DEVELOPMENTS

Mounir El Motassadeq – A Missed Chance for *Weltinnenpolik*?

By Timo Kost[*]

A. Introduction

Within less than two months, three court decisions were rendered that seem to be the last step in the seemingly never-ending story of Mounir El Motassadeq before German criminal courts. First, on 16 November 2006, the German Federal Court of Justice (*Bundesgerichtshof* - hereinafter BGH) found Motassadeq guilty for being a member of a terrorist organisation and for abetting the murder of 246 people, according to sections 129 and 211 (27) of the German Criminal Code (*Strafgesetzbuch* – hereinafter StGB).[1] The court sent the case back to the Higher Regional Court of Hamburg (hereinafter OLG Hamburg)[2], which sentenced Motassadeq to 15 years imprisonment on 8 January 2007. Following the decision of 16 November 2006, Motassadeq lodged a constitutional complaint to the German Federal Constitutional Court (*Bundesverfassungsgericht* – hereinafter BVerfG), which declined to hear Motassadeq´s case on the grounds that the complaint was both inadmissible and unsubstantiated.[3]

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[1] Federal Court of Justice (*Bundesgerichtshof* – BGH), decision of 16 November 2006, published in NEUE JURISTISCHE WOCHENSCHRIFT, 384 (2007).

[2] Where a judgment is quashed solely because of a violation of the law occurring on its application to the findings on which the judgment was based, the Appeals Court can itself adjust the conviction (*Schuldspruchberichtigung*), *mutatis mutandis* section 354 (1) German Criminal Procedure Code (*Strafprozessordnung* – hereinafter StPO). *See* MEYER-GOßNER, STRAFPROZESSORDNUNG § 354 (49th ed., 2006), margin number 12.

[3] Federal Constitutional Court, (*Bundesverfassungsgericht* – BverfG), decision of 10 January 2007, Reg. no. 2 BvR 2557/06, available at: www.bundesverfassungsgericht.de, last accessed: 13 March 2007.

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B. The Case of Motassadeq – A Brief History

Motassadeq was first convicted by the OLG Hamburg on 19 February 2003. The court had sentenced him to 15 years in prison for abetting the murders of more than 3066 people (including the victims in the airplanes and in the World Trade Centre) and for being a member of a terrorist organisation, in accordance with sections 211 (murder), and 129a (formation of a terrorist organization) StGB.

Thereafter, the accused appealed to the BGH, primarily arguing that the OLG Hamburg, with regard to the missing evidence from a key witness (Ramzi Binalshibh), failed to consider the legal principle *in dubio pro reo*.[4] Binalshibh, arrested in 2002 in Pakistan and extradited to the USA, was one of the defence's key witness who, it was said, could testify that Motassadeq was not involved in the preparations of the 9/11 attacks. However, for reasons of state security, the American authorities repeatedly refused to grant the German court access to Binalshibh, who was at that time allegedly detained in American custody.[5] Summaries of Binalshibh's interrogation hearings, made available to the *Bundesnachrichtendienst* (German Secret Service) and the *Bundeskriminalamt* (Federal Criminal Police Office) by the USA, had been subject to a *Sperrerklärung* (a formal executive act that blocks the admission of evidence into a trial) under section 96 StPO.[6]

The BGH thus ruled on 4 March 2004 that a court facing the problem of non-present witnesses where executive authorities, either domestic or foreign, are unwilling to produce them[7] has to act very carefully when weighing the evidence.[8] As the OLG Hamburg's decision failed to meet these requirements, the BGH quashed the decision and sent the case back for re-trial.[9]

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[4] For detailed information about the "facts", in particular the presumable role of Binalshibh, *see* Loammi Blaauw-Wolf, *The Hamburg Terror Trials – American Political Poker and German Legal Procedure: An Unlikely Combination to Fight International Terrorism,* 5 GERMAN LAW JOURNAL 791 (2004), available at: http://www.germanlawjournal.de/article.php?id=473, last accessed: 13 March 2007.

