

# THE RIGHT TO HISTORICAL TRUTH AND MODERN NARRATIONS

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**Abstract.** *The Article overviews the right to truth regarding different storytelling practices that nowadays tend to avoid addressing unpleasant historical past. There is not a united approach concerning which movies or books should be removed or on which scale can the cinema alter the truth to avoid topics of slavery, colonization etc. The paper overviews first how cinema avoids truth and what consequences it might have, then it analyzes book banning processes and the Supreme Court cases in the United States. The article estimates the psychological factors of those alterations on the audience and decides whether the deviance should equal the violation of the right to truth.*

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## Introduction

The right to truth has already emerged in international Human rights law as not only individual right but also the collective one. While it mainly had the narrow scope and referred to the criminal investigation aspect of forced disappearances nowadays the ongoing discussions suggest the broader interpretation of this right, which include the groups right to have access on historical truth regarding mass human rights violations and atrocities that has happened throughout history, such as colonialism, slavery and etc.

On this background it is essential to understand the tendencies entrenched in nowadays narrations: various storytelling practices like cinema, literature and art, to avoid historical truth since it might be triggering for the audience. Books are banned, movies are removed and alternative movies are made where slavery has never happened, the originally white character's races are changed to and replaced by the representatives of the minority races. Concerning this, it is crucial to estimate whether this kind of narratives that avoid unpleasant past, might be violating People's right to truth, despite the artistic freedom of expression, whether their effect that misleads an

audience, their approach to history, and consequences might amount to the infringement of the right to historical truth. The necessity and actuality of this research is evident, since those narration practices are widespread.

The aim of this article is to estimate the possible consequences of those narrations and whether they should amount to the infringement of the right to truth.

Methods used while researching include analyzing scholar's articles on truth to truth, overviewing case law of the USA supreme court as well as case law of ECtHR.

## 1. Modern narrations in the context of law

In 2019 the incessant voice of the outraged society has reached the walls of George Washington High School in San Francisco, Society had only one request: to destroy the murals on those walls, which in fact, had been present for 83 years and depicted the whole life of George Washington. The reason for that was the traumatic part of the history glorified by these 1930's frescoes – immense pictures of killed Native Americans by Washington, enslaved African Americans working in the fields, and other images of slavery, genocide, colonization, White supremacy and oppression ((The New York Times, 2019). Finally, after prolonged discussions and heated controversy – the decision was made and the school covered the murals (NPR, 2022). The artwork had a strong triggering impact on students while telling the undesirable part of history.

This is just one small example of the whole chain. HBO had totally removed “Gone with the Wind” from its platform due to its discriminatory nature (The New York Times, 2020). The book “Huckleberry Finn” was removed from shelves of several schools for the same reasons. All of these are artistic works that tell the “ugly” side of the history, which the mainstream apparently tries to escape. Meanwhile directors create alternative history in TV shows and movies where colonialism, apartheid, discrimination, racism has never occurred, for the sake of representation and inclusivity they frequently change originally white characters' races too even in historical movies. This whole tendency altogether creates the one narrative framework which ignores the undesirable side of the story. This leads to the discussion – whether this kind of “escapism” should be legally acceptable or does it infringe the right to historical truth, should law interfere at some extent in some instances? The question represents the main topic of this research. This might be regarded as narrative escapism<sup>1</sup>.

To understand its legal context, first it is important to define the narration and its impact, after that it would be possible to determine its connection with law. From the view of political philosophy literature, art, cinema and other forms of creative storytelling might be considered as narrations that form the viewpoint of the society.

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<sup>1</sup> while there is not a certain definition in literature about escapism) this is a more socially widespread term, claiming that the fiction tries to avoid something unpleasant, disturbing, or offensive.

For instance, Alasdair MacIntyre a well-known political philosopher in “After Virtue” underlines the importance of narrative, according to which the concept of narration goes beyond individuals and includes states politics and law: To say in short, narration makes contexts, whereas contexts create background for initiating or translating politics and law. Certain stories and angles, that make people view things from specific perspectives, encourages the states to decide what should be done - what legislation should be made, what interpretations should be given to existing legal rules, etc. History, society and its principles, culture and mainstream together create a large legal narrative that develops over time, and becomes the framework for the application and interpretation of laws. This responds to the question - Why Narration matters for issues of law.

MacIntyre’s political theory is relevant in law - especially nowadays - Widespread narratives became the tools that are used by different players to change the direction of ongoing legal processes within the state. The simplest example of this is the total spending on lobbying that recently amounts to around \$3.5 - \$3.7 billion per year in the United States (Statista, 2023) to ensure that the certain issues will be seen by the wider audience from certain angles, this directly creates general public opinion and attitudes towards actual problems, hence, the process results in high pressure on the government and courts, and is followed by adequate legislature, implications and interpretations of law.

Narration is also essential in understanding the past, which of course has the modern-day impact structuring the public’s visions about historical events. Some narratives might be triggering, trauma- awakening experiences if they refer to tragic historical events, but as some might consider changing them could violate the right to historical truth.

The modern world struggles to find the right way to deal with traumatic history and its traces - how to remember or not to remember the past. There is no one, clear legal path in this process. - What legal approach should be used regarding the outcomes of those times, when the system was not democratic. There are buildings, statues, artworks, movies or novels that not only are created in those eras, but also carry the mindset, language, general attitude of the period they were created in. They narrate stories of injustice, inequality, and oppression with the perspective and acceptance of the abovementioned structure, for instance, Margaret Mitchels’s “Gone with the Wind” that shows the offensive perspective for Afro-Americans. The quandary of how to deal with a controversial past and those remnants creates confusion.

