ISSA Proceedings 2014 – The Symbolic Meaning Of Radbruch's Formula; Statutory (Non-)Law And The Argument Of Non-Law

Abstract: Statutory "law" that "intolerably" (Radbruch) violates supra-statutory law is non-law. The content of the argument is not based on eternal and unchangeable natural law that positive law should conform to, but upon the fundamental (human) rights that prevail in a historical period. In the modern state the catalogue of fundamental (human) rights is so extensive that it offers a sufficiently broad basis for the removal of any legal incorrectness (including statutory non-law). Thus, the argument of non-law also has great symbolic value. It persuades us that legal thought should always make sense.

Keywords: legal positivism, Radbruch's formula, the argument of non-law, the symbolic meaning of Radbruch's formula, legal sense, sense of justice, mutuality, coexistence.

1. *Radbruch and his formula*

One of the most penetrating critiques of legal positivism is the so-called Radbruch formula. Already at the beginning of his theoretical path, Radbruch (Gustav Radbruch, 1878-1949) was aware "that it equally belongs to the concept of right law that it is positive as it is the duty of positive law to be right as to content" (Radbruch, 1914: 163, and 1999: 74). The basic characteristic of Radbruch's legal-philosophical thought was that, as a Neo-Kantian, he accepted value-theoretical relativism and advocated the standpoint that legal values cannot be "identified" (Germ. *erkennen*), but only "acknowledged" (Germ. *bekennen*) (Radbruch, 1914: 22, 162, and 1999: 15).**[i]**

An inevitable consequence of value relativism is that the sovereignty of the people and democracy are the central characteristics of the rule of law. The content of law has to be decided in a democratic, responsible and tolerant way. In the paper *Der Relativismus in der Rechtsphilosophie* (Relativism in Legal Philosophy), special importance is assigned to tolerance: "Relativism is general tolerance – just

not tolerance of intolerance" (Radbruch, 1934: 21).

For Radbruch, law is a "*reality whose meaning is to serve the legal value, the idea of law*" (Radbruch, 1999: 34).**[ii]** The idea of law includes justice (in the meaning of the principle of equality), purposiveness (the idea of purpose), and legal certainty. The principle of equality (equal cases have to be treated equally and unequal cases have to be treated in an adequately different manner) has an absolute value, but is only of a formal nature. Of a contentual nature is the idea of purpose, which is relative and extends over the three highest legal values, which, however, cannot be ranked. The starting point may be either man as individual, man as social being, or man as creator of cultural goods (Radbruch, 1999: 54 ff.).**[iii]** And finally, there is legal certainty, which in Radbruch's time before the Second World War had priority over justice (in the meaning of purposiveness). The circumstance that the highest legal value as regards content cannot be identified requires that this content be determined by the authorities with regard to legal certainty (Radbruch, 1999: 73-75).

The experience with Nazism made Radbruch intensify his standpoints and, after the Second World War, also complement them concerning the relation between individual legal values. His well-known paper *Gesetzliches Unrecht und übergesetzliches Recht* (Statutory Lawlessness and Supra-Statutory Law, 1946) also contains this characteristic passage:

"*The conflict between justice and legal certainty may well be resolved in this way: The positive law, secured by legislation and power, takes precedence even when its content is unjust and fails to benefit the people, unless the conflict between statute and justice reaches such an intolerable degree that the statute, as 'flawed law', must yield to justice. It is impossible to draw a sharper line between cases of statutory lawlessness and statutes that are valid despite their flaws. One line of distinction, however, can be drawn with utmost clarity: Where there is not even an attempt at justice, where equality, the core of justice, is deliberately betrayed in the issuance of positive law, then the statute is not merely 'flawed law', it lacks completely the very nature of law. For law, including positive law, cannot be otherwise defined than as a system and an institution whose very meaning is to serve justice*" (Radbruch, 1946: 277).**[iv]**

Radbruch's formula has two derivations. *The formula of intolerability* (Germ. *Unerträglichkeitsformel*) states that when the conflict between statute and justice

reaches an “intolerable degree”, the statute as “flawed law” must yield to justice. *The formula of deniability* (Germ. *Verleugnungsformel*) applies when the statute deliberately negates equality. In this case, the statute “is not merely ‘flawed law’, it lacks completely the very nature of law” (Radbruch, 1946: 277).**[v]** The formula of deniability is considerably less important because the intention of negation is very difficult to prove.**[vi]** If the negation is intolerable, we have the formula of intolerability again (R. Dreier, 2011: 42).**[vii]**

