Вестник Томского государственного университета
Философия. Социология. Политология. 2019. № 48

УДК 165.42 + 343.119
DOI: 10.17223/1998863X/48/19

N.P. Kirillova, E.N. Lisanyuk[1]

TRUTH AND LEGAL ARGUMENTATION IN FYODOR DOSTOEVSKY'S *THE KARAMAZOV BROTHERS* [2]

We examine the reasons of the judicial error in the Dmitry Karamazov case depicted by Fyodor Dostoevsky in The Karamazov Brothers and argue that the truth can and should be established in both of the process types, adversary and investigative, and that the three conceptions of truth, referential, inferential and pragmatic, play an evaluative role in that. The Dmitry Karamazov case shows that the formal view of the truth suffices for deciding a case, but it cannot prevent judicial errors when the epistemological ideal of the material truth falls into oblivion.
Keywords: *truth, legal argumentation, adversary and investigative process models, judicial error, The Karamazov Brothers.*

Introduction

In *The Karamazov Brothers*, Fyodor Dostoevsky tells a story of a legal case, we call it the Dmitry Karamazov case – the DM case, considered by a board of jurors, which has ended up with a judicial decision erroneously sentencing an innocent [3, IV, Ch. 12]. Dmitry Karamazov, accused of murdering his father Feodor Karamazov whom he did not kill, was found guilty of the murder and sent to Siberia. Dostoevsky's narrative of how the legal reasoning in the process evolved is relevant to the contemporary discussion of the role of the conceptions of the truth inherent to two different procedural models of the judiciary, investigative (inquisitional) and competitive (adversarial).

There were several reasons of the judicial error. The court investigator and the prosecutor investigated only one version of the murder, which seemed obvious to them but in fact was false, and they made no attempt to verify the defendant's version, which in fact was true. Along with the prosecutor's erroneous bias against

[1] (рус.) Н.П. Кириллова, Е.Н. Лисанюк. Истина и судебная аргументация в романе Ф.М. Достоевского «Братья Карамазовы».

Аннотация. Мы исследуем причины судебной ошибки в деле Дмитрия Карамазова, описанном Ф.М. Достоевским в романе «Братья Карамазовы», и приходим к следующим выводам: истина по делу может и должна быть установлена и в состязательном и в розыскном типах судебных процессов; три концепции истины – референциальная, инференциальная и прагматическая – играют оценочную роль в установлении истины и в оценке аргументов в суде. Дело Дмитрия Карамазова показывает, что формального подхода к истине достаточно для решения дела, но недостаточно для предотвращения судебных ошибок, возникающих, когда этот идеал предан забвению.

Ключевые слова: истина, юридическая аргументация, состязательная и розыскная модели, юридическая ошибка, «Братья Карамазовы».

[2] The support from the Russian Foundation for Basic Research project # 18-011-00895 is kindly recognized.

This paper is a collaborative update of E. Lisanyuk's talk given at the International Workshop 'Semantics and logic of legal language' held 26-29.04.2018 at the Tomsk State University. I express my gratitude to the Workshop participants and especially to Valery Surovtsev, Vitaly Ogleznev, Anton Didikin and Michael Antonov for their valuable comments to the earlier versions of the paper [1, 2].

Dmitry Karamazov, there were many circumstantial evidences pointing to him guilty, which led to the fallacious decision of the juries.

Dostoevsky portrays how the prosecutor's opinion over the crime was emerging and shows how his strong desire to boost his career by 'winning' a loud criminal case was guiding him towards opposing the defense's position not so much with arguments or evidence as with eloquence and 'theatrical' effects, which misled the jurors.

The jurors' error was caused by the way the prosecutor had been justifying the accusative claim and by some weak aspects of the criminal process's adversary proceedings of that time, which both contributed to the jurors' wrong assessment of the arguments of the prosecutor and Dmitry's defender. We show how three reasons of the judicial error, the prosecutor's and the jurors' faulty performance of their judiciary obligations and the flaws in the criminal process, reflect the evaluative role the conceptions of truth play in establishing the truth and assessing the arguments. We explore the acquisition of different truth conceptions which are legislatively implemented in the types of criminal process and focus on the fact that it is rather the way these conceptions affect the arguments' assessment than the implementation of the conceptions that is crucial for avoiding judicial errors.