For example, when two artists in Lithuania decided to cover the Statue of Petras Cvirka - by moss as the performance called “Let’s not forget not to remember”, they got a clear response from the authorities of the city that it was not even necessary to get permission for the show. Petras Cvirka was a Lithuanian writer who was a member of communist party and supported Lithuania’s incorporation into the So-

viet Union, therefore the performance carried the symbolic idea of emphasizing the outdated ruins of the Soviet era. However, the process of altering the history in such a way became a heated discussion the next day during the performance, when artists were demanded to stop the show and the city council made public statements that the permission was mistakenly granted (Let's not forget not to remember, 2021).

Clearly, in this case, artists tried to alter the remnants of traumatic history. And the issue that had arisen after that perfectly depicts the struggle to define what should be legally acceptable and what should not. Authorities find it hard to decide if altering history should be banned based on the people's right to the historical truth. Should the work be treated as the document that is part of the historical archive?

The confusion is caused by the narrative powers. The extensive psychological researches suggest that the information that is delivered through narratives, rather than non-narrative format, have much longer impact on people, memory retention is raised due to the emotional engagement in the story and use of imagination. Narrated information becomes longer and more effectively encoded in memory, and sparks stronger emotions – the phenomenon of which is called “cognitive impact of narrative media” (Gerrig, 1993, 158). Due to this impact, those narrations are entrenched in society and create collective perspectives.

When it comes to fighting against racism that had been embedded in the society over years, the questions regarding how to treat past, what should be allowed and what should not - are even more heated – Art, Cinema, Literature face the question how to treat the whole remnants of the past colonization, slavery, apartheid, sometimes it is responded by totally removing the past works that reflect those eras, sometimes new works absolutely avoid those subjects, or even more, they alter the historical reality and create the world which always was highlighted by the constituted equality, in cinema the method of race blending which means the highly inclusive casting also leads to the changes of originally white historical character's race, The whole picture altogether makes the possibility of “escapism”, creating the chain of feel-good narration which does not respond to the reality of past and present. Does not provide the real facts and truth.

The tendencies are followed by discussions, Even though they might have some justification, For example fighting structural racism<sup>2</sup>, the main question is whether they are legally acceptable or should the right to truth apply.

The modern forms of narrations nowadays are only concentrated on one side of history and that is not offensive or disturbing. For example, modern movies or TV shows often try to avoid the topics of colonialism, slavery, or create alternative sto-

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<sup>2</sup> Racism entrenched in different societal levels and areas Smith, Alyssa M., “Whitewashing v. Blackwashing: Structural Racism and Anti-Racist Praxis in Hollywood Cinema” (2021). Senior Independent Study Theses. Paper 9455.

ries that are not emotionally pressing for minority groups, meanwhile for the same reason some books that were written years ago are banned because they suggest the unpleasant side of history, or use language that is regarded as offensive now, but was common in the past. With methods like this, modern narrations avoid the past, and they do not provide much information about every perspective of unpleasant history. In this regard the question of the people's right to truth arises.

The right to truth nowadays refers to individual rights in criminal cases. There is the ongoing discussion that the right to truth should not only apply to individuals, but should also be deemed as a collective right of groups to have the access to truth regarding their historical past.

## 2. Cinema, race representation and avoidance of Ugly history

Over years, structural racism was embedded in various areas of societal life - including cinema and literature. Years ago, whitewashing in cinema was that even originally Black fictional characters were played by white actors. Now the situation has turned around and Black actors and actresses often play the roles of originally white non-fictional characters.

In the past White actors darkened their faces with polish and cork in order to imitate Black characters in the past who were portrayed stereotypically - they lacked depth, were superficial, violent, funny<sup>3</sup>.

With the beginning of the twentieth century Black representation in cinema was slightly raised<sup>4</sup>. Blackface practices were later replaced by Whitewashing, which still continued even in the modern era - when white actors were chosen to play characters of originally different races - whether fictional or historical. Biased cinema closed opportunities for talented Black people or Native Americans to represent their history and culture. For instance, "House of spirits" - movie based on Isabelle Allende's book, The Partially autobiographical novel metaphorically tells the history of the Author's Latin American family while also revisiting historical periods of the country. However, in the movie there is not one actress from Latin America. At least hundreds of the very famous movies were whitewashed.

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<sup>3</sup> These comical performances - Minstrel shows aimed to cause laughter in White spectators, while also underlining their supremacy, it was known as Blackface practice. (Smith, 2021, 17).

<sup>4</sup> More Black actors took roles, however those roles were stereotypical too - representing either violent servants or very obedient ones, lacking the complexity of an individual, it was the illusion of equal representation (Bowdre, 2014; 22). The effort made by civil rights movements including Harlem Renaissance gave the broader way to Black arts and culture (CBC Radio, 2021), in this process Black directors, actors, artists played the significant role - in the presence of the strong censorship, oppression and restrictions, they still managed to critic existing stereotypes and create counter-narrative through telling the stories of Black people within its real depth and complexity (The Guardian, 2022).

Simultaneously, as the response of whitewashing industries adopted “race blending” method while casting. That means that directors often prioritize inclusivity during casting to raise representation and choose Black actors to play historically white characters.

