

THE LEGACY OF THE HUMAN RIGHTS MOVEMENT

Article

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The Legacy of the Human Rights Movement: Prosecutor-General Fritz Bauer on Genocide and Human Rights

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Abstract: The paper is devoted to the legacy of Fritz Bauer — the Prosecutor General of the Land of Hesse in West Germany — and analyzes his understanding of the possibility of building the rule of law in Germany, understanding the criminal past of Germany and realizing the responsibility of the German citizens for the genocide of the Jewish people. Fritz Bauer was one of the most consistent supporters of the criminal prosecution against Nazi criminals in the Federal Republic of Germany (FRG). In Bauer's view, the Nuremberg trials were supposed to witness the desire of the German state to restore the rule of law, preserve the memory of millions of victims of Nazism, celebrate the triumph of justice and human rights. In the course of the court proceedings, Fritz Bauer sought to show that millions of German citizens who supported the Hitler regime and shared the ideology of National Socialism were responsible for Nazi atrocities. The merit of Fritz Bauer's goal was to recognize the Third Reich as an illegitimate State and rehabilitate the participants of the Anti-Hitler Resistance Movement. In his articles and court speeches, Bauer justified the right of citizens to resist the criminal authorities, argued that disobeying criminal orders was the only possible option for lawful behavior in an illegitimate State. Fritz

Bauer was convinced that it was possible to prevent the repetition of the past and prevent the neo-Nazis from coming to power only through the democratic education of the younger generation of the Germans, ensuring universal respect for human rights and dignity.

Keywords: Fritz Bauer; genocide; human rights; right to resistance; Nazi criminals; Otto-Ernst Remer; trial; joint responsibility; criminal regime; culture of enemy

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I. Introduction

Prosecutor General of the State of Hessen Fritz Bauer (1956–1968) was one of the most consistent supporters of the criminal prosecution of Nazi criminals in Germany (Meusch, 2001). An irreconcilable standing of the Hessian Prosecutor General in relation to the officials of the German justice who had tarnished themselves during the years of National Socialism turned Fritz Bauer into the strongest enemy of the former Nazis (Rautenberg, 2015, p. 170). In 1968, Fritz Bauer was found dead in his own bathroom. The police stated suicide. However, the mysterious death of the prosecutor still raises many questions (Steinke, 2013).

For many years, the German public preferred not to remember the personality of the Prosecutor General Fritz Bauer. Only in the 1990s, when a new *culture of memory*, aimed at realizing the responsibility of

the German citizens for the crimes of National Socialism, was initiated in the country Bauer's name returned to the public discourse in Germany. The Fritz Bauer Research Institute was founded in Frankfurt am Main.¹ It was engaged in carrying out studies and research, making documentaries and feature films devoted to the life and work of the prosecutor (Wojak, 2009; Steinke, 2013; Kettelhake, 2015; Jaeger, 2015, p. 319). German researchers describe Fritz Bauer as an outstanding fighter for democracy and human rights in post-war Germany.²

II. Fritz Bauer and His Contribution to Human Rights Movement

Fritz Bauer was born in 1903 in Stuttgart to a Jewish family. A future prosecutor studied law at the universities of Heidelberg, Munich and Tübingen (Perels and Wojak, 1998). "Phylosophy of Law" by Gustav Radbruch was Bauer's main reference book during his studies at university (Bauer, 1998, p. 41). In this book, Gustav Radbruch distinguished two types of jurists: 1) jurists prioritizing the sense of order; and 2) jurists prioritizing the sense of freedom. According to the scholar, jurists of the first type were adherents of the police state and "German discipline," they were prone to excessive "regulation and rationalization." Jurists prioritizing the sense of freedom represented the "advanced layer of the rule of law" (Radbruch, 1915, p. 132). Since his student years, Fritz Bauer considered himself to be a jurist of the second type. Referring to the work by Gustav Radbruch, Bauer described the goals persued by jurists prioritizing the sense of freedom as prioritizing "protection of freedom against order, life against reason, a chance against a rule, completeness against a scheme, and, in short, what constitutes the goal and values against what is valuable only if it is expedient" (Bauer, 1998, p. 41; Radbruch, 1915, p. 132).