The paper is organized as follows. We start with outlining the roots of the judicial error in Section 1. In Section 2, we discuss the two conceptions of truth, material and formal, inherent to the investigative and the adversary process types, and illustrate the connections between the conceptions and the process types with the derailments in the DM case. In Section 3, we argue that the two truth conceptions both have certain pragmatic aspects of truth. In Conclusion, we summarize our arguments in favor of our statement that the truth conceptions play a necessary evaluative role in avoiding judicial errors.

1. The roots of the error

Since the murder had been committed in witnesses' absence, in an uncertain situation, for proving Dmitry's guilt the prosecutor could have referred to exclusively circumstantial evidences. The prosecutor was justifying the defendant's guilt with a complex of witness and material evidence, from which it followed that he was at the crime scene, had a motive and an opportunity to commit the murder. The amount of this evidence was significant, but it did not disprove the defendant's position that he did not commit the murder and did not steal his father's money although he did come to his house. There was no rebuttal of the defendant's position in the prosecutor's argumentation, which should have cast doubt in the prosecutor's proof of Dmitry's guilt. That doubt could have prevented the judicial error, but that did not happen as the jurors were confident in their wrong assessment based on emotions and vague beliefs of the sort we call post-truth today [2].

Dmitry consistently described his further actions, and this description corresponded to the witnesses' testimonies, except of the two of them which were in fact false. He denied having taken his father's money and reported that the source of the money he had with him was his beloved Grushen'ka. Dmitry claimed that the murder was committed by his father's servant Smerdyakov for only he knew where the money stolen during the murder was kept. Smerdyakov was Dmitry's father's illegitimate son and had his own motives for committing the murder. The prosecutor and the jurors trusted the false testimonies of servant Grigory who had erred and

the innkeeper who had been biased. Grigory maintained that the garden gate had been open – in fact it had been closed, and the prosecutor used that to prove the way by which Dmitry escaped after the murder. The prosecutor grounded his conviction that Dmitry had stolen the money from his father by the innkeeper's testimony about the amount of money Dmitry spent in the inn, in fact exaggerated. Had the forensic investigation had their testimonies verified, it would have found them false, which would have supported the defendant's version. The forensic investigator and the prosecutor undertook no thorough investigation of Smerdyakov's involvement in the murder, so neither evidences of his guilt, nor the true motive for the murder committed was found.

During the consideration of the case, new evidence, unavailable in the preliminary investigation, appeared in the court: the testimony of the defendant's brothers, Ivan and Alexey Karamazov, who confirmed his position. Ivan Karamazov testified that Smerdyakov confessed to the murder, gave him the stolen money and then committed suicide. However, these testimonies did not fit into the prosecutor's version, he disregarded them and they did not shake his personal conviction in Dmitry's guilt. The prosecutor presented Ivan Karamazov's testimony, on the one hand, as false and biased, given for the sake of saving the brother from an accusatory sentence; on the other hand, he argued that the witness was mentally ill, so his testimony could not be trusted. These claims were inconsistent together, but the court did not take this into account despite the fact that the prosecutor provided no evidence of the witness's mental illness.

In his emotional accusatory speech, the prosecutor referred exclusively to the evidence against Dmitry, eloquently demonstrating his personal conviction of Dmitry's guilt, and he considered neither the facts in favor of the defendant's position, nor the witnesses' testimony that it was Smerdyakov who had committed the murder. He succeeded in creating wrong beliefs in the jurors by drawing incongruous psychological portraits of Dmitry Karamazov and Smerdyakov, with the help of which he argued that Karamazov acted as a true murderer, and Smerdyakov could not commit a murder. The prosecutor's conviction was based on the emotions and psychological appeals but not on the facts of case, and the jurors' conviction became so, too.

There were two apparent contributions to the judicial error, the prosecutor's wrong conviction and the jurors' wrong evaluation of the arguments in favor and against Dmitry's guilt. The prosecutor's version lacked factual support; he derailed both logically – in substantiating the accusatory claim, and legally – in failing to refute the defendant's position; his strong desire to 'win' the case misdirected his conviction – all that led him to the wrong conclusions. The prosecutor's rhetorical success in creating wrong beliefs in the jurors reflected his wrong conviction and finalized the contribution to the judicial error.

