

Projeto

Mnemonic Reality:
Investigating Memory Laws'
Impact on Reality
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Mnemonic Reality: Investigating Memory Laws' Impact on Reality and Reality's Impact on Memory Laws

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With disinformation, fake news, and denialism on the rise all over the world, the European Union does not remain immune to historical distortion. To battle with it, members states have introduced a particular type of legislation which are broadly understood as memory laws. These are legal provisions specifically crafted to protect a certain memory of the past. While present in every EU country, their actual shape differs considerably, however no study has analysed them all. Moreover, research has also not been done so far as to how the normative aspects of memory laws translate into reality and how vice versa reality is reflected in the normative framework. Our project proposes to rectify this study gap by focusing on Holocaust denial prohibition memory laws. In the first project phase, we in-

tend to prepare a compendium of Holocaust denial bans in all EU members states, and then check their effect on society using online surveys. The second project phase would focus more closely on four EU countries, Germany, Lithuania, Poland and Portugal, to investigate the impact of Holocaust denial bans more closely. On this basis, we intend to establish an analytical framework of how the normative framework can reflect deficits in reality.

1. Rationale

Another spectre is haunting Europe: the spectre of historical distortion. As years since the end of WWII, as well as other atrocities, go by, facts which seemed to have been established beyond any doubt are questioned once again, all the more easily in the era of social media. History seems to repeat itself,

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with the technological progress feeding the worst instincts within increasing parts of the populations.

This phenomenon has not been ignored: law, with its institution of memory laws, is supposed to come to our rescue. Memory laws (Belavusau and Gliszczyńska-Grabias 2017) are specifically crafted provisions which focus on the protection of a certain, not necessarily true, narrative regarding the past, setting one official collective memory of the events in question (Krawatzek and Soroka 2020). They were introduced first in the form of anti-Holocaust denial legislation, but over the years have become to be used as a political instrument in various countries (Behrens 2017).

However, despite their introduction, historical distortion is not disappearing – if anything, it seems to be increasing. Thus, the big question remains: do memory laws truly work within the society, or are they just an easy way for the governments to show they are fighting with disinformation while not taking any impactful measures? And how can their deficits in reality be translated to the normative framework? This project proposes to find out.

2. Theoretical considerations

During the 19th century and especially in the 20th century, on the back of the total consecration of human Reason (Adorno and Horkheimer 2010), the affirmation of positivism

came to feed the gradual imposition of policies of political, religious and racial segregation, in which the Holocaust is the finished example of this path of lights and shadows, of total rationalization of the worldview on the one hand and ostensive combat and exclusion of certain groups of that once had been called Humanity on the other (Dupuy 1991). The bleaching of memory was imposed for certain collectives, accompanied by dehumanizing laws and refusing the dignity of individuals, resulting in a narrowed view of history. Present day's memory distortion carries with it similar dangers.

The present project is based on the theoretical conception that collective memory exists. Even if this notion is still challenged by some and its exact delineation is subject of debate (Zubrzycki and Woźny 2020), it is the prevailing view in the humanities, anthropology, history and law that the collective memory can be differentiated from the memory of individuals (Halbwachs 1925; Assmann, J. 1992). We recur to Peirce's and Saussure's respective theories of sign (Peirce 1883; Saussure 1916), or Semiotic, as to how (linguistic) symbols translate their meaning in reality. Within this context, we seek to empirically investigate what effects memory laws actually create on the memory of a collective. The "collectives" that are subject of our research are, first, the populations of a

State, and second, different ethnic groups. By this, we reflect the need for an intersectional approach (Berger and Guidroz 2009). An emphasis of the project lies on assessing the empirical findings and on conceptualising how factual shortcomings can be reflected in the normative framework of memory laws. On this basis, policy recommendations will be developed.

3. Innovation aspect

The novelty and uniqueness of the proposed project can be seen in both: (1) its scope – the research covers different European countries and therefore is a unique opportunity for data collection and comparative research; and (2) its idea to connect the Holocaust denial laws with the Holocaust education issues.

There are recent research examples, exploring the memory laws in several European countries, but their scope is not as broad as the proposed here (for instance Koposov 2022), whereas the research perspective, combining memory laws and memory education, is mostly applied in case studies. For instance, such approach on Lithuanian case was explored by Beresniova (2017).

The comparative perspective can reveal the differences between the countries' definitions of the legal concepts, applied in the various

Holocaust denial laws. For instance, in Lithuania, the banning of the Nazism symbols is included in the "Code Code of Administrative Offences" together with the ban of Soviet symbols (Article 524, "Distribution or demonstration of Nazi, communist, symbols of totalitarian or authoritarian regimes")². In the court practice, this Lithuanian Holocaust denial law is interpreted in a certain way: for instance, the Court of Klaipėda ruled on 25th of January 2012, that promotion of certain types of Swastikas is not punishable, if these Swastikas resembles the pre-Christian Baltic tribes' symbolism, so called symbol of the sun. One more controversial Holocaust-related memory law comes from Poland – in 2018 a law was passed that made it a criminal (later lowered to civil) offense to implicate the Polish nation as collaborators during the Holocaust (Ray and Kapralski 2019).

So far, however, similar studies have not been conducted in other EU countries. As such, these examples demonstrate the value of the proposed comparative multi-country and multi-perspective research project as a way to create the common analytical tools in order to better understand and compare these multiple local European countries' perspectives and put them together in a broader European framework.

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² *Lietuvos Respublikos Administracinių nusižengimų kodeksas*, accessible online: <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b8d-908c0215b11e58a4198cd62929b7a/asr>>, last visited on 20 June, 2022

4. Structural considerations, methodology and timeframe

Mnemonic Reality project will limit the investigations of memory laws to EU countries, with a general focus on Holocaust denial memory laws in all twenty-seven member states. We selected Holocaust denial bans as a suitable memory law for several reasons: (1) bans on denialism are classic memory laws, as they incriminate expressions that divert from an “official” interpretation of a historical event; (2) legal provisions to restrict Holocaust denial exist in all 27 EU member States, even if some States do not contain an explicit provision, but use more general provisions like incitement to hatred or insult; and (3) compared to other memory laws, Holocaust denial bans can clearly be delineated and hence compared to each other.

In turn, we propose a closer focus on all memory laws in four countries: Germany, Lithuania, Poland and Portugal. We choose them on the basis of three reasons: (1) they are diverse in terms of their WWII and post-war experiences; (2) they have a different range of memory laws (from a broad one in the case of Portugal to several minute ones in the case of Poland); and (3) they are where our principal and assistant researchers will be based in.

The methodology of the project lies on three pillars, combining empirical research and induction with a deductive approach: (1) the conducting of in-depth online surveys in all

27 EU member states, (2) archive work, namely the examination of police files and court cases in Germany, Lithuania, Poland and Portugal, and (3) conceptual reflection on the interaction between the normative frame and factual deficiencies (for more details see *infra* 6).

5. Research centres involved in the project

- Academy of European Human Rights Protection, Cologne University, Germany
- Centre for Global Studies, Universidade Aberta, Lisbon, Portugal
- Mykolas Romeris University, Vilnius, Lithuania

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