¹ See: Fritz Bauer Institut official web-site. <https://www.fritz-bauer-institut.de> [Accessed 10.11.2022]. (In Germ.).

² See, for example, the special issue of the research journal "Forschungsjournal Soziale Bewegung" (2015; No. 4), dedicated to the human rights movement in Germany. The central heading of this issue, consisting of 34 articles by German researchers is called "Fritz Bauer: Human rights as a challenge to jurisprudence and legal policy."

In 1928, Fritz Bauer became an assessor judge in the Stuttgart district court. Two years later, he became the youngest judge in Weimar Germany. From his early age, Fritz Bauer was active in politics. Back in 1921, he joined the Social Democratic Party. In 1931, he headed the Stuttgart branch of the paramilitary organization “Imperial Flag Black-Red-Gold” (Perels and Wojak, 1998). The organization united the supporters of democratic parties and used to be the most numerous movement (3 million members) in Weimar Germany. The main purpose of the association was to protect the republican system from right-wing radicals and extremists (Yakhlov, 2005, p. 80).

According to Fritz Bauer, professional lawyers should not have recused themselves from political life and should not have turned into “Legal Technocrats” hiding behind the phrase “Politics without me.” Arguing his stance, Bauer added: “Democracy is not a steamer, the management of which is entrusted to the captain. On the contrary, democracy is a boat in which we must row together.” The jurist was convinced that the legal profession obliged him to have a clearly expressed civic stance, to defend the values of democracy, humanism and human rights (Bauer, 1998, p. 40).

After the Nazis came to power in March 1933, Fritz Bauer was sent to the Heuberg concentration camp, where he stayed for six months. In the concentration camp, he became close to Kurt Schumacher, the future leader of the Social Democratic Party of Germany. Fritz Bauer wrote that communication with Schumacher gave him strength. As Schumacher’s inmate, Bauer admired his courage and steadfastness (Bauer, 1998, p. 39). In 1936, Fritz Bauer managed to leave Germany for Denmark. Since 1943, he was in Sweden, where he joined the Social Democratic emigrant movement, and, together with Willy Brandt, he was engaged in editorial activities (Wojak, 2015a, p. 72).

In 1949, Fritz Bauer decided to return to Germany. The legal scholar said that returning to his homeland, he hoped that he would be able to take part in the construction of new democratic Germany, where laws would be based on the principles of humanity, equality, justice and tolerance (Wojak, 2015b, p. 126). Being a professional lawyer and a member of the anti-Nazi movement, Fritz Bauer reached a high position in the German justice system. In 1950–1956 he was the Prosecutor

General of Braunschweig, from 1956 until his death he held the post of Prosecutor General of the Federal Land of Hessen (Perels and Wojak, 1998, pp. 15–16).

On Bauer's initiative, on the facade of the Frankfurt Prosecutor's Office building, three-dimensional letters were installed, representing a quote from Art. 1 of the German Constitution: "Human Dignity is Inviolable." The prosecutor wrote that building a democratic society is unthinkable without respect for the dignity of everyone (Bauer, 1998, p. 42). Mutual respect between people was based on feelings of humanity and brotherhood. The jurist insisted that the slogan "Germany above all" should be replaced by the statement "All people are brothers" (Bauer, 1998, p. 88). To do this, German society needed a comprehensive program of re-education, eliminating authoritarian thinking and deeply rooted racial prejudices (Meusch, 1998, p. 61; Wojak, 2015b, pp. 133–134).

