to archival documents, studied them, and published their works, the emergence of the Internet and the process of digitalization have radically changed this situation” (Dorskaya & Pashentsev, 2021). This observation supports the thesis that final judicial acts serve as a source of knowledge, assuming that the judicial authorities are indeed the professional mentioned.

The court is considered a law enforcement agency. Law enforcement involves implementing legal norms in relation to real-life circumstances. This imposition is essentially a legal qualification. A judicial act becomes new if the conclusions drawn by the body align with the actual circumstances of the case, which must be established by examining all necessary evidence. Thus, an attempt is made to ascertain real facts, correlating reality with the pursuit of historical truth.

Historical truth can be formed or reformed, closely related to the legal concepts of “emergence” and “transformation”. Legal facts serve as grounds for generating, changing, or terminating legal relationships. If we define the benefit represented by historical memory as a subjective right, then this right becomes part of the content of a legal relationship, with its emergence or change grounded in legal facts. Court decisions and acts of judicial bodies function as these legal facts. Therefore, it can be argued that one of the functions – albeit optional – is the acquisition of new knowledge about history. This knowledge is reinforced by the transparency of justice and the belief that what is established by the judicial body is indeed true.

However, it is important to note that a comprehensive approach to considering the functions of judicial bodies has certain exceptions. Judicial and quasi-judicial jurisdictions may struggle to establish truth or verify modal judgments critically using moral norms and ethical ideals. In such cases, a judicial act serves as a prerequisite for this activity, embodying the essence of jurisdictional work.

An interesting complementarity among various elements emerges here. It has been established that a judicial act can be perceived as a source of knowledge while also considering truth establishment as a goal. If we reference Thomas Aquinas’ theory for some judgments, truth can be seen as a form of all-encompassing harmony. Interestingly, harmony is rarely mentioned among society’s goals for courts; however, by administering justice and restoring violated rights, courts contribute to ensuring harmony in public life. This suggests that in relation to tribunals and other judicial bodies, we can also discuss

their role in maintaining harmony. As observed, judgments based on formal logic are supported by social and empirical illustrations that reinforce this thesis.

With high level of trust in society (demand for judicial justice), courts can serve as instruments for shaping historical memory that is positively received in society. For instance, processes related to the rehabilitation of victims of political repression during the 1960-1980s in the USSR recorded these repressions as historical facts. The qualities of justice may come into play here: broad opportunities for proving circumstances and the obligatory nature and validity of court's decisions enhance this process.

The impact of judicial processes on historical memory

A subtle but important aspect is the distinction between the semantic content of the categories “restoration of the right to memory”, “formation of memory”, “reformation of memory”, and “distortion of memory”. From this list, it is necessary to differentiate between target categories and those that are immanently accompanying. It is somewhat presumptuous to assume that influence will occur solely on one object and exclusively through the final judicial act.

This can be illustrated by examining one of the most well-known bodies in society, which has been central to significant historical events and served as the basis for a lengthy trial: the International Tribunal that considered the case of Slobodan Milosevic. The specifics of this tribunal are not the focus of this study; however, it is essential to understand whether this process left a lasting impact on societal consciousness regarding the subsequent perception of historical events.

Some statements from individual journalists suggest that the tribunal's prosecution aims to rewrite the history of certain regional events. While it may seem that rewriting in this case is not feasible – given that the trial occurred relatively soon after the events in question – it is certainly possible for the tribunal to influence how these events will be perceived in the future. This influence stems from an open and transparent public process, which includes statements from state officials and an examination of evidence aimed at objectively assessing circumstances, culminating in a final act.

Moreover, in terms of memory formation, if we return to our earlier list, society often awaits the position of a judicial body or quasi-judicial tribunal, before forming its own opinion. The conclusions articulated in the tribunal's act will eventually be incorporated into historical chronicles and reflected in scientific and educational works.

Textbooks, particularly those used in basic (general) education organizations, play a crucial role in shaping societal memory of society. During school years, history is primarily learned either through educational institutions or through conversations with individuals who have personal knowledge of various events. Both textbooks and citizens tend to perceive information about historical events more objectively when the position of a specially established body – such as the International Tribunal for the former Yugoslavia – has

been articulated. This tribunal, established by the UN Security Council, holds significant authority and is trusted by public opinion.

It is important to note that the activities of such bodies can also contribute to the restoration of memory. The cycle is generally similar, with the caveat that the information in the educational and scientific literature is often authored and not fully based on chronological and other objective data. This situation inevitably leads to competition among sources of information. In this context, the trial becomes a means of restoring historical truth, which closely relates to another form of influence: the correction of memory. History provides numerous examples where such corrections are required by society. Over time, events and new circumstances can be perceived differently by people. In this case, the trial must perform a constitutive function.