In recent years in order to encourage equal representation in the cinema, the tendency of race blending, or even identity conscious casting<sup>5</sup> is getting widespread. Some even call it “BlackWashing” when the originally white characters are played by black actors and actresses.

Even though blending practices aim for inclusivity and not the exclusion of white actors, it is still debatable whether people are deprived of the right to truth, White-washing or blackwashing either one alters the history.

Discussions around race blending gets even more heated when the directors practically create alternative history – period dramas that avoid the topics of slavery, colonization and White dominance. For example, in Netflix series – *Bridgerton* members of aristocracy including the main character - duke are played by Black actors and actresses, while in its prequel “*Queen Charlotte: A Bridgerton Story*” queen is played by Black actress.

Though the most complicated discussions emerge around the pure historical shows or movies where the race of historical figures is changed. Some of these examples include “*Queen Cleopatra*”<sup>6</sup>, “*Anne Boleyn*”<sup>7</sup>, “*Troy: Fall of the city*”<sup>8</sup> where Achilles was played by an actor of African descent<sup>9</sup>.

However, artists – including directors and scriptwriters have a broad choice of freedom: how do they want to convey their story, whom they want to play, what they want to tell and how. In art, cinema, literature this is often called an “Artistic license”.

So called “Artistic license”<sup>10</sup> derives from the freedom of expression and restricting it on a higher level can result in risky consequences. The artistic ways and choices, creative processes and outcomes are all covered by the “artistic license” which allows artists to be fully expressive without fear of limitations.. Artistic license allows cinema directors, filmmakers to be free to choose how they want to convey the story and in this context they can “alter” past events, history, without demanding accuracy, or create alternate realities which are not expected to be fully adequate and realistic.

When freedom of expression contradicts other rights, like the freedom of religion or right to privacy it might be restricted. Although it is debatable if the mere

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<sup>5</sup> Identity Conscious casting refers to the process, when the director has already decided that character will be played by the representative of minority groups.

<sup>6</sup> 2023 Netflix mini-series

<sup>7</sup> 2021 TV Series

<sup>8</sup> 2018 Movie

<sup>9</sup> David Gyasi

<sup>10</sup> The term is used in Humanitarian Sciences

changing of the character race constitutes the ground for limiting artistic freedom of expression based on right to truth – to set limitations for the directors, scriptwriters during casting.

Castings are not public matters - they are held by private companies which have the right to choose with whom they want partnership. Since freedom of expression is an essential part of democracy, the flaw of information and narratives is its characteristic.

The question with ethics, might be taken into account however cannot be considered as the basis of challenging artistic freedom, legal restrictions and censorship, while they do not include any offensive material for the viewer, obscenity etc. It is questionable whether the mere change of the skin color and inconsistency with the historical truth are enough grounds for restricting creative freedom.

### **3. Removing pasts- Banning books and the analysis of the decisions of the US supreme court**

One of the main aspects of today's tendency is to ban books that include unpleasant perspectives of history or use language that was acceptable during some historical times, but now those phrases are considered offensive and disturbing for some groups.

Book banning has a long history. This way of censorship has its roots in ancient times and was mostly used in order to control the information and dissenting ideas which existed among the members of society.

Since the last century human rights like freedom of opinion and freedom to receive information gained huge recognition and international support. However, book banning is still one of the remaining methods to limit access to some types of information in modern society.

It should be mentioned that even though some books may be banned in order to exclude any type of discrimination, some of them, in most cases, are banned based on personal views or for other obscure reasons.

Despite the fact that book banning restricts constitutional rights these days it takes place in some developed countries. For instance, this type of censorship is quite widespread in some states of the USA. In particular, many widely famous books like *To Kill a Mockingbird*, *Catcher in the Rye* and etc. which are recognized as classics and that portray historical reality, language and perceptions that were present at the time of creating those books, are challenged or banned in some schools of the USA.

Banning or challenging books in school libraries falls under the competence of local boards of education. School board members in the USA have the responsibility to remove books which may be inappropriate for children.

Decisions made by mentioned entities have become quite controversial, especially in recent years, among students, nonprofit organizations or other members of society.

Two main nonprofit organizations like the American Library Association (ALA) or the American Civil Liberties Union (ACLU) often resist the decisions regarding the book banning. These entities fight against this type of censorship and try to leave some of the crucial books on library shelves.

Apart from these organizations, usually local school librarians and administrators advocate against the board of the school and try to ensure that students have an access to different kinds of literature.

In scope of the US legal framework, first amendment of the constitution defines the limits of the discretion of boards of education. In particular, this provision guarantees the freedom of speech and expression which should be considered by the entities in decision-making process.

The Supreme court of the USA ruled on many cases regarding the book banning matters and stated its interpretations.

Board of education v Pico is regarded as the landmark case based on which the supreme court defined the discretion limits of school boards. The court stated that US school boards have broad discretion to govern the school matters but “such discretion must be exercised in a manner that comports with the transcendent imperatives of the first amendment”. (Board of education v. Pico, 457 U.S. 853 (1982)).

As the supreme court held in this landmark decision, the discretion of boards of education, may not be exercised based on the personal or political views of the members. The court also considers intention as the main element of defining whether or not the board abused its discretion. If the board intentionally made decision in order to suppress dissenting ideas, it infringed the first amendment of the constitution.

The supreme court ruled in favor of students. However, some judges had dissenting opinions and stated that students shouldn't have the access to all kinds of literature unless their educators find the material necessary.