The adversarial model of criminal justice described in the novel also contributed to the judicial error by its general poor legislative implementation, which was one of the reasons of the court's malfunction in the DM case. At the time when Dostoevsky wrote his *The Karamazov Brothers* the adversarial model was newly introduced as a result of the judicial reform of 1864. Its authors tried to create a novel type of criminal procedure legislation, which would protect the rights of the accused, as opposed to the previous investigative type of the process which focused on the search of guilt evidence. The reformers believed that considering certain

types of criminal cases involving jurors in an adversarial process would minimize judicial errors and conviction of the innocent.

The pre-reform investigative process had three main criminal procedural functions in the hands of the court: accusation, defense and resolution of the case. There were no prosecution and defense parties, and the court investigated both the accusatory evidence and the defendant's version. To a certain extent, judges themselves accused and defended suspects, and resolved the cases. In the novel adversarial process involving jurors, the criminal procedural functions were separated from each other, which obliged the court to resolve cases on the basis of evidence submitted by the parties, and was meant to prevent the court from substituting the prosecution or the defense. This adversarial process against Dmitry Karamazov was described by Dostoevsky in his novel.

The advantages and disadvantages of the investigative and adversarial process types and of constructing of a procedural model that would equally well protect the interests and rights of crime victims and of defendants and would guarantee against an unjustified conviction were and still are central in the discussions over the criminal law. The fundamental issues in these discussions are establishing the truth in a criminal case and correct assessment of the arguments which have to be based on it. Good legislation and its accurate implementation are the necessary tools for achieving the former goal which thus instantiates the procedural kind of justice. The latter goal belongs to the domain of argumentation analysis as we need to know what kind of truth has to be and can be established, which amounts to the epistemological and ontological queries respectively; and what the ways are by which it can be and should be conveyed in dialogue, which refers to its pragmatic aspects.

2. Two truth conceptions in the two process types

Legal analysts discriminate between two kinds of truth involved in the issue, material, or objective, and formal, or legal. Material truth means establishing a full and objective factual picture of a crime by forensic and in-court investigation; it is called objective because it refers to the correspondence between facts of a crime existing as they are independently of the investigation, and their propositional descriptions used in legal reasoning over crimes. These facts are truth-makers in the doctrine of objective truth which thus has a referential nature. The correspondence conception of truth expresses the classical approach to it in epistemology. To establish material truth makes up the core task in the investigative criminal model.

The adversarial process places the doctrine of legal truth in the center. According to this doctrine, the establishing of a crime picture which would suffice for deciding the case is carried out by the court by means of assessing the evidence and arguments submitted by the opposite parties, the prosecution and the defense. The court selects one of the two positions as the best justified and decides the case on its basis. The truth-makers of legal truth are formal relations between the premises and the conclusions of the arguments contained in the opposing parties' positions. Legal truth has an inferential nature, and its truth-makers demonstrate the conclusive coherency of the party's position. In epistemology, the coherency-based inferential conception of truth emerges as the methodological elaboration of its correspondence conception by providing algorithms of obtaining truth instead of the vague correspondence notion.

There are two roles, epistemological and normative, the two truth conceptions play in the two process types. They reflect respectively the cognitive and the procedural goals towards which legislation directs the court's investigative efforts. Along with the referential and inferential truth conceptions, there is a remarkable variety of other truth conceptions in epistemology, but they are unlikely candidates for implementation in the types of processes since investigation outcomes they are capable to convey are either ambiguous, as in the informational conception of truth, or multivalent, as in the agentive or ameliorative conceptions [4–6]. These conceptions allow for more than one truth for one and the same issue, and they rather exemplify negative investigation results than provide cognitive ideals for the processes. Thus, the judicial error in the DM case can be viewed in the vein of either the agentive or the ameliorative conception. According to the agentive conception, the truth in the case amounts to what one of the parties says (in this case it was the prosecution)[1]. The ameliorative conception treats any investigation outcome as lacking perfection with respect to some ideals with which the outcome has to comply and defines as true a statement closest to those ideals irrespective of their relevance to the issue at question [9. P. 366]. In the DM case, Dmitry's lack of moral perfection placed the prosecutor's version of the crime closer to the (ameliorative) truth than the defendant's version with its no appeal to morals at all. Along with doubts in its cognitive contribution, the ameliorative truth lacks procedural determinacy as it endorses leaving untouched the question why morals matter in the prosecutor's accusation against Dmitry but not in the Karamazovs' accusation against Smerdyakov.