Radbruch does not give in to the temptation of revenge. Striving for decisions that are correct as to contents and for justice at the same time requires respect for legal certainty. “And we must rebuild a *Rechtsstaat*, a government of law”, he states, “that serves as well as possible the ideas of both justice and legal certainty” (Radbruch, 1946: 281).**[viii]** Non-law must only be fought against legally (i.e. by legal means) and “with the smallest possible sacrifice of legal certainty” (Radbruch, 1946: 278).**[ix]**

Radbruch’s formula of intolerability has often been invoked in the practice of German courts and the German Constitutional Court.**[x]** A very significant decision refers to the 11th Ordinance to the Citizenship Act (of 25 November 1941).**[xi]** The Constitutional Court decided that the Ordinance was null and void from the very beginning. The Ordinance had fatal consequences for Jews and their assets. As an example, I cite just the first sentence of the first paragraph: “A Jew having a habitual residence abroad cannot be a German citizen.” The second sentence of the same paragraph accepts the assumption that one already has a habitual residence when it can be established in view of the circumstances that he does not live there just temporarily. In the decision of the Constitutional Court, the first item of the pronouncement comprises just expressions from Radbruch:

“*[L]egal provisions from the National Socialist period can be denied validity when they are so clearly in conflict with fundamental principles of justice that a judge who wished to apply them or to recognize their legal consequences would be handing down a judgment of non-law rather than of law.”***[xii]**

After the fall of the Berlin Wall, Radbruch’s formula was also invoked in the decision of the Constitutional Court dealing with the shooting of fugitives trying to escape from GDR across the Berlin Wall.**[xiii]** In the decision it was repeatedly stated that Radbruch’s formula was only applicable to cases of extreme non-law. It was a majority standpoint that the killings of fugitives at the Berlin Wall were

serious non-law as well.**[xiv]** What has been contentious is the issue of justifying the reasons authorising the use of firearms.**[xv]** The dilemma is whether it can be said retroactively that the justifying reasons (Germ. *Rechtfertigungsgründe*) were non-law. The Constitutional Court of the GFR did not completely answer this question. The court allowed that the strict prohibition of the retroactivity of justifying reasons was not valid when the gravest criminal acts clearly showing contempt for human rights that are generally accepted in the international community were concerned.**[xvi]**

2. *Pitamic's view*

I mention the Slovenian legal theoretician and philosopher *Pitamic* (Leonid Pitamic, 1885-1971)**[xvii]** because his final view of law and the nature thereof comes close to Radbruch's. Both Radbruch as well as Pitamic deal with the problem of statutory (non-)law I am deal with in this paper.

Pitamic, from the very beginning, struck out on a new path: he was convinced that law could not be understood and explored by a single method aiming at a pure object of enquiry. He argued that it is necessary to employ other methods besides the normative method (especially the sociological and the axiological methods), which, however, should not be confounded. Methodological syncretism can be avoided by distinguishing clearly between different aspects of law and by allowing the methods to support each other (see Pitamic, 1917: 365-367).

Step by step, these results prompted Pitamic to combine the positive-law and the natural-law conceptions of the nature of law. For Pitamic, the essential elements of law are order and human behaviour. These elements are interdependent. The order is associated with legal norms regulating external human behaviour. It is also essential that law ceases to be law when its norms cease to be at least *grosso modo* effective (Pitamic, 1956: 192−193). However, not any order can function as an element of law; the condition is that it is an order which prescribes "only external human behaviour and does not prescribe or allow its contrary, 'inhumane behaviour', otherwise it loses its legal quality" (Pitamic, 1956: 194).