Based on this landmark judgement, the supreme court established certain criteria that must be met when discussing the educational suitability of materials. Besides, according to the judgements the first amendment of the US constitution is a governing principle that must be considered in decision-making process<sup>11</sup>. However, as many agree these days, these landmark decisions didn't establish clear guidelines or enough

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<sup>11</sup> For example in Pico v. Board of education, According to one of the major aspects of the court's decision, vulgarity is considered as one of the main grounds based on which the banning of the books would be upheld. In particular, as the Justice Brennan states, book banning decision, based on the obscenity of the material is permissible.

In Miller v. California case, the supreme court defined the term “obscenity” and developed the Miller test based on which it stated that the work can be regarded as obscene if it “depicts or describes, in a patently offensive way, sexual conduct, if an average person would find that the work appeals to the prurient interest and if it lacks serious literary, artistic, political or scientific value”. (Miller v. California, June 21, 1973, p. 15).



grounds to help school boards challenge the book materials especially regarding books that depict unpleasant historical events. Mentioned view can be supported by the fact that many classic books are challenged or banned in some states of the country and the boards' decisions still spark debates and opposite views regarding the fairness of them.

Among the list of banned books many of them are challenged because of the issues regarding the racism and derogatory word usage that are offensive and disrespectful to certain groups of people in the US. According to the research of the American Library association, books that refer to the theme of racism or present the stories of African-Americans, were the most challenged and considered as inappropriate for students in 2022.

This creates a dilemma since some words for instance “Nigger” that are now considered offensive were commonly used towards the minority groups, by that time they weren't deemed as disrespectful or violating others rights, therefore, they were used by the famous authors in books by which they aimed to awareness and empathy in society. One of the perfect illustrations of this is Mark Twain's classic book, “Adventures of Huckleberry Finn” is one of the most challenged books in the US. In particular, based on the language usage this book has been a matter of debate since it was first published. The primary reason for targeting this literary work is the repeated use of the derogatory term “nigger” which is nowadays offensive and disrespectful for some African-American students.

On the other hand, “Huckleberry Finn” very much provides information about the historical reality: language that was used, living conditions of afro- american people, the barriers they had to overcome and the gravity of slavery. The book itself aimed to promote equality.

In 1998, the supreme court of the US ruled on the dispute between Kathy Monteiro and The Tempe Union High school District.<sup>12</sup>

Kathy Monteiro who was African-American teacher in Phoenix and the mother of one of the students in high school, claimed that the school's requirement for students to read “The Adventures of Huckleberry Finn” and “A rose for Emily” by William Faulkner, caused psychological suffering for her daughter and other students because of the usage of discriminatory terms. As the claimant stated these literary works created “a racially hostile educational environment” which also increased racially hostile attitude among students.

Monteiro started proceedings based on the fourteenth amendment of the US constitution that ensures the equal treatment of citizens and title VI of the Civil Rights Act which prohibits discrimination.

In the decision-making process, the court had to find balance between the conflicting interests of the rights of students. In particular, court discussed whether or

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<sup>12</sup> <https://caselaw.findlaw.com/court/us-9th-circuit/1281281.html>

not the right to access information is more crucial than the right to gain education that doesn't contribute to racial discrimination.

Even though the supreme court had not analyzed the importance of truth and had not mentioned the right to truth itself, we can assume that the right to information is directly connected with the right to gain knowledge about historical truth. Information that those books provided is crucial to understand how the society functioned at that period, it also plays a vital role in developing critical thinking of students. Hence it is important to find the balance between the right to access information and avoiding bullying or discrimination among children. The supreme court took into the consideration the importance of knowing history, even though it agreed with the idea that the content of literary works may be offensive and disrespectful for some.

In particular, as it noted ruling in favor of the appellant may result in more future complaints based on different grounds, for instance, some people can complain to ban the books by Toni Morrison and other well-known Afro-American authors on the basis that they mention Caucasians in a derogatory manner. In particular, the court considered that the increase of similar lawsuits may have a negative effect on education system since schools may try to challenge or remove some literature that have the content or use of specific terms that could become the reason of future complaints.

Besides, even though the court did not particularly use the term "right to truth" it stated that it's essential for students to get to know the bad and good sides of the history and discuss the events critically as the development of critical thinking is one of the main aims of education. Also, banning all the books that might have offensive content may result in the limitation of the books that are "suitable" for education.

In brief, the supreme court considered that removing of books by courts or boards of education is not a proper solution to put an end to racial discrimination or the breach of other fundamental rights.

Points listed by the court in this judgment may be deemed agreeable since it underlined possible threats for the educational system in the US. If the appellant had succeeded in this case it would have caused the limitation of other types of literary information for students. Besides, mentioned approach couldn't fully protect the children from possible bullying or discrimination and might have breached other human rights. Therefore, it's essential for school systems to change and develop the new methods of teaching rather than remove all the books that may be deemed inappropriate.

"Adventures of Huckleberry Finn" still remains banned in some of the schools in the USA as some people still find it derogatory. Therefore, it can be assumed that removing of literary works still continues to be one of the main methods to prevent psychological pressure for students and not the new approaches to resolve these matters at schools.

These days, many other books in the USA, which are deemed classics in other countries, take place in the list of challenged or banned books because of the usage of derogatory terms and especially for using the n-word.

Mentioned list includes books like “To Kill a Mockingbird”, “Gone with the Wind”, “The Catcher in the Rye” and etc.