The epistemological role the truth conceptions play in the investigation identifies the kind of the truth which can be established; their normative role determines the definite ways of how the truth has to be established in order to exclude employing any truth conception other than the one legislatively implemented by those ways. Whatever peerless the referential and the inferential conceptions might be in epistemological, legal or argumentative sense, postulating them as investigation objectives implies obtaining one true crime version. In practice, achieving it according to either of the conceptions is a complex task as the judicial error in the DM case demonstrates.

There are two sides in this complexity; one has to do with the implementation of the truth conceptions according to their definitions in the corresponding process type, and the other with how the arguments based on the established truth are assessed. In both of the process types, objective and formal truths embraces wider scopes than the ones their truth-makers bring about. As the two conceptions instantiate the social-constructive type of normativity [10. P. 31], the law identifies them by means of certain institutionalized procedures, different for each of the two. The procedural aspect accounts for the constructive side of the two truth conceptions' normativity; it is plain in legal truth and is less apparent in the material one in which facts are treated as independent truth-makers whose objective character is maintained rather by their existence as they are than by obtaining them with the help of legislatively determined investigative measures. In the investigative process, the court assumes that there can be only one true factual picture of the crime, and it has to be established. Such an assumption is a cornerstone notion in episte-

[1] Here it is irrelevant whether the agentive conception of knowledge and truth is viewed as psychological [7], like in the beginning of the XX c., or as cognitive [8], like today.

mology and is a kind of a cognitive ideal conveyed in a remarkable variety of definitions. Logic models this ideal by the designated value 'true' – 1, preferred over other truth values, 'false', or 'inconsistent' – 0, 'doubtful – τ, in the linear truth values ordering of bivalent (i), ternary (ii) or 4-valued formalisms (iii), (iv)[1].

(i) $1 > 0$;
(ii)$1 > 0 > \tau$;
(iii) $+1 > -1 > 0 > \tau$;
(iv) $+1 > 0 > -1 > \tau$.

However, such an assumption does not exhaust what the conception of material truth says. Investigative truth-seeking measures are confined to the queries made over the preliminary investigation, beyond which the judges may not investigate during the in-court trial, in order to prevent them strengthening the evidence base of either the prosecution or the defense [13. P. 98–99]. In this way, although the discovering of material truth is subordinate to the assumption of objective truth, the establishment of it is a constructive activity limited to definite procedural steps. Dostoevsky's *Crime and Punishment* illustrates a similar idea by portraying a detective who, amid having found no evidence which he had to present to the court in the preliminary investigation, started pursuing Raskolnikov, the suspect, to have him confess to the murder [14].

The material aspect the legal truth has in the adversarial process is likewise less apparent than its formal one. It restricts its truth-makers' scope to the parties' positions, which amounts to the idea that in establishing the legal truth the court is confined to considering crime evidences to which it has been exposed by the opposing parties, and may neither initiate investigation of other facts beyond that, nor question the evidences not questioned by the parties [15. P. 196–199]. In the adversarial process, this ontological material restriction in the whereabouts over the establishing of the legal truth prevents the court from substituting the functions of the prosecution and the defense.

The court's lack of attention to the material aspect in the establishing of the legal truth was one of the reasons of the judicial error in the DM case. The court could not further investigate the evidence, the pestle erroneously presented by the prosecutor as the murder tool, once that had not been explicitly challenged by the defense which did not question the pestle evidence as it had had a restricted access to the forensic investigation in the preliminary stage. Thus, in the two types of the process, the conceptions of formal and objective truths do not exhaust what the conceptions of legal and material truths embrace respectively; in these types, both conceptions show up, albeit diversely, their referential and inferential aspects.

Since either of the two versions can turn true in a court decision but until that it is not known which will do, the court's and the jurors' reasonings in the adversarial process are best modeled by formalisms with two designated values, 'averse true' – +1, which may be interpreted as supported by arguments, and 'reverse true' – –1, or supported by counterarguments, as in (v):

(v) $+1; -1 > 0 > \tau$.

[1] The difference between employing (iii) and (iv) for modelling the DM case is discussed in [1]; the formalisms based on such orderings – in [11, 12].

These truth values are not only incompatible, as any truth values are in (i) – (iv), but are disparate. This implies the non-standard definitions for the disjunctive 'or' – $\vee$ and conjunctive 'and' – $\wedge$ connectives:

if $\phi <=> +1$, $\varphi <=> -1$, then

$\phi \vee \varphi <=> \tau$, instead of *max* $\{v(\phi), v(\varphi)\}$,

and $\phi \wedge \varphi <=> 0$, instead of *min* $\{v(\phi), v(\varphi)\}$.