Fritz Bauer was convinced that the trials against Nazi criminals were an effective tool for the democratic, anti-fascist education of the younger generation of Germans (Meusch, 1998, p. 66). Widely publicized in the press, public trials demonstrated to German citizens unprecedented atrocities committed by their compatriots in the history of mankind. The Hessian prosecutor initiated dozens of trials against former Nazi functionaries. The Frankfurt am Main Prosecutor's Office supported the prosecution in such high-profile trials as the trial against the criminals of the Auschwitz concentration camp (1863–1965) (Grakhotskiy, 2019, p. 146), the trial against members of the Sonderkommando-4a, who took part in the mass killing of Jews in Babi Yar (1966), the trial against high-ranking officials of the German justice system, who organized the forced killing of more than 70 thousand mentally ill and disabled people (1970), etc. (Wojak, 2015b, p. 131; Dittmann, 2015, p. 208).

According to Fritz Bauer, the trials against Nazi criminals were supposed to testify to the desire of the German state to restore the rule of law, preserve the memory of millions of victims of Nazism, and the triumph of justice and human rights (Wojak, 2015a, p. 83). The prosecutor wrote: "[these] trials are not just trials against individual criminals, but they are "The Days of Last Judgment" for the German people and their history." In the course of the court proceedings, Fritz

Bauer sought to show that millions of “little Hitlers, Heydrichs and Eichmanns,” who supported the Hitler regime and fully shared the ideology of National Socialism, were responsible for Nazi atrocities (Meusch, 1998, pp. 61–62). Criminal trials were supposed to be a “bitter medicine” designed to permanently cure German citizens of the vices of Nazism (Bauer, 1998, p. 85).

However, post-war German society was not ready to accept Bauer’s ideas. Society was dominated by the opinion that ordinary Germans “had nothing to do” with the crimes of the Nazi regime, citizens were only hostages of totalitarian power, the full responsibility for what they had done lay solely on Hitler and his entourage (Bauer, 1998, p. 83). Based on this, the approaches of the Hessian Prosecutor General to the criminal prosecution brought against Nazi criminals did not find support either in the state or in the public structures of West Germany. Fritz Bauer repeatedly received anonymous threats demanding to stop investigating criminal cases against former Nazis. The prosecutor regularly faced attacks from politicians who accused him of “undermining the image of Germany in the face of the whole world” (Meusch, 1998, p. 70).

The state of German society in the first post-war decades was succinctly described by the philosopher Hannah Arendt. After many years of emigration in 1950 she visited Germany. Hannah Arendt was amazed at how strong the desire of the Germans was to “escape from reality and responsibility” (Wojak, 2015b, p. 129). On the contrary, as Fritz Bauer wrote, every time he left his office, he found himself in a hostile environment (Rautenberg, 2015, p. 164).

III. Bauer’s Approach to Germans Involvement in Genocide

In the course of his work, Fritz Bauer repeatedly thought about the reasons that prompted German citizens to support the criminal plans of the Nazi Party and take an active part in the genocide of the Jewish people. In the article “Genocide” Fritz Bauer noted that the ideology of National Socialism corresponded to the worldview of “social losers.” Among the latter, the jurist referred to the petty-bourgeois strata of German society. The prosecutor explained that after the First World War, most German citizens faced severe socio-economic upheavals.

Mental and psychological problems added to total unemployment and an unprecedented drop in living standards; the Germans felt humiliated because of defeat in the war, suffered from unfulfilled aspirations and dreams of prosperity, education and decent work (Bauer, 1998, p. 70).

According to Fritz Bauer, on the wave of general discontent in 1933, marginals came to power in Germany. They sought to shift responsibility for all the troubles of German society to an external enemy. The Hitlerite regime appealed to the dichotomies “we – they,” “friend – foe,” “good – evil” (Bauer, 1968, pp. 20–21). Nazi propaganda constructed a “sense of we” [Wir-Gefühl] by proclaiming Germans as “superhumans,” designed to deal with numerous enemies and expand their “living space.” The Jews were declared the source of all the troubles and the worst enemy of the German nation. According to Nazi racial ideology, they were not “full-fledged people and were condemned to death.” Fritz Bauer highlighted that, according to various estimates, the Nazis killed from 4 million 194 thousand to 5 million 721 thousand European Jews (Bauer, 1998, p. 66).