[5] FRANKFURTER ALLGEMEINE ZEITUNG, 24 November 2004, Nr. 275, 4.

[6] BGH, decision of 4 March 2004, published in NEUE JURISTISCHE WOCHENSCHRIFT, 1259 (2004).

[7] For further information about the legal requirements for „non present witnesses," *see* Christoph J. M. Safferling, *Terror and Law – Is the German Legal System able to deal with Terrorism? The Bundesgerichtshof (Federal Court of Justice) decision in the case against El Motassadeq,* 5 GERMAN LAW JOURNAL 515 (2004), available at: http://www.germanlawjournal.de/article.php?id=428, last accessed: 13 March 2007).

[8] BGH, *supra*, note 6, 1262.

[9] *See further*, Safferling, *supra,* note 7.

On 19 August 2005, Motassadeq was convicted a second time by the OLG Hamburg. This time he was sentenced to seven years in prison, on the sole charge of being a member of a terrorist organisation by virtue of Section 127 StGB. The court found no evidence that Motassadeq had abetted the murders of the victims of the 9/11 attacks. The decision was based on the fact that no evidence indicating that Motassadeq was aware of all of the dimensions of the 9/11 attacks had been found.

C. The 2006 Decisions

I. The 16 November 2006 decision of the BGH

After the OLG Hamburg's decision on 19 August 2005, both the General Federal Prosecutor[10] and again the accused appealed to the BGH.

The accused claimed in particular the following issues: (1) the OLG Hamburg's decision to give to the witness Mzoudi[11] a right to refuse to answer any questions during the trial failed to comply with the requirements under section 55 StPO[12] and (2) the court did not meet the requirements concerning the weighing of evidence established by the BGH in its 4 March 2004 decision.

Under the ruling of the BGH the decision regarding the applicability of section 55 StPO is subject to the presiding judge's general competence to administer the main hearing (section 238 (1) StPO).[13] Under section 238 (2) StPO the court shall render a decision on an objection by a participant in the proceedings that an order by the presiding judge relating to the conduct of the hearing is illegitimate. The BGH thus required that every participant, who wants to appeal the court's order to give a witness the right to refuse under section 55 StPO, must object to a refusal of

[10] Sections 142a and 120 *Gerichtsverfassungsgesetz* (Organisation of the Courts Act) require cases of national security to be prosecuted by the German Federal Prosecutor.

[11] Mzoudi was the second accused charged before a German Court. Unlike Motassadeq, Mzoudi was found not guilty by the OLG Hamburg. The OLG found no evidence that Mzoudi was involved in the preparation of the 9/11 attacks. After the German Federal Prosecutor appealed to the BGH, this decision was confirmed by the BGH on 5 June 2005 (published in NEUE JURISTISCHE WOCHENSCHRIFT, 2322 (2005)). For further information on this case, *see* Blaauw-Wolf, *supra*, note 4.

[12] According to section 55 StPO any witness may refuse to answer any questions the reply to which would subject him to the risk of being prosecuted for a criminal offence or a regulatory offence.

[13] BGH decision of 15 January 1957, published in BGHSt 10, 104, 105; Meyer-Goßner, *supra*, note 2, section 55 margin number 10.

information on the part of a witness according to Sec. 55 I StPO and bring about a decision under section 238 (2) StPO.[14] Since the defence failed to bring such a decision about in the trial before the OLG Hamburg, the BGH rejected this part of the accused's appeal.