However, the legal norm "ceases to be law when its content seriously threatens the existence and social interaction of the people subject to it" (Pitamic, 1956: 199). For this it is not sufficient that there is some kind of inhumanity in the content of the legal norm (e.g. high taxes that are unjust); there has to be "a conspicuous, obvious, severe case of inhumanity" [such as the mass slaughter of

helpless people (Pitamic, 1960: 214)]. There has to be a "crude disturbance" (for instance, the extermination of the members of another race), which interferes so intensely with law that its nature is negated (Pitamic, 1956: 199).**[xviii]**

Ulfrid Neumann convincingly observes that Pitamic "does not invoke ethical criteria beyond law, but appeals to elements of the legal concept itself" (Neumann, 2011: 281). This form of justification is to some extent in accordance with Radbruch and his formula. The similarities between Radbruch and Pitamic consist predominantly in the fact that their projects both aim at the justification of the legal concept and that they both, in a similar way, explore the boundary which may not be transgressed by a conflict between single elements of law in order to remain within lawfulness. The Rubicon is crossed once the order is "blatantly inhumane" (Germ. *krass unmenschlich*). We are here faced with an obvious parallel to Radbruch's "formula of intolerability"
(Germ. *Unerträglichkeitsformel*)**.[xix]**

It cannot be concluded from Pitamic's oeuvre that he drew on Radbruch's theories. In the work *An den Grenzen der Reinen Rechtslehre* (On the Edges of the Pure Theory of Law), Radbruch's name is only mentioned once in association with heteronomous obligations (Pitamic 1918, 750). In Pitamic's most important book, Država (The State, 1927), Radbruch is not quoted at all. The majority of reasons for their affinity lie in the fact that Radbruch and Pitamic underwent a similar development, which ultimately led to similar results.

Pitamic encountered theory and philosophy of law as Kelsen's disciple and was impassioned by normative purism as a form. He was not very deeply affected by the sharp distinction between the *is* (Germ. *Sein*) and the *ought* (Germ. *Sollen*) since he also contemplated law sociologically and axiologically. From the very beginning, he was perturbed by the self-sufficiency of law as a normative system. In the face of the assertion that an ought can only be derived from an ought, he advanced the thesis, inspired by Aristotle, that man is by his very nature implanted into normative relations.**[xx]** His experiences with the barbarism of the 20th century certainly had an influence on Pitamic, who, just like Radbruch, placed law in relation to values. Radbruch argues that law strives for justice, while Pitamic seeks the solution in a concept of law that also has to be humane. Radbruch's formula is articulated more thoroughly than Pitamic's legal concept. However, Pitamic can also be understood as saying that conscious disavowal of equality is inhumane and that an inequality which is intolerably inhumane lacks

legal character.

Thus, Radbruch and Pitamic are also in agreement by outgrowing the division into natural law and self-sufficient statutory law. It lies in the nature of law to include issues of correctness as to the contents as well as effectiveness of legal decisions. If we only deal with correct law, we can be utopian and miss reality. If we only deal with positive law, we are in the centre of reality but can miss the values that represent the basis and give meaning to our dealings. Law is also a value phenomenon and consists of value decisions that must not fall below an adequate ethical minimum if they want to preserve the nature of law. If the ethical minimum is not achieved, we are at a point that is "intolerable" or a "crude disturbance" of law.**[xxi]**

3. *Some open questions*

The argument of statutory (non-)law has several facets that are worth dealing with in more detail. The argument is a radical critique of apologetic legal positivism and partially also of scientific legal positivism that closes its eyes to the true contents of law. Due to its positivist attitude, scientific legal positivism cannot be held responsible for the atrocities and abuses committed in the name of "law". The responsibility lies with those making decisions and carrying them out.**[xxii]** What may be objectionable regarding scientific positivism is the fact that it does not explicitly tell how far its range extends. If it does say it – this is what Hart does and also Kelsen in his own way – then one has to focus on the quality of the positivist approach itself.

The argument of (non-)law – I am talking about it in the sense of Radbruch's formula of intolerability – is a critique of self-sufficient statutory positivism. The content of the argument is not based on eternal and unchangeable natural law that positive law has to be in accordance with, but on basic (human) rights as implemented in a particular historical period. In Radbruch's case, these are the basic (human) rights that were established together with the modern state. These rights are summarised in the "so-called declarations of human and civil rights" and are so firmly anchored that "only the dogmatic sceptic could still entertain doubts about some of them" (Radbruch, 1945: 14).**[xxiii]**

Radbruch's formula of intolerability primarily functions so as to falsify a statutory law which is claimed to be law. Thus, the argument of (non-)law does not claim that something is law, but rather claims that something is not *law*. Kaufmann

declares in a well-founded way that “our knowledge is much more reliable at falsifying than at verifying” (Kaufmann, 1995: 518). But one has to be careful also in falsifying. Legal certainty requires that only that is falsified which really strikes the eye, which is “intolerable” (Radbruch), which is a “crude disturbance” because it is “a conspicuous, obvious, severe case of inhumanity” (Pitamic), or which is “extreme non-law” (Alexy **xxiv**).