As concerns evidence and arguments assessment, such non-standard interpretation fits the adversarial process better than the standard one. Let us take $\phi \wedge \varphi$ as the prosecution's and the defense's arguments for and against the claim, which taken together turn the issue over the claim unresolved, or inconsistent. This is what the truth value 0 in (v) expresses. For example, Ivan's testimony of Smerdyakov's confession in the murder confronting the prosecutor's contention that the murder was committed by Dmitry leaves the issue inconsistent until further arguments would appear. When either the prosecution or the defense puts forward their argument, which is symbolized by $\phi \vee \varphi$, it makes the issue indeterminate – τ, since without a rebuttal of the opposing version neither pro-argument nor contra-argument itself suffices for establishing the truth as it happened with the prosecutor's no rebuttal of Dmitry Karamazov's version of the murder, which was one of the reasons of the error. To observe that although to refute the positions confronting the crime version proposed by the prosecution is prosecutors' imperative task in the both types of process, in the investigative type it is more persistent as there is no material opposition to the prosecution's crime version, which is reflected in the court's obligation to perform both the prosecution and the defense as well as in the truth-values ordering (i) – (iv) modeling their assessment.

Employing diverse formalisms for modeling arguments' assessment in the two types of process with their diverse backgrounds in the two different conceptions of truth does not exclude the idea that the court may and should epistemologically assume the existence of objective truth. According to Ivan Foynitsky, a contemporary of Dostoyevsky and influential criminal law analyst, such an assumption has an apparent legitimate procedural support in the investigative process type, but not in the adversarial one. Although the pursuit of material unconditional truth is the ultimate goal for any criminal process and for every court, the specific properties of the process involving jurors imply that the truth the court attains is formal truth [16, 8]. In the after-reform pre-revolutionary criminal process, the conceptual principle of material truth as established by the court of jurors had to be understood in a restricted sense, and the guiding principle for the in-court discovery of truth was not material, but legal truth, in the form of a proven prosecution [17. P. 345].

After the 1917 revolution, the court of jury was abolished and the establishment of material truth was regarded as a goal in the criminal judiciary. Many Soviet legal theorists criticized the pre-revolutionary model of the criminal process for its formal approach in what regards establishing the truth. They treated such an approach as erroneous since it reduced the act of administering justice to a formal logical operation – to constructing syllogisms. Contrary to that, the court's objective was to amount to the establishment of material truth, which meant a full and accurate correspondence of the conclusions made by the court to the facts. The guilt or innocence of the suspects should depend on the material truth as identified by the investigation. [18. P. 14].

As courts of jury have been reestablished in the contemporary legal system, there continue discussions over the conceptions of truth those trials would have to pursue as their goals. Some contemporary theorists warn that the adversarial model of the criminal process should not be overestimated as the key truth warrant. In court dispute between the parties, the truth may be revealed as well as may be buried depending on whether the truth coincides with their interests or contradicts them. Thus, the defender's desire to establish the truth may be contraindicated to their position in the courtroom, when it endangers their client's interests; the prosecutor, freed from the obligation of supervising the legality, would unlikely undermine their position in the pursuit of the truth. Consequently, adversariality is just a tool for forensic cognition, which may yield ambiguous outcomes according to the will of those who employ it [19. P. 65–66].

3. The pragmatic aspect of truth

The truth pursued in the adversarial or investigative type of process brings about the issue of arguments' assessment in which the pragmatic conception of truth plays its role along with the referential and the inferential conceptions although it does so with no mention in the legislative endorsements of the type of processes. In the adversary type, the pragmatic truth conception is the one on which the court instrumentally relies when it selects the best justified position by evaluating the connection between the position's coherency, the crime version the party is intended to prove and the position's sustainability as opposed to the other party's position. This connection, stable in its definition of what has to be connected but diverse in what is connected in each case [20. P. 4], is the truth-maker of the pragmatic truth which exemplifies a contemporary elaboration of both the referential and inferential truth conceptions and relates the truth-makers of the first two conceptions to the truth-makers of the pragmatic conception. It bridges the establishment of correspondence between facts and their description as well as between the description's coherency and the investigator's objectives. This relation instantiates the idea of engineering, or poetic dimension of truth taking over its experimental, or declarative dimension [21. P. 301], as well as the fact that no pure facts exist or can be conveyed unless they come from a certain source for a certain purpose by well-defined means [22. P. 55]. Thus, the pragmatic conception of truth contributes to the evaluation of any evidence or argument irrespective of whether they are put forward by the prosecution or by the defense, and the challenge is to procedurally identify the extent to which such contribution affects the court decision in the two types of the process, in which the conceptual identification of the kind of truth to be established is subordinate to the extent identification.