With respect to the second issue, it must first be remarked that the BGH, as an appeal level court, does not weigh the evidence found by the court of first instance itself. The BGH can only comment on whether the court of first instance's weighing of evidence observed the legal framework. The court held that the OLG addressed the requirements it made in the first decision (4 March 2004) concerning the weighing of evidence in cases of non-present witnesses. The BGH held that the OLG, by weighing this evidence, observed the requirements when it classified the abstract's probative value as doubtful. In particular the OLG did not fail when it held that there was too much circumstantial evidence that undermined its assumption that Motassadeq knew that a number of airplanes were to be used as weapons in the USA.[15]

The Federal Prosecutor claimed that the OLG, on the basis of those facts which the court deemed proven, failed when it declined to apply the requirements for aiding and abetting the murder of 246 airplane passengers. The OLG ruled that, though the *Tatbeiträge* (the distinct contributions to the principal offence) supported the principal offence, they were not sufficient to increase the risk that the principal offence was put into action. In particular, the OLG found that Motassadeq kept up appearences that three of the pilots (Mohammed Atta, Marwan Alshehhi and Ziad Jarrah), while residing in the USA to prepare for the assault, were still living as students in Hamburg. He further wired Binalshib money from Alshehhi's German bank account, which Binalshibh was to transfer to Atta and Alshehhi in the USA.

Further doubts remained about the accused's exact knowledge concerning the distinct form, variety, place and time of the attacks. He also did not know about the full extent of the attacks and the vast number of victims. The OLG found that the accused knew only that the group around Mohammed El Amir Atta planned to hijack airplanes which were to be crashed. The BGH followed the Federal Prosecutor and ruled that under section 27 StGB (accessoryship) it is not necessary that the accessory's acts increase the risk that the principal offence will be put into action. Rather, it should be sufficient that the accused's acts promote the *Haupttat* (principal offence). Furthermore, it is not necessary that the accused knew in detail

[14] BGH, *supra*, note 1, 386. This requirement was also challenged by the legal literature: Gollwitzer, in LÖWE/ROSENBERG, StPO, section 238 (25th ed.), margin number 43.

[15] BGH, s*upra*, note 1, 387.

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that the airplanes were to be flying into the distinct 9/11 targets. His knowledge of the fact that the airplanes were to be crashed would be sufficient to show that his intention was the death of the passengers.

II. The decision of the BVerfG

In response to both this decision and the decision of the OLG, Motassadeq lodged a constitutional complaint to the BVerfG. He claimed a violation of his Basic Rights with respect to (1) the BGH's decision to reject his appeal since he claimed a failure concerning the OLG's order to give the witness Mzoudi a right to refuse questions under section 55 StPO, (2) the BGH's approval of including the summary of the hearings of Binalshibh and Slahi into evidence, and (3) the BGH's modification of the OLG's decision by convicting Motassadeq for being an accessory to the murders of 246 people. On 12 January 2007, the BVerfG ruled that it did not accept the constitutional complaint. Concerning points (1) and (2) the complaint failed to meet the requirements for admissibility. The substantiation of the complaint was insufficient because it failed to challenge earlier decisions both of the BVerfG and the BGH concerning the general legitimacy of the necessity to bring about a decision under section 238 (2) StPO as a requirement for the admissability of an appeal on points of precedural law.[16] As well, it lacked a sufficient challenge to the BGH`s decision concerning point (2) since it disregarded that the summaries of Binalshibh's interrogation hearings were subject to differentiated treatment by the OLG which would be an argument against a violation of Basic Rights. With regard to point (3) the BVerfG saw no violation of Basic Rights, in particular no violation of the *Willkürverbot* (prohibition of arbitrary decisions)[17] since the BGH ruled that the facts found by the OLG met the requirements of accessoryship under section 27 StGB.[18]

[16] BVerfG, 21 March 2001 – Reg. no. 2 BvR 403/01; BVerfG, decision of 14 May 1999, published in STRAFVERTEIDIGER, 3 (2000); BGH decision of 8 October 1953, published in BGHSt 4, 364, 366; BGH, decision of 14 February 1985, published in STRAFVERTEIDIGER, 355 (1985).

[17] BVerfG decision of 24 March 1976, published in BVerfGE 42, 64, 74; BVerfG decision of 13 January 1987, published in BVerfGE 74, 102, 127.