Harper Lee’s “To Kill a Mockingbird” is among the list of one of the most challenged books. This book has been a subject of debates since it was first published.

For instance, in 2021, the board of the Mukilteo school district, challenged the book in question, as the teachers reckon that this literary work was focused on “whiteness”. It should be mentioned that they were seeking to remove the book from the list of compulsory books and not from the school’s library.

Teacher’s objection was based on the fact that many students considered the book offensive and insulting because of the content and word usage which also caused discriminatory attitudes from some of the classmates. Besides, according to teachers one of the main motives of this challenge was the necessity of rethinking of what they valued, taught and memorized after the killing of George Floyd.<sup>13</sup>[2]

Based on the current cases, it can be assumed that one of the most common grounds for challenging the literary works are the discrimination cases at schools. The book content and specific term can cause negative reactions from students and form the racially hostile environment. However, books shouldn’t be removed from school libraries as it would limit the students’ possibility to develop their critical thinking skills. If the schools can’t handle the discriminatory attitudes among students by other ways, removing the books from compulsory reading list can be considered as a better solution.

To conclude, there are still no clear guidelines or criteria to be used in order to discuss the suitability of books for educational aims. Not only the views of the teachers or parents but also the real experiences of the students result in the banning or challenging of some of the most famous books. However, banning can’t be considered as a proper solution of racial discrimination, as it is already mentioned such approach may result in more challenges for education system.

## **4. Right to truth**

### **4.1. Historical accuracy and psychological impacts and ethical responsibilities**

As mentioned above, the character’s race or making historical alterations serves a justified aim - to create equal opportunities and eliminate the long-entrenched stere-

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<sup>13</sup> <https://www.washingtonpost.com/education/2023/11/03/to-kill-a-mockingbird-book-ban-removal-washington/>

otype however the biggest issue arises regarding the changes in the races of historical characters. History, despite its complexity which is characterized by many interpretations, versions and discussions, is not the mere creation of anyone's creative process, but the chain of true events and facts that had occurred throughout time. Even though the creative works regarding those historical facts are the fruits of imagination of an artist, writer or the director, it is debatable what scope of obligations they carry regarding the historical reality and correctness.

Movies are often challenged by the audiences on the grounds of historical accuracy, for instance, Movies like "Redbad" and "Green Book" were highly critiques. The first movie was disliked by an audience, because of its portrayal of Christianity, and distortion of events. Even YouTube and Facebook refused to stream the trailers of this movie. While the latter "Green Book" was also criticized for the misinterpretation of the history, which questioned its position on Oscar nominees, and even though the movie still won Oscars (The Guardian, 2019), it also sparked the debates about the extent on which directors could "rewrite" history.

In terms of law, there is no general rule demanding the artists to be fully truthful to history. "Artistic license" generally gives them an opportunity to distort and alter fact. The only fact of misleading the audience by changing some factual circumstances in cinema and without leading to any harm and violation of other's rights, in general, does not contradict US or EU law. Unlike, for example, advertisements, that are obliged to be truthful<sup>14</sup>.

Obviously, it is hard to determine exactly what is acceptable and what is not by an artistic license regarding historical accuracy. Whether the law should set limits or not, is still actual. To answer the question, it should also be examined whether changing the historical characters' race in several instances might provide the audience with the misinformation that could result in grave consequences.

In 2021, a new British TV series aired about Anne Boleyn - the second wife of King Henry VIII of England. The actress who played the role of the Queen was Jodie Turner - Smith, British actress and model of African descent. The director of the movie even specified that the casting was identity conscious and that she already had in mind who would play the main character in her movie. While in color blind casting directors choose the actors and actresses disregarding their race, in identity conscious casting the directors have already decided primarily that the role should be played by the representative of the minority. Hence, the casting choice became highly debatable. Did the director have the freedom to alter the history on that level?

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<sup>14</sup> For instance, according to the US federal law media advertisement should be "truthful, not misleading, and, when appropriate, backed by scientific evidence" - Federal Trade Commission Act 15 U.S.C. §§ 41-58, as amended

First, it is clearly the false representation of the real historical figure - Queen Anne Boleyn, and the second, it questions the right representation of Black people too.

To delve deep into the issue, the historical context should also be analyzed - Anne Boleyn was the queen from 1533 until 1536 when she was executed on charges of adultery, incest, and treason. During this era, there was no chance for the Black people to be potential kings or queens in European countries including England. Having black monarch was generally impossible for European countries during that era, the firm structure of the society and conventional norms, the presence of drastic differences between powers and the life conditions of people from different social backgrounds - privileged and non-privileged hindered any possibility for anyone to rule other than white monarchs. The other alternatives would clearly not be feasible and accepted by society.

But more important is that, even though the slavery of Black people with its modern description was not yet present in England at that time, the issue was still relevant. In reality, the 16th century was characterized with the transatlantic slave trade, which meant the forced transportation of millions of African people to the America's to make them work as slaves on plantations. In fact, England - the country of Anne Boleyn was one of the leading players in transatlantic slave trade with other heavily involved European countries - Spain, Portugal, France, and the Netherlands. Therefore, England that was heavily involved in this process could by no means have the Black queen.

Therefore, it's obvious that the series not only inaccurately conveys the historical facts, but also creates the alternate reality of the past of racial minorities, and creates false assumptions into the audience about the opportunities of Black people in that era.