It would be naive to think that falsification is not based on a standard that has to be verified. We have just dealt with that and seen that the basis of falsification are basic (human) rights and generally valid principles of international law. Both cases concern rights and principles that are positive and, as such, legally stronger than the statute in contradiction with them. Being legally stronger gives them the character of *supra-statutory* law, which laws and other provisions have to comply with.**[xxv]**

The result of falsification is that statutory non-law is denied legal validity. If instead of the “law” being qualified as non-law, a new law is drawn up, this is an act of the verification of law. The verification act is substantially more difficult than the falsification act and, additionally, the results of verification “are much less precise” (Kaufmann, 1995: 521). Thus, we are dealing with a difficult issue that reminds us that one has to be as circumspect as possible and that no new wrongs may be done in the name of amending old ones. An absolute legal certainty does not exist. If we do not want to sacrifice legal certainty, we can only approach the noble aim of justice without ever being able to achieve it completely.

The argument of (non-)law is usually applied in the rule of law reacting to the non-law of previous periods that were lawless at least so to a certain extent. In such cases, the falsification acts are the responsibility of the legislature, which replaces the previously valid law with a new one. An important role is occupied by the courts, especially the Constitutional Court, which abrogates the controversial laws (and other general legal acts) or declares them non-law. Legal acts that are non-law cannot have any further legal consequences and hence individual legal acts based on them have to be annulled or at least abrogated.

The argument of (non-)law is a legal and/or moral argument. It is a moral argument for all those who sharply distinguish between law and morals; for them, moral unlawfulness is an argument that makes it legitimate that immoral positive

law is changed in a legal manner. The most typical supporters are noble legal positivists. They state that, as scientists, they are not interested in the content of law. Thus, Kelsen says that he does not know what justice is, but immediately adds that behind the standard of legal justice there lies “the justice of freedom, the justice of peace, the justice of democracy, the justice of tolerance” (Kelsen, 2000: 52).

If the argument of (non-)law is also a legal argument, our standpoint is that “non-law” should not have any legal consequences. This thesis is compatible with those legal scientists who also deal with law from the point of view of contents and try to understand the legal participants (e.g. judges) who make legal decisions in concrete cases. *Mutatis mutandis*, this must also be said especially of legal participants who make authoritative legal decisions.

The typical legal participants making authoritative legal decisions are judges. In the rule of law where courts of law ensure the constitutionality and legality of legal acts, their role keeps gaining significance. If I limit myself to countries with constitutional courts (e.g. Slovenia), it must be said that countries of this type have set up a mechanism by which possible statutory non-law can be reacted to very effectively. A judge who believes that the statue he has to apply is non-law (i.e. statutory non-law) will stay the proceedings and make an appropriate request to the Constitutional Court.**[xxvi]**

In the modern state, the catalogue of basic (human) rights is so extensive that it offers a sufficiently broad basis for eliminating any legal incorrectness (including statutory non-law). The constitutional catalogue of basic (human) rights makes the achievements of rationalist natural law positive and thereby opens the door to Radbruch’s formula becoming an element of valid law. It is not an exaggeration to say that thereby natural law enters into constitutional law, as is the title of Hassemer’s paper (Hassemer, 2002: 135-150). Natural law entering into constitutional law is not suprapositive law, but an integral part of positive (constitutional) law.

4. *The symbolic meaning of Radbruch’s formula*

Thus, Radbruchs’s formula has another dimension, which nowadays is its most important virtue. In a very insightful manner, it reminds us that any law may be problematic as to its contents:

"*A good lawyer would stop being a good lawyer if he were not fully aware, at any moment of his career, that his profession is at the same time necessary and deeply problematic*" (Radbruch, 1999: 105).

"*Something very difficult is imposed upon us lawyers: we have to believe in our vocation and at the same time, within some deepest layer of our being, over and over again have doubts about it*" (Radbruch, 1999: 105).