[18] The BVerfG reviews judgments not with respect to their application of statutory law, but only if this application violates Basic Rights (*Verletzung spezifischen Verfassungsrechts*), see BVerfG decision of 10 June 1964, published in BVerfGE 18, 85, 92.

D. Comment

The case of Motassadeq has been subject to a politically delicate debate during the last five years.[19] From a lawyer's perspective it is astonishing how much even legal reviews have focussed on the facts of the case. Loammi Blaauw-Wolf, for example, writes: "Usually a legal discussion would focus more on the legal arguments of a judgment and less on the facts of the case. However, in this instance, it seems that just the opposite is required."[20] The remaining question is: Why? The independence of judges was entrenched by the adoption of Article 97 of the Basic Law and it is beyond a doubt that this was for the better. Against this background we can only review these court decisions from a legal perspective and it is better not to engage in vague speculations about "what really happened." From a legal perspective, the decisions reveal, at first glance, no serious challenges. If Motassadeq knew about the plans to use commercial planes as weapons against targets in the USA, then his supporting acts in Germany constitute accessory to these murders under section 27 StGB. The delicate question, however, was whether he had this knowledge. The public debate focussed in particular on the lack of cooperation from the USA in sharing evidence obtained from Binalshibh's interrogation interviews.[21] We should focus on how the BGH coped with this fact.

The BGH ruled in its 4 March 2004 decision on the way to handle cases of non-present witnesses whose availability is hampered by a foreign executive. It seems as though other possibilities to decide this question are unconvincing. The BGH discusses different arguments in legal literature, which claim that statements of an accused should be treated as true if these assumptions are based on evidence that is subject to a *Sperrerklärung* (a formal executive act that blocks the admission of evidence into a trial) under section 96 or 54 StPO. These claims are essentially based on the principle *in dubio pro reo*.[22] The Court rejected this view and pointed out that this principle applies not to sole questions during the hearing of evidence but rather applies after the hearing of evidence. "The presumption of truth would lead in many cases to an acquittal or would benefit the accused inappropriately, because it would be up to him to assert facts that would be potentially clarified by blocked exhibits..."[23] In spite of this, the court held that due to the significant effects on the

[19] New York Times, 29 August 2002, A 11; Frankfurter Allgemeine Zeitung, 20 August 2005, 193, 1.

[20] Blaauw-Wolf, *supra*, note 4, 795.

[21] *See,* Bartwuchs und andere Schuldfragen, Die Zeit, 18 August 2005, 34, available at: http://zeus.zeit.de/text/2005/34/Motassadeq, last accessed: 13 March 2007.

[22] BGH, *supra,* note 6, 1262.

[23] *Id.*

accused's right to a fair trial,[24] the alleged fact has to be taken into account in a "careful weighing of evidence," including the application of the principle *in dubio pro reo*.[25] The court further points out that the fact that it is a foreign state that has blocked the witness requires no dissenting conclusion. The characteristic of Motassadeq's case should be that the foreign state, the USA, has a considerable interest in the conviction of the accused. Rejecting this view would mean entitling the foreign state to have control over criminal trials in Germany.

At first glance, it seems as though this conclusion, to reject attempts that seek to treat the alleged fact as true and further to regard the alleged fact within the weighing of evidence, is prudent and the only satisfying one. Admittedly, a presumption of truth increases the risk that the accused asserts allegations, knowing full well that the impossibility to prove these allegations exists because of a foreign state's *Sperrerklärung*. This would entitle the accused, to a certain extent, to control the outcome of the trial. But we should look a little deeper into the arguments of the court in its first decision.[26] This leads to the conclusion that the BGH would have been better off to have applied another option to the case, an option that is also discussed in the judgment, *Prozesshindernis* (procedural impediments). This would avoid the questionable application of a presumption of truth. The court ruled that this is not a case that requires the application of a *Prozesshindernis*. Such an analysis should only be required when an interference with the accused's right to a fair trial reaches an extent that cannot be balanced by other compensations.[27] It is the right to a fair trial that is the connecting point for our criticisms. The argumentation of the BGH abridges the fact that a foreign state blocks the witness and argues the case within domestic parameters. The court argues in particular with a comparison to the problem of non-present witnesses that are blocked by the national executive because they are, for example, police informers (V-Mann).[28] According to former judgments, it is possible to introduce these witnesses indirectly into the trial.[29] In the case of Motassadeq, the BGH supports its arguments using its own prior reasoning from cases involving police