In defense of directors, it is often stated that the audience is smart, spectators can question narrated story, make their own researches on those histories, therefore directors do not hold any obligation towards truthful portrayal of facts (The Guardian, 2019). It is true that audiences expect movies to involve directors and screenwriters' imagination. However, there is difficulty to determine exactly what is true and what is false. That is why in case of biographical movies, directors are often strongly bound by ethical obligations to respect privacy, factual accuracy, to analyze the future audience and their perception, and make it clear which parts of the movie are fictional. For example, Audience might now that Anne Boleyn was white in reality, however, they do not know further history of African people in that era, while the TV show can make an impression, that transatlantic slave trade was not happening and Black people were suitable for the throne, completely escaping the tragic history.

In reality, the fact of how real persons or events are portrayed in cinema, even if it is fiction - matters. If the setting gives the spectators an assumption that something should be considered as the fact and the part of the real historical background, that means that the audience might be deceived by a false representation of some events.

For Instance, the abovementioned argumentation became the basis of the admissibility of Nona Gaprindashvili's claim against Netflix by California District Court, when facts about her were distorted in the popular fictional series "Queen's Gambit" (Nona Gaprindashvili v. Netflix; 2022, U.S. District Court of California.).

The quantity of those kind of movies are increasing, for instance Netflix series "Queen Charlotte: The Bridgerton Story" completely twists reality and fiction, it uses the real historical characters from late 18<sup>th</sup> century as well as imaginary ones, and creates the period setting where everyone is equal regardless race, Black people are presented in Aristocracy, there is no social structure and hierarchy, which of course in the 18th Century was a fantasy. Altogether those kinds of movies create an impression that colonialism and slavery has not happened, and have detrimental effects as far as they undermine the severity of real historical past and ongoing structural racism in present.

Many suggest that historical accuracy is not only a matter of ethical responsibility. It also affects people's everyday visions, opinions and choices. Numerous Psychological researches including Psychologist Dr. Richard Gerrig's "Experiencing Narrative Worlds: On the Psychological Activities of Reading," (Gerrig, 1993; 196-200, 202-204) suggests that the way people remember the information is very much affected by storytelling forms: like literature or cinema. Their influence can overshadow the previous vision of spectators and get embedded in collective memory, shaping their attitude towards different issues. Realizing this theory, filmmakers should feel the responsibility to accurately convey history, as their stories shape viewers' perceptions and memories of the past. Inaccurate portrayals in movies results in the perpetuation of false information and misconceptions about historical events, influencing collective memory and public understanding and approach towards important issues.

Another Psychological research by Melanie C. Green and Timothy C. Brock, suggests "transportation theory" which means that the narratives people perceive through cinema literature and other forms, are transporting into their real-life visions. Public narratives predominate over public advocacy, which means that Novels, films, soap operas, art, music lyrics, art and etc., instantly catch the viewers mind and easily entrenches into their personal choices, that is why those areas require bigger attention (Green M. *et al*, 2000, 701). Another research suggests that the brain processes information from narratives differently than from non-narrative sources. Brains exhibit heightened connectivity while hearing, seeing the stories, engagement and integration which facilitates far better recall of the information (Hasson, *et al*, 2004, 1634-1640).

In short, it is possible that people will read about transatlantic slave trade from history books after seeing the misleading shows, however they will still primarily remember the sense of equality from the series where even the queen was an African descent.

Many argue that the tendency might be considered as the “forced diversity” (Vox, 2022) rather than natural one. According to the letter, Inclusivity and diversity must be promoted through the stories where they can actually be found. Many spectators suggested for example, that instead of changing the originally white characters’ race, producers, directors and screenwriters could find the original stories that truly represented African culture and make the relevant adaptations with actors, the main aim of race blending casting would be achieved and diversity would not have artificial nature. Stories and adaptations would be more authentic and would also raise general awareness and sympathy towards African culture.

Some claim, that changing originally white characters race might also have the opposite effect– it makes the impression that the stories that are worth of most attention should be found only in historically dominant white culture, and actors and actresses of African descent are artificially casted for the roles just for the sake of visual diversity, forced to represent culture that is not intertwined with their history. While it would be more reasonable and more respectful to those actors and actresses to find and adapt the loads of stories coming from African culture itself, it will also provide the audience the truthful information, hence, it would be in accordance with the right to truth.

Through the narrative alterations and manipulations described in those researches it is easy to change audiences’ beliefs. In this case, the higher quantity of movies that escape the ugly, racist history by distortions, will raise the possibility that the heavy past might be undermined in the future, Society’s sensations and perceptions might base on those movies, shows, that escape the adequate representation of the past. Cumulatively with the processes of book and art censorship, this eventually might result in the emerging impetus of slavery denial.

Today holocaust denial amounts to the hate speech not protected by freedom of speech (*M’Bala M’Bala v. France*, 2015, ECtHR), even though the false representation of the history of slavery, colonization etc., itself does not mean the denial, it might become the incentive for the future allegations that the past was not as brutal as it was.

Therefore, in order to avoid such occasions, filmmakers should make it clear how the history was modified, and in that particular era, what were the true circumstances in which Black people had to endure by captions and descriptions attached to the movies.

In general, there are organizations that have their own ethical standards of film-making, however there is not one general guideline. However, it would be possible for example, for The European Union to establish legally binding guidelines under its competencies regarding cultural policy and the internal market. EU’s cultural and audiovisual sector also involves competences of the EU to adopt measures to promote the development of European audiovisual works while respecting the diversity of cultures in the Member States. In the US the Directors Guild of America (DGA)

has its own guidelines, still it would be more convenient if it would be regulated on the state level, since the guidelines in general are not binding. Filmmakers, especially, of Historical movies, should be obligated to make annotations regarding the changes in the character's race, as well as providing the short overview of the real relevant historical background.