The prosecutor concluded that millions of German citizens were involved in the commission of a state-sanctioned collective crime — the genocide of the Jewish people (Bauer, 1998, p. 66). Implementation of the collective atrocity required a clear division of labor, similar to how the roles of criminals united in a gang of robbers are distributed. The gang consists of the ringleader, gangsters, gunners, concealers, etc. In turn, genocide implementation required participation of executioners, guards, transporters, doctors, who carried out selection, and countless managers and employees of various government departments (Bauer, 1998, pp. 72–73).

During the trials against Nazi criminals, the accused claimed that they did not share the criminal intent of the leadership of the Third Reich and did not wish Jews to die, but “only obeyed the orders of their superiors” (Bauer, 1998, p. 66). Such reasoning made it possible to assign full responsibility for the Holocaust to Hitler and his associates, as well as to minimize the punishment of the direct perpetrators of crimes (Hey, 1984, pp. 62–63; Alekseev, 1986, pp. 270–275). Fritz Bauer did not agree with this approach, he argued that many ordinary Germans were convinced anti-Semites and adherents of racial ideology,

they consciously took part in actions of mass annihilation of Jews (Wojak, 2015, p. 85).

Fritz Bauer identified 5 types of citizens involved in the genocide of the Jewish people. To the first type – believers – the prosecutor referred the Germans believing in the ideas of National Socialism. They were convinced of the scientific validity and inviolability of the Nazi racial theory. According to Bauer, the leading role among such people was played by “fanatics” and “neurotics” who suffered from an inferiority complex and sought to compensate for their social inferiority by belonging to the “master race” (Bauer, 1998, pp. 69–70).

Citizens of the second type were called “formalists.” They were distinguished by unquestioning obedience to the State, they strictly followed the orders of their superiors, believed that any order received from above was legitimate and not subject to discussion. According to the prosecutor, such behavior of German citizens was caused by the traditions of German authoritarian-militaristic statehood. For centuries its subjects were instilled a sense of submission, commitment to discipline and order (Bauer, 1998, pp. 70–71).

The third type included people referred to as “beneficiaries.” The prosecutor noted that for a significant number of German citizens, Nazi ideals were only a cover for the pursuit of their personal goals. The Germans participated in the implementation of Hitler’s criminal plans in the hope of “realizing themselves,” moving up the career ladder and prosperity. In some cases, sadists and sexual maniacs hid under the screen of convinced National Socialists, and during punitive actions they sought to satisfy their insane intentions (Bauer, 1998, p. 71).

The fourth type covered “involuntary criminals.” As Fritz Bauer noted, individual citizens were forced to obey the criminal orders of their superiors, as they feared that they would be severely punished for refusing to participate in the genocide. However, the prosecutor warned against exaggerating the number of such citizens. According to Bauer, there were enough “believers,” “formalists” and “beneficiaries” at the disposal of the Nazi leadership who participated in the crimes of National Socialism without any coercion and intimidation. The jurist added that in the judicial practice of the Third Reich there were no cases of punishment for refusing to carry out criminal orders. As a rule,

such a “fault” could be followed by a transfer to another duty station, denial of the right to vacation or *making a mark* in a personal profile (Bauer, 1998, p. 71).

The fifth type was classified as “fellow travelers” or “observers.” This type included citizens who were not directly involved in the implementation of the genocide of Jews, but they also did not take any action to prevent the criminal intentions of the Hitlerite authorities. Fritz Bauer pointed out that with the tacit consent of millions of German citizens, the Nazis committed atrocities unprecedented in the history of mankind (Bauer, 1998, p. 72). Thus, the Hessian prosecutor came to the idea of the collective responsibility of the Germans for the genocide of the Jewish people.

Thus, despite a certain degree of generalization, Bauer’s identification of 5 types of German citizens involved in genocide reveals their systematic and consistent involvement in the procedure that was not justified either from humanistic or juridical points of view. At the level of domestic jurisprudence, he insisted on holding German citizens responsible for Nazi crimes regardless of their claims that they had not shared the criminal intentions of the Nazi leaders.

