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### **THE GOALS OF LAW IN RADBRUCH'S PHILOSOPHY: STABILITY, EXPEDIENCY, JUSTICE**

Gustav Radbruch was a German criminal lawyer, then Minister of Justice of the Weimar Republic and professor of law. After Hitler came to power, he was dismissed from the university for political reasons, forbidden to hold lectures and publish publications in his native language. After the defeat of the Nazis, Radbruch returned to law. After his death, his manuscripts were published, making up 20 of the most valuable volumes. Among them the book "Philosophy of Law" (Gustav Radbruch "Rechtsphilosophie"), where he was forced to say: the belief in the principle that "the law is the law" made German lawyers vulnerable to the arbitrary content of the criminal laws of the Third Reich.

"If a law deliberately violates the will of justice, then such law is void, the people are not bound to obey them, and lawyers must find the courage not to recognize their legal nature." According to Radbruch, examples of such laws are cases in which certain nations or races are legally recognized as "inferior" (Untermenschen), when the same punishment (death) is applied to many crimes of varying severity, and in different forms of criminality when the "enemy" Radio broadcasts and the slightest remark towards the Führer are considered treason. On the example of the anti-human, racist laws of the Third Reich, he gave us the so-called The concept of "immoral laws" and asserts that such a law is not binding on judges, the judge is freed from the obligation to comply with the law, which is inconsistent, more precisely, outrageously contrary and incompatible with justice, therefore it completely rejects justice, such laws do not have a legal nature, says Radbruch. Since they do not recognize the main essence of justice - equality.

This famous formula of Radbruch was actively used by the German courts during the denazification of Germany.

Radbruch believed it was obvious that the main goal of any normative prescription is its stability, expediency and justice. For law, all three goals are therefore important and unconditional, it is an ideal triad. But, firstly, if two of them can be identified, then the third is more difficult, because it belongs to the category of morality and value system. It is very difficult to determine what is fair for everyone and what is the difference between what is simply unfair and what is "intolerably" unfair.

And secondly, what should they do if they come into conflict with each other? Or what if what is appropriate is unjust, or what is stable is not appropriate? In this case, one of the goals should have priority, and in a critical situation of choice, this priority prevails over everything else. There is an answer. Justice, justice, justice is the main goal and task of law, justice and any legal activity. The British have not used the word "correct" in its pure form for a long time. In their legal discourse it is called law and morality. And for the British public, this morality is clear and understandable, because it is no longer just a morality, but a prevailing social worldview, based on the value of human rights and freedoms.

Stability is impossible and meaningless without justice. Unjust stability leads to degeneration and death of state and society. The right (appropriate) is that, which has the best fair results.

"Justice" is not equal to "law" and "rule of law" is not "dictatorship of law" - this is Radbruch's formula. Its essence is this: where justice is not even sought, where equality, which is the basis of justice, is denied in the legislative process, that the law is not simply "illegal". In fact, it has no legal nature at all. And therefore it must be "set aside" by the judge in the interest of justice.

If laws deliberately violate the will of justice, for example, by granting or simply arbitrarily denying human rights, then such laws are void, people are not bound to obey them, and lawyers must find the courage not to recognize their legal nature."

Radbruch believes that justice is more important than stability. But at the same time he explains that justice prevails only when "the existing law becomes so obviously incompatible with justice that the law as 'wrong law' denies justice, when justice is not even sought, and when the equality which forms its foundation., was deliberately rejected in the law-making process".

This model of community management based on the principle of "accept, beg and do" and "the law is the law", whatever its content, is a very dangerous form of legal positivism, with serious consequences. It is characteristic of absolute monarchies and authoritarian pseudo-parliamentary regimes. Under these conditions, any arbitrariness can happen with the help of the law. But law and arbitrariness are completely different worlds. The law of arbitrariness is not

only an illegal law, it is no law at all. Radbruch wrote: Positivism, believing in the principle that "the law is the law", made German jurists vulnerable to criminal and arbitrary laws. However, positivism is not able to independently justify the validity of the law. Positivism assumes that the validity of a law is demonstrated by its ability to be enforced by force.

It is impossible to distinguish between cases of "legislative error" and the law acting against its unjust content. But we can clearly define: When justice is not even aspired to, but when the equality underlying it is deliberately denied in the process of making the law, then the law is not only an "unjust law," but more than that, it is illegal. Its nature, since law, including positive law, cannot be defined otherwise than as an order and totality of laws (Satzung) created essentially for justice. And the Nazi law does not meet this criterion either in whole or in its individual parts.

The most striking personality trait of Hitler, the person who left his mark on the entire Nazi "law", was the complete absence of truth and law in the true sense of the word. Since Hitler had not even a hint of the truth, it cost nothing to give the appearance of truth to his propaganda influence without shame or conscience. And as he had no legal sense, he unhesitatingly asserted the most obvious arbitrariness of the law. A criminal who made a mistake, guided by patriotic motives, could not be subjected to the same punishment as another whose motivation (in the Nazi sense) was of an anti-national nature. Thus, it became clear from the beginning that the so-called "National Socialist law" sought to distance itself from the requirement that defines the essence of justice: equal treatment. As a result, this "right" had no legal nature. And it wasn't "right" at all. This is especially true of the norms by which the National Socialist Party, which, like all other parties, represents only a part of the population, has claimed the usurpation of the entire state. It cannot be underestimated - especially after 12 years of the fascist regime - what a terrible threat to legal stability is posed by the concept of "legal wrong", the denial of the legal nature of laws. I hope that such a "wrong" will be the only mistake in the history of the German people. But at the same time, we must be prepared to face the potential danger of the return of such an outlaw state by overcoming the positivism that robbed us of the power and ability to resist the abuses of Nazi legislation. - wrote Gustav Radbruch.

Illegal legality provided by state power is arbitrariness. Radbruch admits that "it is entirely conceivable that the content of illegal actions, their degree of injustice or inappropriateness is so important that the legal stability guaranteed by existing legislation cannot be taken into account." It seems to refer to a situation where a law deviates so much from its meaning that its main features are lost, so such law is considered invalid and illegal.

"Human imperfection does not allow us to harmoniously combine in the law all three values of law - common benefit, legal stability and justice, and it

remains only to make a choice, in the name of legal stability, to agree or not. The operation of a bad, harmful, or unjust law, or the denial of its operation, considering its injustice and the harm it causes to society as a whole. But the people, and especially the jurists, must clearly know that although there may be laws which are largely unjust and injurious to society, they must refuse to act upon them and to recognize their legal character."

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### **THE RULE OF LAW IN THE CONTEXT OF UKRAINE'S INTEGRATION TO THE EUROPEAN UNION**

Guillermo O'Donnell specified that the rule of law works intimately with other dimensions of the quality of democracy. Without a vigorous rule of law, defended by an independent judiciary, rights are not safe and the equality and dignity of all citizens are at risk. Only under a democratic rule of law will the various agencies of electoral, societal, and horizontal accountability function effectively, without obstruction and intimidation from powerful state actors.