Legal theorists rightly call the truth to be established by the court either material or formal in the sense that it is based on a certain procedural assessment in which philosophers discriminate three aspects: logically formal, or inferential relating its premises to its conclusions, material, or referential relating the objects of its concern to the outside facts, and communicatively consistent, or pragmatic relating what it contained in the parties' positions to their intentions [23]. The former two aspects are characteristic of the two truth conceptions which are the objectives in the two types of process. Although the latter aspect seems to play a lesser role in the investigative process than in the adversarial, it affects conveying arguments in the investigative process as well, since there is no way of obtaining facts and evi-

dence other than by legally definite procedural measures performed by competent investigators. Thus, in both types of the process, it shuts the epistemological door to the court investigation for the pragmatic aspect of truth but opens the procedural entrance for it.

Many contemporary proponents of the adversarial process refer to the ideas of pre-revolutionary theorists regarding the shortcomings of the investigative process. Foinitsky pointed to three groups of those shortcomings of which the first two correlate with the prosecutor's contribution to the judicial error in the DM case and the third with that of the jurors. The first was ignoring individuals' rights, employing brutal measures for the sake of the abstractly understood justice. The second was combining the judge's, prosecutor's and defender's roles in one hand, an essential property of the investigative process which endangered of improper administering of justice both the victims and the suspects. No matter how morally strong the judges were, they could unlikely avoid taking biased decisions given that their obligations included both the prosecution and the defense. The risk of bias, like it happened in the DM case despite the adversarial process, was enhanced by the fact that in the investigative process the law allowed for no formal defense as it obliged the judges to be the defenders as well [16. P. 70–71]. The third group had to do with the fact that in the parties' absence, the investigative process lost the vitality characteristic of the court proceedings based on the struggle of opposing interests and became a lifeless clericalist machine. Such processes had a rough finish which eliminated the ability of bootstrapping its evolvement to the requirements of particular cases and left little room for focusing on personal guilt, deeply individual in its shades. Thus, when the new testimonies of Ivan and Alexey challenged the prosecutor's version, the court showed no flexibility and disregarded them.

Why illustrate Foinitsky's ideas put forward in support of the adversariality in court with the adversary process depicted by Dostoevsky? The reason is that in his portrayal of the DM case Dostoyevsky demonstrated that the adversarial type of processes involving jurors counted as more progressive than the pre-reform investigative type, had its drawbacks and could not guarantee against judicial errors. Dostoyevsky's deep concern was not so much over the type of the process but rather over the courts' capability to establish the truth. This concern is persistent in his *Crime and Punishment,* too. Had not Raskolnikov confessed in the murder to the investigator, the court would have had no evidence against him and could not have had him sentenced for the murder he had committed. The Raskolnikov case exhibits yet another judiciary shortcoming and demonstrates the need of establishing material truth along with selecting a version for legal truth on the competitive basis. These two processes' stories critically oppose each other regarding the ways of identifying the truth in the case.

Assessing the capabilities of the adversarial process from the viewpoint of judiciary, we nevertheless argue that not only legal but also material truth is achievable in it despite all the shortcomings observed. That the legislation sets before the court the task of proving the fact of the crime, the fact that it was committed by the defendant and the fact of the defendant's guilt testifies that the legislation requires legal (formal) truth to be established during the process. At the same time, material truth can be achieved not only in the investigative but in the adversarial process as well if both the court and the parties perform what they are obliged to according to their procedural functions, irrespective of the type of process. Material truth in the

case not only can but also should be established by a lawful and efficacious investigation at the preliminary stage, professional prosecution, due defense, thorough in-court consideration and fair resolution of the criminal case whenever the parties and the court take all the lawful measures for the full realization of their functions defined in the framework of the type of process. The procedural and pragmatic aspects of discovering the truth and assessing the arguments allow for the epistemological diversity as modeled by different formalisms, yet make a formal view on what can be achieved by the court both necessary and sufficient in the legal sense, be it an adversarial or an investigative process. Material truth provides the necessary epistemological ideal for such a formal view in the both types of the criminal process; it necessitates perfection in performing obligations by the parties and excellence in cognizing the facts of the case, in the absence of which the formal view of the truth suffices for deciding a case, but cannot prevent judicial errors as the DM case shows.