In this sense, Radbruch's formula has a symbolic value; its value transcends the circumstances in which it was created and to which it reacted. It is not only intended for legislators and other lawgivers, it is also intended for understanding law and implementing it. A statute, also a criminal one, is only rarely (if at all) so unequivocal that its understanding is a pure reconstruction of the "thought" (i.e. norm) it imparts.**[xxvii]** It is in the nature of the interpretation of statutes that it is, sometimes more and sometimes less, also a "thinking through to the end of something that has been thought" (Radbruch, 1999: 108). Legal norms are not given automatically, legal norms are only the meaning of the statutory text. Smole's Antigone would say in a literary manner, as reported by the Page,**[xxviii]** that also the sense of the (written) thought has to be found.

Smole's above-mentioned Antigone is one of the excellent re-interpretations of Sophocles' Antigone.**[xxix]** The primary special feature of Smole's Antigone (1959) is that Antigone never appears on the stage: she is in the background all the time, behind the stage, behind the text, within us and behind us. Since Antigone is physically absent, the main persona is Creon, who – in contrast to Sophocles – is much less high-principled and therefore much more pragmatic ("you may trade and haggle/", he says, "make merry but abide by the city's laws and regulations;/ – within the law"**[xxx]**), philosophically and personally a sceptic ("even the/ king, who is, in spite of all, a man, sleeps sounder if he is first of all a/ human being and king only in the last account. But that's enough of chatter;/ we have work to do!"**[xxxi]**), yet in spite of his doubts, he is unrelenting when the foundations of power are in question:

"*But someone who seeks/ fundamental changes in our world, with abolition of the monarchy and/ other institutions, some overweening planner, with a new utopia, who is/ not thirsting for my blood, but questions the whole basis of the monarchy/ − that is the enemy.*"**[xxxii]**

Others, who keep going to see her and talk to her, report on Antigone. Of fundamental importance is certainly the above-mentioned report by the Page that Antigone keeps examining because she wants to obtain a deeper sense of the thought that makes her resist Creon's order that Polyneices should not have a grave. Finally, Antigone finds Polyneices and buries him. She is, as Ismene says, "a gentle flower that opens just to shed its petals."**[xxxiii]**

The symbolic power of Antigone's deed tells us that the range of legal argumentation ends where the sense of law ends. It is in the character of law and its nature not only that so-called law is not law any more if it is humanly intolerable. These are extreme cases that are typical of authoritarian political systems. In political systems that accept the rule of law and are based on it, it is the opposite direction that is natural. Its basic characteristic is that it seeks to find the right measure, which is humane and takes into account that law is about mutual and interdependent relations that are tolerable to both sides.**[xxxiv]**

This bilateral tolerability is one of the basic aspects of the rule of law as a legal principle. Here the topic of a new paper can start. Its main thesis is that bilateral tolerability is the principle directing the definition of legal rules and the manner of their application. The principle of tolerability aims at a goal, has weight, and defines the scope (range) of the meaning within which the legal rules operate.

NOTES

i. See also Radbruch, 1934: 17-22.
ii. The English quotation is taken from Paulson, 2006: 31.
iii. Cf. also Radbruch, 1914: 101 ff.
iv. The English quotation is taken from Radbruch, 2006b: 7.
v. The English quotation is taken from Radbruch, 2006b: 7.
vi. See e.g. Kaufmann, 1995: 515.
vii. See also Saliger 1995: 5.
viii. The English quotation is taken from Radbruch, 2006b: 11.
ix. The English quotation is taken from Radbruch, 2006b: 8.
x. See e.g. BVerfGE 3, 225 (232 ff.); 6, 132 (198 ff.); 6, 389 (414 ff.); 23, 98 (106) and 54, 53 (67 ff.).
xi. BVerfGE 23, 98 ff., especially 106 ff.
xii. The English quotation is taken from Paulson, 2006: 27
xiii. BVerfGE 95, 96 ff.
xiv. See Kaufmann, 1995: 516. See also Alexy (1993: 486), who reasons in a very

convincing manner: “Wenn aber alles zusammenkommt: ein ganzes und einziges Leben, das man führen soll, wie man nicht will, die Unmöglichkeit, sich mit Argumenten dagegen zu wehren, das Verbot, dem zu entfliehen, und der Todesschuss für den, der das nicht hinnimmt, dann kann an dem Urteil, dass extremes Unrecht geschah, als das Leben der zumeist jungen Menschen ausgelöscht wurde, die ihre Konzeption des guten und richtigen Lebens, ganz gleich wie immer diese aussah, selbst um den Preis ihres Todes realisieren wollten, kein Zweifel sein.”