Historical truth has needed restoration after the infamous fates of figures like Joan of Arc, Giordano Bruno, and Galileo Galilei. The actions of the judicial bodies that considered these figures were not always assessed correctly; in fact, their judgments often remained unchallenged. The views regarding their theories and beliefs were revised through the willful acts of state rulers. This situation represents a violation of legal logic, which hinders the objective restoration and reinforcement of historical truth in societal consciousness. Therefore, similar conclusions, enshrined in a judicial act would contribute to strengthening the sought-after truth.

It should be noted that such trials can also serve an informative function. Possession of information, in turn, leads to the formation of an objective memory. The conclusion can be illustrated by a now world-famous phenomenon: the Holocaust. While historians have gathered extensive knowledge on this subject, certain aspects, such as the true purpose of the ghettos remain unclear⁵.

One source of information about the massacres was the documents from German government agencies. In this context, a trial can serve as an “official platform” for examining evidence and establishing judicial truth regarding certain facts related to this phenomenon.

We believe that M.M. Mubarakshin is correct in asserting that the historical and practical significance of known processes in states lies in their uniqueness and singularity; thus, the subsequent trial can rightfully be considered unique (Mubarakshin, 2014). This uniqueness arises from the fact that such trials are not integrated into a single system, and general universal rules for their conduct cannot be formulated. The judicial bodies themselves do not operate within a unified national or supranational framework; the entities that establish them vary significantly. Consequently, it can be stated that the significance of trials in forming historical truth does not imply a pre-established role in the mechanism of influence; rather, it is often determined post factum.

⁵ United Nations website. Available at: <https://news.un.org/ru/story/2020/01/1347872> [Accessed 06th May 2024].

However, as A.A. Dorskaya and D.A. Pashentsev point out, when examining the processes of defining and implementing official memory policy from the perspective of social development, history can act as both a unifying and dividing principle for society (Dorskaya & Pashentsev, 2021). Without disputing the validity of the thesis, we note that the essence of the phenomena under consideration lies in the fact that a single body – potentially a judicial body, and an international one at that – serves to perform the unifying function. It is important to recognize that the significance of such processes should not be idealized, even in theory. Challenges in forming a cohesive image of events through these processes do exist, and the mechanism itself is not flawless. Depending on the initiators, the bodies involved, and a certain selectivity in choosing grounds, the process can be quite one-sided, during which the prosecution may highlight only specific events in isolation from the broader context. Not all cases actually reach the tribunals; as a result, only one version of events may be established. Human Rights Watch, commenting on the well-known events of the 1990s in Rwanda notes: “The fact that the tribunal dealt mainly with the Hutu is further used by the government of Paul Kagame for the “policy of one memory”. We concur with K. Koroteev, who asserted that this issue is not for the tribunal to address but rather for the current authorities of Rwanda, who use tribunal practices for their own purposes⁶.

Ideas about history are inherently subjective; individual milestones are perceived, analyzed, interpreted and presented by specific individuals with their own perspectives. Ultimately, all history – whether we like it or not – is expressed in words, which serve as a form of thoughts. However, imposing words on the characterization of events is merely a form of qualification (Myslivets & Romanov, 2018; Repina, 2012; Filyushkin, 2023). This qualification requires careful handling of terminology. Unity of opinion is based on a consistent application of legal categories that prevents arbitrary interpretation. In this context, the importance of judicial bodies and tribunals lies in their ability to provide interpretations of legal categories when considering and resolving specific cases. These interpretations should subsequently be utilized in writing monographs, textbooks, and other scientific and methodological publications.

International legal proceedings serve another crucial function in world history – one that is difficult to replicate with the same degree of success through other types of activities. We are discussing the recording of opinions from participants in the events under consideration, which will be included in various “chronicles” for centuries to come. This is significant because, within the framework of the adversarial process, participants – depending on their procedural status – provide explanations or testimony while pursuing their own interests. The thoughts and speeches of eyewitnesses to historical events are crucial for how future generations perceive these events. Such explanations and testimonies are documented in the minutes of court hearings and final judicial acts, making them permanent records in history due to the legal force of judicial acts. Furthermore, since international trials are often open to the press, and the principle of

⁶ Koroteev K. The European Court of Human Rights and Historical Memory. Available at: <https://urokiistorii.ru/articles/evropejskij-sud-po-pravam-cheloveka-i-i>

publicity is upheld through the publication of the judicial findings, these statements easily become public knowledge and can significantly contribute to the formation of historical memory.