To conclude, alterations in History, changing the historical characters' races – should result in more serious consequences and might alter society's visions of the past. Censoring it, would be unjustified intervention in creative processes, however there is the need of legally binding norms, obliging directors to provide the information about the relevant historical reality before and after the movie, with visual and audio descriptions.

#### 4.2. Right to historical truth as a human right

The right to truth is the right that has already been established at national, regional and international levels. In the Inter-American system, it evolved mainly as a separate individual right in the criminal investigations regarding the area of enforced disappearances (Noorloos M., 2021, 876). While European Court of Human rights does not separate it from other rights and there is the general view that it should be deemed as the procedural aspect of article 3 of the European convention on Human Rights, however the discussion has arisen even within the courts to acknowledge it as the separate right (EL-MASRI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA), the illustration of which is the tendency of dissenting opinions that state the pressing necessity to approve this right as the autonomous one<sup>15</sup>. Regardless of this, it is evident that this right has already emerged in different levels including international (Naqvi Y, 2006, 245). However, as mentioned before, the legal discussion has also started around acknowledging this right as the collective right to truth which goes beyond the area of enforced disappearances and includes right to access to information regarding the accurate historical events.

It can be assumed that even though this right is becoming inherent in international human rights law, there are heated debates regarding the scope of the society's right to truth if one can be fully acknowledged. In particular, some scholars suggest that the content of this right should not exclude the fact-finding process and the broader historical truth regarding the human rights violations that had happened in the past. Besides, there is the question whether this right demands authority to make some official acknowledgements (Noorloos M., 2021, 886) There are some soft law documents addressing the issue of whether there should be a united legal approach regard-

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<sup>15</sup> The tendency is apparent in the ECtHR concurring opinions on *El-Masri v. The Former Yugoslav Republic of Macedonia*



ing the collective truth to the information on the reasons, conditions and outcomes of historical mass atrocities.

On an international level, it is worth mentioning that The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation establishes the rights of victims and their representatives to receive information about gross violations of international human rights law, this standard is established not only regarding individual crimes, but also includes systemic level - particularly, gross violations against society. such approach ensures the proper analysis of facts and subjective and objective aspects that played part in the occurrence of violence and incessant impunity (Noorloos M., 2021, 880).

In general, various sources limit the right to truth. However, OHCHR'S study suggests that it shouldn't be the subject of limitations (Noorloos M., 2021, 880).

One of the important aspects to consider is that the mentioned right applies to every event regardless of the timeline- whether the violation took place in the past or is happening in the present. This right also goes beyond the criminal proceedings even in case of expiration of judicial action whether the violation was against individuals or groups.

One of the crucial aspects is the value of truth regarding mass violations. it enables elimination of obscure versions of the past as well as false interpretations. it helps to find and keep the proof of atrocities and seek the source of violations. Sometimes narratives from dominant sides manage to create unclear visions of past events to gradually avoid critics and accountability. Recognizing the broader interpretation of the right to truth which also refers to the society helps prevent the possibility of denial and future mass breaching of rights. In particular, this right guarantee access to the information about the actors who played the main part in atrocities and helps us to critically analyze factors of the cases which may also ensure to find ways for preventing the same mistakes.

There are various narratives that might be told regarding one event. Scholars suggest that historical truth concerning the mass violations of human rights should be recognized as a human right of those people who, or whose ancestors were the victims of those abuses. Only in this way, evidence of those tragic occurrences will be guaranteed to be safe in the future, and some personal narratives or interpretations that are made to avoid confrontation, will never substitute the real historical facts and events. (Saxby G., 2021, 3)

It is also essential for the self determination of the nation or group of people, which is not only based on analyzing success but also every aspect of history - especially suffering and brutality that those people have undergone.

Very often groups that obtain dominance and supremacy after their victory, create mythical stories and legends around the conquerors and show only one side of the story - how the conquest was beneficial for all. But in reality it is crucial to establish

a true narrative about the past which includes every aspect of history, regardless of whether it is unethical or ethical. (Schaffer & Smith, 2004, p.14). This must involve the cases of mass human rights abuses that had happened through the whole timeline. (Saxby G., 2021, 3) This compels the society to become more alert to possible future violations, prevents the repetition of ugly history or denial which amounts to infringement of human rights. (Anon, 2018, p. 314).

Truth commissions established new ways for conducting human rights activities by initiating discussions, evoking collective memories of society (Bakinar, 2016, p.219). In fact, after the end of the Cold War and fulfillment of decolonisation programmes, sixty human rights treaties have been enacted that guarantee specific rights of individuals (Schaffer & Smith, 2004, p. 15)

The exposition of human rights violations influenced nations to take into the consideration the violence and levels of prevention from exercising basic rights that must be recognized as a part of nations' political and historical narrative (Bakinar, 2016, p.14). Based on such an approach, collective memories of truth can result in developing legitimate political positions ("Is the recognition of historical truth a human right?"). (Saxby G., 2021, 4)

uncovering the shameful and uncomfortable parts of history is an essential way to eliminate burdens of history and to see human rights as an instrument to deal with one's life with respect and freedom. the process of colonization resulted in the abuse of inhabitants' human rights since violence was a way for settlers of colonies to control them (Grewcock, 2018; Wofle, 2006). it's essential to reveal the mentioned aspects of history even though they uncover the unfortunate events since the process of decolonisation can indicate how worthy and vital it is to unfold the truth and ensure the protection of this right.

opposite methods of the British Empire have not been portrayed as truthful by imperial apologists. However, it was addressed as a golden age for those who were subdued and supported by the propaganda paintings of Samuel Daniell (Daniell, 1804) and William Lyttleton (Lyttleton, n.d). many historical aspects of colonialism continue to be unreprobed.