xv. Kaufmann, 1995: 516: “The bone of contention is Art. 27 II 1 of the Border Act of GDR. The provision reads: ‘The use of a firearm is justified when it may stop a directly imminent committance or continuance of a criminal act that, in view of the circumstances, is also considered a heavy criminal act.’ This is the norm on the basis of which the killings at the Berlin Wall were considered justified and thereby non-punishable.”

xvi. See pt. 3 of the operative part of BVerfGE 95, 96. See also the literature for and against the allowability of retroactivity (for justifying reasons) cited by Kaufmann, 1995: 518, fn. 16.

xvii. See Pavčnik, 2013: 105-129.

xviii. See also Pitamic, 1960: 215: “Es kann ja auch nach positivem Recht sogar eine rechtskräftige Entscheidung aus gewissen schwerwiegenden Gründen wegen krasser Verletzungen des positiven Rechtes angefochten und außer Kraft gesetzt werden.”

xix. See Neumann, 2011: 281.

xx. See Pitamic, 1960: 212. See also Pavčnik, 2010: 93−94, 101.

xxi. More about Pitamic in the introductory study I wrote for the book Pitamic, 2005: 153-173. See also Pavčnik, 2013: 105 ff.

xxii. See Philipps, 2007: 195-196: “Der Ausdruck ‘Stoppbedingung’, den man anstelle von ‘Grundbedingung’ verwenden kann, erinnert mich an etwas, das fast ein halbes Jahrhundert her ist. Ein Freund von mir und ich – wir waren Assistenten von Werner Maihofer – sind damals von Saarbrücken nach Mainz gefahren, um einen Vortrag von Hans Kelsen zu hören. An die Einzelheiten des Vortrags erinnere ich mich nicht mehr, wohl aber an eine Szene, die sich daran anschloss. Ein Student fragte Kelsen in deutlich kritischer Weise, ob der von ihm vertretene Positivismus nicht wieder zu einer Diktatur wie der vergangenen führen könne. Kelsen antwortete: ‘Ob eine solche Diktatur wieder eintritt, das hängt von keiner Rechtstheorie ab, sei sie nun positivistisch oder nicht. Das hängt nur davon ab, ob Menschen, jetzt die Menschen Ihrer Generation, rechtzeitig

‘Halt!’ sagen.’”

xxiii. See also Radbruch, 1948: 147: “Die völlige Leugnung der Menschenrechte entweder vom überindividualistischen Standpunkt (‘Du bist nichts, Dein Volk ist alles’) oder vom transpersonalen Standpunkt (‘Eine Statue des Phidias wiegt alles Elend der Millionen antiker Sklaven auf’) aber ist absolut unrichtiges Recht.”

xxiv. Alexy, 2009: 159: “Extremes Unrecht ist kein Recht.”

xxv. About generally valid principles of international law see Degan, 2000: 70-76, Škrk, 2007: 281-289, and Türk 2007: 59.

xxvi. See the Constitutional Court Act, Art. 23.

xxvii. See von Savigny, 1840: 214. For him interpretation is “Reconstruction des dem Gesetze inwohnenden Gedankens”.

xxviii. Smole, 1988: Verse 118: “[S]he seeks the inmost meaning of some thought.”

xxix. Steiner, 2003: 170: “As I noted above, the Sophoclean chorus tends to fall away from spoken ‘Antigones’ after the sixteenth century and such scholarly treatments as Garnier’s. There are exceptions. Among the most intriguing is Domik Smole’s Slovene Antigone, first staged in 1960. Here, the heroine never appears. It is via the chorus and several secondary personae that we experience the terror and moral-political meaning of her fate.”

xxx. Smole, 1988: Verses 142-143.

xxxi. Smole, 1988: Verses 947-950.

xxxii. Smole, 1988: Verses 643-648.

xxxiii. Smole, 1988: Verse 2259.

xxxiv. Cf. Sprenger, who builds upon the notion that law has to be based on an elementary pre-legal sense. Its main characteristic is that, at either side, an adequate “Answer-Behaviour” is built into mutual legal relations (Sprenger, 2003: 334). See also Sprenger, 2012: 87 ff.

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