Conclusion

We showed that the role of different conceptions of truth played in legal argumentation evolving in the two types of criminal process is evaluative in two aspects as an epistemological ideal in the establishment of the truth in a case and as an indicator of the malfunction of the court parties and of the shortcomings in the implementation of the criminal process type. In the DM case it was the adversarial type. The confusion in the conceptions of truth on which the court could rely and which it had to seek was the cognitive reason of the error.

From the legal viewpoint, the malfunction and the shortcomings contributed decisively to the error, and, consequently, a thorough performance of their professional obligations by the court and the parties as well as accurate law enforcement are the necessary, although not sufficient, conditions for preventing such errors. From the viewpoint of argumentation, disregarding diverse aspects of truth in establishing it and arguing in favor or against it misdirected the court and the jurors away from cognizing material truth in the case, which led to the jurors' faulty assessment of the investigation outcomes and thus contributed decisively to the error. Thus, the conceptions of truth serve as necessary tools in evaluation of the court's and the parties' perfection in performing their obligations in the courtroom as they demonstrate whether the epistemological ideal of material truth was sufficiently pursued for establishing the truth and a fair decision. The DM case shows that the formal view of the truth suffices for deciding a case, but it cannot prevent judicial errors when such an ideal falls into oblivion.

Reference

1. Lisanyuk, E. (2017) Russian logos of the post-truth era and arguments' evaluation (in F. Dostoevsky The Karamazov brothers and Crime and Punishment). *Russian Logos: The Horizons of Comprehension.* Proc. of the International Conference. September 25–28, 2017. St Petersburg. pp. 407–412.

2. Lisanyuk, E. (2018) Alternating truth in argumentative dispute resolution. In: Beziau, J.-Y., Buchsbaum, A. & Rey, Ch. (eds) *Handbook of the 6th World Congress and School of Universal Logic*. Vichy: Universit´e Clermont Auvergne.

3. Dostoevsky, F.M. (1989) *Sobraniye sochineniy v 15 t.* [Collected works in 15 vols]. Vol. 9–10. Leningrad: [s.n.].

4. Lisanyuk, E.N & Mazurova, M.R. (2019) Argumentation, peer-disagreement and the birth of truth in dispute. *Epistemologiya i filosofiya nauki – Epistemology and Philosophy of Science*. 56(1). (In Russian). DOI: 10.5840/eps20195619

5. Zaitsev, D.V. & Grigoriev, O.M. (2011) Dve pravdy – odna logika [Two truths – one logic]. *Logicheskie issledovaniya – Logical Investigations*. 17. pp. 121–139.

6. Shramko, Y. & Wansing, H., (2005) Some useful sixteen-valued logics: How a computer should think. *Journal of Philosophical Logic*. 34. pp. 121–153.

7. Martin, W. (2013) Theodor Lipps and the Psycho-Logical Theory of Judgement. In: Textor, M. (ed.) *Judgement and Truth in Early Analytic Philosophy and Phenomenology. History of Analytic Philosophy*. London: Palgrave Macmillan. pp. 9–35. DOI: 10.1057/9781137286338_2.

8. Mylopoulos, M. (2017) A cognitive account of agentive awareness. *Mind and Language*. 32(5). pp. 545-563. DOI: 10.1111/mila.12158

9. Haslanger, S. (2012). *Resisting reality*. Oxford: Oxford University Press.

10. Shevchenko, A.A. (2010) Normativity: its role, sources and status. *Vestnik Novosibirskogo gosudarstvennogo unversiteta – Bulletin of Novosibirsk State University. Series Philosophy*. 8(4). pp. 28–32. (In Russian).

11. Finn, V.K. (2006) Standartnaya i nestandartnaya logika argumentasii [Standard and non-standard logic of argumentation]. *Logicheskie issledovaniya – Logical Investigations*. 13. pp. 133–165. (In Russian).