Hence, taking into account the above-mentioned views it should be concluded that the misrepresentation of truth which gets entrenched in the minds of audience leads to further risks that the right to truth will be violated. It infringes the duty to remember. (Noorloos M., 2021, 892), emerging legal concept which demands to tell the stories not from the viewpoint of the perpetrator stories, but in a complex inclusive way, to serve justice through the memory.

## Conclusions

- 1) The modern narrations avoid the past and they don't provide every aspect of the history. These days the modern forms of narrations are only concentrated on one side of history that is not offensive or disturbing and don't show the perspective of unpleasant history. In this regard the question of people's right to truth arises.
- 2) There is the ongoing discussion that the right to truth should not only apply to individuals, but it should also be considered as a collective right of groups to have the access to truth regarding their historical past.
- 3) The "artistic license" allows artists to be fully expressive without the fear of limitation and to be free to choose how they want to portray the story and in this context they can "alter" past events. The question with ethics might be taken into account however cannot be considered as the basis of challenging artistic freedom while they don't include any offensive material for the viewer, obscenity etc. It is debatable whether the mere change of the skin color and inconsistency with the historical truth are enough grounds for restricting creative freedom.
- 4) One of the popular tendencies of today is to ban books that include unpleasant perspectives of history or use language that was acceptable during some historical times, but nowadays those phrases are deemed as offensive and disturbing for some groups.
- 5) The US Supreme court in one of the landmark decisions underlined the importance of knowing history, even though it agreed with the idea that the content of literary works may be offensive and disrespectful for some. In particular, the court considered that removing books by courts or boards of education is not a proper solution to put an end to racial discrimination or the breach of other fundamental rights.
- 6) The US Supreme court had not analyzed the importance of truth and had not mentioned the right to truth itself; we can assume that the right to information is directly connected with the right to gain knowledge about historical truth. Information that is provided by some banned books is important to understand how the society functioned at that period. It also plays a vital role in developing critical thinking of students.
- 7) It can be assumed that there are still no clear guidelines or criteria to be used in order to discuss the suitability of books for educational aims. Not only the views of the teachers or parents but also the real experiences of the students result in the banning or challenging some of the most famous books. However, banning can't be considered as a proper solution of racial discrimination, as such approach may result in more challenges for educational system.
- 8) The biggest issue arises regarding the changes in the races of historical characters. Even though the creative works regarding those historical facts are the fruits of imagination of an artist, writer or the director, it is debatable what scope of obligations they carry regarding the historical reality and correctness.

- 9) In terms of law, there is no general rule that demands artists to be truthful to history. The only fact of misleading the audience by changing some factual circumstances in cinema and without leading to any harm and violation of other's rights in general does not contradict US or EU law.
- 10) It is challenging to determine exactly what is acceptable and what is not by an artistic license in relation to historical accuracy. Whether the law should set limits or not is still relevant.
- 11) According to many suggestions historical accuracy is not only a matter of ethical responsibility but it also affects people's everyday visions, opinions and choices.
- 12) Alterations in history, changing the historical characters' races should result in more serious consequences and might alter society's visions of the past. There is a need for legally binding norms, obliging directors to provide the information about the relevant historical reality before and after the movie, with visual and audio description.
- 13) Many scholars suggest that historical truth concerning the mass violations of human rights should be recognized as a human right of those people who or whose ancestors were the victims of those abuses.
- 14) Revealing the shameful and uncomfortable parts of history is an essential way to eliminate burdens of history and to see human rights as an instrument to deal with one's life with respect and freedom.

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## SUMMARY

Presented research paper analyzes the right to truth, its scope within the modern legal system and its protection within different storytelling practices. As it is discussed in the paper modern narrations tend to avoid past and try to hide some uncomfortable or shameful aspects of history which at some point breaches the right to historical truth therefore there is an ongoing discussion that the scope of the right to truth should be broader and it should be considered as a collective right of groups to have the access to truth about historical aspects.

During the work on this topic, it became clear that the “artistic license” which allows artists to be free to choose the methods or ways to portray some historical aspects may at some point breach the right to historical truth and conveying the altered historical facts sometimes affect the way people view current reality or make important choices.

Presented research also discusses the book banning process in the US school systems which resulted in removing many widely famous books from the library shelves. Based on the research, the US Supreme court’s comments can be considered agreeable. In particular, putting an end to racial discrimination should be achieved by other proper solutions rather than book banning methods. As it is mentioned in the research, access to information is essential for developing critical thinking and it is closely related to the right to truth of individuals.

This article also discusses some psychological research and analyzes how the alteration of facts influence the vision and future choices of individuals. Mentioned examples also underline the importance of the right to historical truth and access to accurate historical aspects.

Based on the research, it can be assumed that the right to truth should protect broader areas of individual’s lives since the access to accurate past events at some point ensure the development of critical thinking of individuals and may guarantee that members of society will take right steps regarding the modern political or social situations.