Conclusion

Despite the ambiguity and controversial nature of many assumptions formulated in this work, there is also an objective component. It is well established that in 1986, Israel enacted a law imposing liability for Holocaust denial. In 1996, the European Union issued a Directive mandating member states to introduce provisions for public justification of crimes addressed by the Nuremberg Tribunal. In 2008, the Council of the European Union adopted a decision On Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law.

These isolated examples among many allow us to objectively assess the existence of a normative framework surrounding these issues. While much remains debatable, it is reasonable to conclude that a mechanism for addressing these matters is forming. The following serves as a foundational premise: if there are normative legal acts, then from the perspective of comprehensive implementation of legal norms, there should also be law enforcement. This enforcement, in turn, is provided by judicial bodies.

The examples demonstrate that such bodies can indeed be endowed with specific functions, particularly a control function. This control can be exercised in relation to achieving the objectives outlined in particular acts, especially those adopted by EU bodies and similar organizations.

The allocation of control functions to courts is not entirely straightforward. In most cases, courts are tasked with resolving existing disputes of various natures. While there are valid arguments from those who contend that courts lack this function, it is important to recognize that this perspective is somewhat narrow. Even within a single state there are judicial systems endowed with control functions, and this is even more pronounced across different countries.

At the supranational level, if we are to identify such a direction, it is appropriate to highlight judicial bodies as the most independent, impartial and competent jurisdictions available.

In several Eastern European countries, laws have been established prohibiting actions that deny crimes against the rights and freedoms of citizens. These laws typically relate to events from World War II. However, it is reasonable to assume that the body of normative legal acts will continue to expand, especially as earlier historical events come under scrutiny. This trend indicates a clear direction for the development of supranational judicial systems and underscores the need for a serious discussion on these issues.

For instance, Armenia has articulated the need to recognize the Armenian genocide in the Ottoman Empire during World War I. We believe that only tribunals can be granted the competence to consider such claims as the most objective participants in this process.

Another confirmation of this perspective is the recognition of the impossibility of resolving individual issues by a single country, issues that should be resolved by judicial bodies. For instance, it is unacceptable for one state to unilaterally decide whether its citizens can be judged by other states for specific crimes. Each case requires a systematic approach rather than discretionary resolution, while also respecting the independence of states in addressing important national issues.

Currently, various conventions and charters are being developed on topics such as the protection of monuments across different states. These acts necessitate the involvement of law enforcement agency.

Many countries are initiating tribunals and lawsuits regarding various historical issues; however, there is no clear and coherent mechanism for their creation and operation. One constant remains: in all cases, it is essential to uphold the rights and freedoms of individuals as well as those provided for by international agreements.

Finally, it is important to remember that the issues raised in this work lie at the heart of science and scholarly creativity. Scientific sources highlight the concern that expanding the body of normative acts on these subjects may limit the freedom of scientific expression. Preventing unreasonable restrictions can be managed by established judicial and possibly quasi-judicial bodies.

Based on the results of this study, several key conclusions can be drawn:

A judicial body can serve as a means of understanding historical events. This is because decisions are made based on legal qualifications, which involve comparing real events and legal norms. Therefore, establishing facts is one of the two “key halves” of judicial activity. These events should be recognized as real whenever possible, enhancing reliability through the examination of a significant body of evidence. While achieving objective truth may be challenging due to procedural principles, the pursuit of factual reliability increases. These findings are then recorded in the descriptive part of the judicial act, which is positioned as a source of knowledge – whether about a specific individual or a particular era. This knowledge contributes to history as examined by the court, regardless of case category.

The significance of a judicial act in recording and transforming historical memory is largely determined by its legal obligation. The publicity and accessibility of judicial acts allow a wide audience to engage with their content. One of the primary functions of courts is not only to form historical memory but also to transform it through restoration. This occurs when established historical knowledge about an era becomes subject to review by newly created tribunals or rehabilitation efforts by the judicial authorities following periods of repression. In such cases, courts must establish legal facts that give rise to new legal relationships distinct from those in previous periods.

Additionally, historical knowledge may be interpreted through judicial acts based on the official objectives facing both the state and the judiciary. Historical truth itself represents a valuable benefit for individuals and collective communities alike. As a benefit with intrinsic value, it also functions as a subjective right that warrants protection, including judicial protection. Thus, when considering cases that require establishing historical events, courts act as jurisdictional bodies safeguarding the right to historical truth.

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