IV. The Trial against Otto-Ernst Remer and the Right to Resist

On Bauer’s initiative, on 7–15 March 1952, the trial against Otto Roemer took place in the Braunschweig court. During the Second World War, the defendant was the commander of the “Great Germany” security regiment. Following Hitler’s orders, Remer suppressed the so-called “Conspiracy of July 20” (1944), when a group of Wehrmacht officers led by Colonel Schenk von Stauffenberg attempted to assassinate Hitler and carry out a *coup d’etat*. After the war, Remers became one of the leaders of the neo-Nazi Socialist Imperial Party. In May 1951, in his speech at an election rally, the neo-Nazi declared that the “July 20 conspirators” were “traitors to the motherland paid from abroad.” A criminal case was initiated by the Braunschweig Prosecutor’s Office on the fact of slander and desecration of the memory of the deceased officers (Wolf, 2015, p. 197).

During the trial, the prosecution was represented by Fritz Bauer. As noted by the biographer of the Hessian prosecutor R. Steinke, Bauer's accusatory speech at the trial in Braunschweig became historic (Steinke, 2013, p. 143). The prosecutor pointed out that the main purpose of the trial was to rehabilitate the participants of the Conspiracy rather than to bring the defendant to justice (Bauer, 1998, p. 169). In this regard, Fritz Bauer opined that there were no signs of such a crime as treason in the act of the German officers, since the rebels were not in collusion with foreign governments, they did not give out state secrets and did not seek to harm Germany. On the contrary, the officers were motivated by a sense of love for the fatherland, they sought to save their country and the German people from an imminent catastrophe. It was obvious to the military that the war was lost, an attempt to eliminate Hitler and stop the war meant saving millions of human lives. Fritz Bauer convinced the participants of the court session that if the plot on 20 July had succeeded, Germany would have had to sign a peace treaty on the most difficult conditions, but those conditions would have been much more acceptable than the conditions of the Act of Unconditional Surrender of 8 May 1945. The prosecutor believed that in the summer of 1944 Germany still had a chance to create a democratic government and avoid the partition of the country (Bauer, 1998, pp. 170–171).

According to Bauer, the actions of the conspirators could not be qualified as actions committed with the aim of seizing state power, since, since 1933 there had been no legitimate state power in Germany, the regime of the Third Reich had never been legitimate. In fact, the Nazis usurped power by gross violation of the Constitution (the publication of the Law "On Granting Emergency Powers," the unification of the state posts of President and Chancellor), the abolition of basic civil rights and freedoms. Moreover, Fritz Bauer defined the Third Reich as an illegitimate state that was "based on a system of violence and arbitrariness." In his opinion, the Nazi regime was criminal; war crimes, crimes against peace and humanity were committed on the initiative of the Fuhrer. The prosecutor concluded that the attempt to overthrow Hitler was not a desire to seize state power, but the implementation of the right of citizens to resist the criminal regime (Bauer, 1998, pp. 176–177).

In his accusatory speech, Fritz Bauer paid special attention to right to resist. The prosecutor noted that the right to resist was known to the Germans since the days of ancient German democracy. “Saxon Mirror” (13th century) allowed the Germans to resist the authorities that infringed on their interests (Bauer, 1998, p. 178). Bauer stressed that in modern society, the right to resist did not lose its relevance: “As soon as the constitution and the principle of separation of powers cease to operate in the state, parliament is deprived of the right to make laws, independent courts are liquidated, the activities of the opposition are banned, citizens have the right to resist the authorities and restore the democratic system” (Bauer, 1998, p. 178).

Fritz Bauer wrote that those German citizens who dared to resist the Nazi regime “sowed the seed of a new democracy” in Germany. The prosecutor clarified that the allies in the Anti-Hitler coalition defeated the Hitlerite troops and thereby “removed the stone that prevented the ascent of this seed.” However, it was planted by the Germans who challenged Hitlerism (Bauer, 1998, p. 174).