12. Karpenko, A. & Tomova, N. (2017) Bochvar's three-valued logic and literal paralogics: their lattice and functional equivalence. Logic and Logical Philosophy 26. P. 207–235 DOI: 10.12775/LLP.2016.029

13. Kirillova N.P. (2008) Adversarial Character of the Judicial Proceedings and Establishment of the Truth in Criminal Law. News of higher educational institutions. *Pravovedenie – Jurisprudence*. 1(276). pp. 93–100. (In Russian).

14. Dostoevsky, F.M. (1989) *Sobraniye sochineniy v 15 t.* [Collected works in 15 vols]. Vol. 5. Leningrad: [s.n.].

15. Kirillova, N.P. (2006) Conflictology and adversariness of court investigation. *Mysl': Zhurnal Peterburgskogo filosofskogo obshestva – Thought: Journal of St Petersburg Philosophical Society*. 6(1). pp. 187–199. (In Russian).

16. Foynitsky, I.Ya. (1896) *Kurs ugolovnogo sudoproizvodstva* [Criminal Justice]. Vol. 1. St Petersburg: Obshchestvennaya pol'za.

17. Rozin, N.N. (1916) *Ugolovnoe sudoproizvodstvo* [Criminal Justice]. Petrograd: [s.n.].

18. Strogovich, M.S. (1947) *Theory of material truth in criminal process*. Moscow: [s.n.]. (In Russian).

19. Boykov, A.D. (1997) *Tret'ya vlast' v Rossii. Ocherki o pravosudii, zakonnosti i sudebnoy reforme 1990–1996* [The third power in Russia. Essays in judiciary, legality and legal reform 1990–1996]. Moscow: Research Institute of the Problems of Strengthening Law and Order.

20. Rorty, R. (2000) Universality and Truth. In: Brandom, R.B. (ed.) *Articulating Reasons*. Cambridge MA: Harvard University Press. pp. 1–30.

21. Floridi, L. (2011) A Defense of Constructionism: Philosophy as Conceptual Engineering. *Metaphilosophy*. 42(3). pp. 282–304. DOI: 10.1111/j.1467-9973.2011.01693.x.

22. Kasavin, I.T. (2013) Knowledge and communication in the contemporary discussions in the analytic philosophy. *Voprosy filosofii*. 6. pp. 46–57. (In Russian).

23. Dutilh Novaes, C. (2015) A Dialogical, Multi-Agent Account of the Normativity of Logic. *Dialectica*. 69(4). pp. 587–609. DOI: 10.1111/1746-8361.12118

Nataliya P. Kirillova, Saint Petersburg State University (Saint Petersburg, Russian Federation).
E-mail: kirillova59@mail.ru

Elena N. Lisanyuk, Saint Petersburg State University (Saint Petersburg, Russian Federation).
E-mail: e.lisanuk@spbu.ru

Vestnik Tomskogo gosudarstvennogo universiteta. Filosofiya. Sotsiologiya. Politologiya – Tomsk State University Journal of Philosophy, Sociology and Political Science. 2019. 48. pp. 193–204.
DOI: 10.17223/1998863X/48/19

TRUTH AND LEGAL ARGUMENTATION IN FYODOR DOSTOEVSKY'S *THE KARAMAZOV BROTHERS*

Keywords: truth; legal argumentation; adversary and investigative process models; judicial error; *The Karamazov Brothers.*

In *The Karamazov Brothers*, Dostoevsky tells a story of a judicial error. Dmitry Karamazov, accused of murdering his father Feodor Karamazov whom he did not kill, was found guilty of the murder and sent to Siberia. The Dmitry Karamazov case is relevant to the contemporary discussion of the role legal argumentation plays with respect to the conceptions of truth inherent in two models of judiciary, investigative (inquisitional) and competitive (adversarial), on which the evaluation of the parties' arguments is based. The authors examine the reasons of the judicial error – the prosecutor's biased conviction, his derailments in justifying his version of a crime, the jurors' wrong assessment of the parties' argumentation, and the shortcomings of the newly introduced adversarial process type – and argue that the truth can and should be established in both of them, and that the three conceptions of truth (referential, inferential and pragmatic) play an evaluative role in that. They serve as the necessary tools in evaluation of the court's and the parties' perfection in performing their obligations in the courtroom as they demonstrate whether the epistemological ideal of the material truth was sufficiently pursued for establishing the truth and fair decision. The Dmitry Karamazov case shows that the formal view of the truth suffices for deciding a case, but it cannot prevent judicial errors that occur when such an ideal falls into oblivion.