As a result, the Braunschweig court found Otto Remers guilty of slander and desecration of the memory of the deceased. The defendant was sentenced to 3-month imprisonment. In the text of the sentence, the judges agreed with Bauer’s arguments concerning an illegitimate nature of the Third Reich: “The state the top leadership of which practiced disenfranchisement and suppressed human rights cannot be called legitimate” (Wolf, 2015, p. 204). The members of the court recognized the actions of the rebels as legitimate. The court decision noted that the officers sought to eliminate Hitler and his regime, guided by a sense of love for the motherland, self-sacrifice and responsibility for the fate of the German people (Wolf, 2015, p. 203).

The attention of German and foreign mass media was focused on the Braunschweig process. The Remer’s verdict significantly influenced the public opinion with regard to Germany: if before the trial the Germans believed that “July 20th conspirators” were traitors, then after the trial, most citizens evaluated the rebels in a positive way. German jurist R. Wasserman described the Braunschweig trial as “the most important trial since the Nuremberg Tribunal” (Wojak, 2015b, p. 130).

V. Duty to Resist the Criminal Regime

Fritz Bauer was convinced that resistance to the illegitimate state was not only the right, but also the duty of every citizen (Bauer, 1998, p. 177). According to the prosecutor, when the Hitlerite regime issued legislative acts violating human rights (for example, the Nuremberg racial laws), and issued criminal orders for the extermination of Jews, Gypsies and representatives of Slavic peoples, German citizens had to fulfill their “constitutional duty of disobedience:” to abandon “complicity in disenfranchisement” and “eliminate evil emanating from the state” (Bauer, 1998, p. 209; Staff, 1988, p. 449).

Fritz Bauer wrote that every German was under the duty to prevent the commission of crimes and to help victims of the Nazi regime. Based on this, everyone had the right to eliminate Hitler, Heydrich, Eichmann and any other participant in the “Final Solution to the Jewish Question” (Bauer, 1998, pp. 177, 210). The prosecutor summarized that resistance to criminal power was an act of necessary defense (Bauer, 1998, p. 208).

In 1963, in the interview given the German radio station “NDR” Fritz Bauer noted that in order to prevent rehabilitation of National Socialism in Germany, German society must return to the foundations of Christian morality. The jurist reminded radio listeners of the biblical truth: “A person should be more submissive to God than to people.” The prosecutor explained these words as follows: “above any law or order there should be an awareness that there are actions that cannot be performed under any circumstances,” a person should be able to say “no” to state commands that contradict the Ten Commandments of Christianity (Bauer, 1998, pp. 113–114).

In support of his stance, Fritz Bauer referred to the words of Pope John XXIII. In his famous encyclical “Pacem in Terris” (1963), dedicated to the rights and duties of the man, the relationship between the state and society, as well as the problems of peace between States, the Pontiff wrote: “If state bodies do not recognize or violate human rights, then their orders lose their legal force.” In the margins of this document, the prosecutor made a note: “Not every law is the law, not every order is the order” (Wojak, 2015b, p. 133).

Fritz Bauer distinguished between passive and active resist to Nazi disenfranchisement. The first involved refusing to carry out criminal orders. The second was the most difficult task for the citizens of the Third Reich, as it contradicted the human instinct of self-preservation, required unprecedented courage to sacrifice their own lives to save the destinies of other people (Bauer, 1998, pp. 113–114). As cases of such self-sacrifice, Fritz Bauer described the activities of the underground group of students of the University of Munich “White Rose,” “July 20 Conspirators,” the case of German officer Hans Oster. Hans Oster, being an active participant in the anti-Nazi Resist, gave the Dutch military information about the date and time of Hitler’s troops attack on the Netherlands. The prosecutor noted that, in accordance with the norms of international law, waging an aggressive war was a crime. According to Bauer, Hans Oster was aware of the criminal nature of Germany’s intentions and made the only right decision — he tried to prevent aggression, passed the official information available to him to representatives of another state (Bauer, 1998, p. 173).

In his article “The Right of a Little Man to Resist” (1962), the Hessian prosecutor wrote that the aggressive nature of the war unleashed by the Third Reich was obvious to every sane German citizen. In this regard, Fritz Bauer raised the question of the legality of desertion of soldiers and officers of the Wehrmacht. The prosecutor argued that the evasion of military personnel from participating in an aggressive war was a legitimate form of resistance to the Hitlerite regime (Bauer, 1998, pp. 209, 213).

Shortly before his death in June 1968 Fritz Bauer gave a public lecture for the last time. Within the walls of the University of Munich, the prosecutor talked about resistance to the criminal state. The jurist came to the conclusion that the joint responsibility of the Germans meant that citizens, with the exception of individual participants in the anti-Hitler Resistance, did not fulfill their “duty of disobedience.” In this case, the lawyer turned to the moral and ethical side of joint responsibility. The prosecutor wrote: “[t]he submission of citizens to the criminal regime was immoral, it was disobedience that was the only morality in Nazi Germany” (Meusch, 1998, pp. 61–62).

VI. Conclusion

Fritz Bauer anticipated his time by several decades. The activities of the Hessian prosecutor marked the beginning of destruction of the myth that German citizens were only hostages of the Hitlerite regime and “knew nothing” about the crimes of the Third Reich establishment. At the trials against Nazi criminals, Fritz Bauer sought to show that millions of Germans were involved in the infernal mechanism of mass destruction of innocent people, every German citizen bore his share of responsibility for the genocide of the Jewish people and other atrocities of National Socialism. The jurist’s ideas about joint responsibility of the German people became relevant in the 90s of the twentieth century and formed the basis of the modern culture of memory in Germany (Thamer, 2007, p. 81; Boroznyak, 2014).

Fritz Bauer is rightfully considered a central figure in the post-war human rights movement in Germany. The Hessian prosecutor himself characterized his activities as “a continuous struggle for human rights” (Bauer, 1998, pp. 37–49). The merit of Fritz Bauer’s goal was to recognize the Third Reich as the illegitimate state and rehabilitate the participants of the anti-Hitler Resistance Movement. In his articles and court speeches, he justified the right of citizens to resist the criminal authorities, argued that disobeying criminal orders was the only possible option for lawful behavior in the illegitimate state.

Fritz Bauer was convinced that it was possible to prevent the repetition of the past and prevent the neo-Nazis from coming to power only through the democratic education of society, ensuring universal respect for human rights and dignity. The prosecutor wrote: “We cannot make Heaven out of the Earth, but each of us can do something to prevent it from becoming hell” (Bauer, 1998, p. 49).

References

1. Alekseev, N.S., (1986). *Atrocities and retribution: crimes against humanity*. Moscow: Yurid. lit. Publ. (In Russ.).
2. Bauer, F., (1998). *Die Humanität der Rechtsordnung: ausgewählte Schriften*. J. Perels (ed.). Frankfurt: Campus-Verl. (In Germ.).

3. Boroznyak, A.I., (2014). *Cruel Memory. Nazi Reich in the perception of the Germans in the second half of the 20th and the beginning of the 21st century*. Moscow: Political Encyclopedia Publ. (In Russ.).
4. Dittmann, U.I., (2015). Fritz Bauer und die Aufarbeitung NS-“Euthanasie”. *Forschungsjournal Soziale Bewegung*, 4, pp. 208–229, <https://doi.org/10.1515/fjsb-2015-0420>. (In Germ.).
5. Grakhotskiy, A.P., (2019). The Frankfurt Trial (1963–1965) and Overcoming the Past in Germany. *Lex Russica*, 3, pp. 146–158, <https://doi.org/10.17803/1729-5920.2019.148.3.146-158>. (In Russ.).
6. Hey, B., (1984). Die NS-Prozesse — Probleme einer juristischen Vergangenheitsbewältigung. In: Weber, J., (ed.). *Vergangenheitsbewältigung durch Strafverfahren? NS-Prozesse in der Bundesrepublik Deutschland*. München. Pp. 51–70. (In Germ.).
7. Jaeger, S., (2015). Zwischen Tragik und Heldentum. Die Inszenierung westdeutscher Vergangenheit in Ilona Zioks Dokumentarfilm “Fritz Bauer — Tod auf Raten”. *Forschungsjournal Soziale Bewegung*, 4, pp. 319–337, doi:10.1515/fjsb-2015-0433. (In Germ.).
8. Kettelhake, S., (2015). Filme. “Nichts gehört der Vergangenheit an. Alles ist Gegenwart und kann wieder Zukunft werden”: Auschwitz, Fritz Bauer und die filmische Aufarbeitung. *Forschungsjournal Soziale Bewegung*, 4, pp. 306–313, <https://doi.org/10.1515/fjsb-2015-0430>. (In Germ.).
9. Meusch, M., (1998). Ein Zeuge für ein “besseres Deutschland” — Der Hessische Generalstaatsanwalt Fritz Bauer (1903–1968) zwischen Diktatur und Demokratie. *Gießener Universitätsblätter*, 31, pp. 59–75. (In Germ.).
10. Meusch, M., (2001). *Von der Diktatur zur Demokratie: Fritz Bauer und die Aufarbeitung der NS-Verbrechen in Hessen (1956–1968)*. Wiesbaden: Historische Komm. für Nassau. (In Germ.).
11. Perels, J. and Wojak, I., (1998). Motive im Denken und Handeln Fritz Bauers. In: Bauer, F., (1998). *Die Humanität der Rechtsordnung: ausgewählte Schriften*. Hg. J. Perels. Frankfurt: Campus-Verl. Pp. 9–33. (In Germ.).
12. Radbruch, G., (1915). *Introduction to Philosophy of Law*. Moscow: Mysl Publ. (In Russ.).

13. Rautenberg, E.C., (2015). Die Bedeutung des Generalstaatsanwalts Dr. Fritz Bauer für die Auseinandersetzung mit dem NS-Unrecht. *Forschungsjournal Soziale Bewegung*, 4, pp. 162–196, doi: 10.1515/fjsb-2015-0418. (In Germ.).
14. Staff, I., (1988). Fritz Bauer (1903–1968) “Im Kampf um des Menschen Rechte”. In: Blanke, T. and Seifert, J., (eds). *Streitbare Juristen: eine andere Tradition*. Baden-Baden: Nomos-Verl.-Ges. Pp. 440–450. (In Germ.).
15. Steinke, R., (2013). *Fritz Bauer oder Auschwitz vor Gericht*. München: Piper Verlag. (In Germ.).
16. Thamer, H.-U., (2007). Der Holocaust in der deutschen Erinnerungskultur vor und nach 1989. In: *Erinnern des Holocaust? Eine neue Generation sucht Antworten*. Bielefeld: Aisthesis-Verl. Pp. 81–93. (In Germ.).
17. Wojak, I., (2009). *Fritz Bauer 1903–1968. Eine Biografie*. München: C.H. Beck. (In Germ.).
18. Wojak, I., (2015a). Fritz Bauer (1903–1968). Ein Leben für die Humanität unsere Rechtsordnung. In: Begalke, S., Fröhlich, C., Glienke, S.A., (Hrgs.). *Der halbierte Rechtsstaat: Demokratie und Recht in der frühen Bundesrepublik und die Integration von NS-Funktionseleiten*. Baden-Baden: Nomos. Pp. 71–90. (In Germ.).
19. Wojak, I., (2015b). Fritz Bauer: “Im Kampf um des Menschen Rechte”. *Forschungsjournal Soziale Bewegungen*, 4, pp. 125–135. (In Germ.).
20. Wolf, N., (2015). Der Remer-Prozess. *Forschungsjournal Soziale Bewegung*, 4, pp. 197–207. (In Germ.).
21. Yakhlov, A.V., (2005). The Weimar Republic: The party system. Political forces and their programs. *Politex*, 3, pp. 80–89. (In Russ.).

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