[24] The fair trial principle is guaranteed in Art. 6 European Charter of Human Rights (EMRK) and is part of the principle of due process under the judgment of the BVerfG, *see* BVerfG, decision of 26 May 1981, published in NEUE JURISTISCHE WOCHENSCHRIFT 1719 (1981).

[25] Safferling, *supra*, note 7.

[26] We can focus on the first decision, since the decision in November 2006 applies merely the requirements made in the March 2004 decision for this question.

[27] BGH, s*upra,* note 6, 1263.

[28] *Id.,* 1261.

[29] BGH, decision of 20 December 2000, published in NEUE JURISTISCHE WOCHENSCHRIFT, 2245 (2001).

informers because these cases interfere in the same manner with the right to a fair trial, which has to be compensated in the manner described above.

However, a more theoretical second-order observation might reveal the crux of this argument.[30] When the court puts into effect the distinction between Legal and Illegal[31] by ruling that the intervention into the right to a fair trail can be compensated for within the weighing of evidence and mainly refers to an argument within the domestic context (V-Mann), then the court entrenches the distinction between Law and Non-Law at a point that fails the transnational connection of this case. A judgment arguing for compensation for an interference with a Basic Right, like the fair trial principle by the executive, refers under the veil of legal arguments to non-legal assumptions of a state's architecture (*Fremdreferenz*). Luhmann's theory of social systems disambiguates this conclusion. Accepting his basic assumption that society is a collection of communicative acts, we have to consider that each legal correspondence establishes new boundaries, however, developed through yesterday's definitions of what is legal/illegal.

The essential point in this theory for the present problem is that the law, or in other words legal communication, has no direct access to what is outside of the law. Only through the thin lens of established legal arguments does the law catch a glimpse of what is on the "other side." That is, the distinction between *Selbstreferenz* and *Fremdreferenz* in Luhmann's theory.[32] A step further would be to say that the law's view of what is "outside" is contained within norms and legal doctrines.[33] It then becomes apparent that every legal argument that deals with "power," the latter institutionalized in what we may call the executive, is based on a law-intern generated view of how the institutionalized "power" is bound in the architecture of the nation state. These law-intern cognitive patterns contain at their core the assumption that the executive is bound by law and justice, as entrenched in Article 20 (3) Basic Law. Thus the BGH's judgment is only tenable under the assumption that the institutionalized executive is bound in a legal system of due process, which guarantees that every executive act both is based on a formal act of legislation and is subject to judicial review. The latter becomes apparent when we focus on the fact

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[30] Also critical Karsten Gaede, *Schranken des fairen Verfahrens gemäß Art. 6 EMRK bei der Sperrung verteidigungsrelevanter Informationen und Zeugen*, STRAFVERTEIDIGER 599 (2006). Gaede inquires the BGH´s 2004 decision (*supra,* note 6) against the background of the judgment of the European Court of Human Rights concerning Art. 6 EMRK and concludes that the "*Beweiswürdigungslösung"* (the decision to adress the problem of a *Sperrerklärung* within weighing of evidence) is not in accordance with this judgment.

[31] NIKLAS LUHMANN, DAS RECHT DER GESELLSCHAFT 165 (2nd edition 1997).

[32] *See,* Luhmann, *id*., 83.

[33] GUNTHER TEUBNER, RECHT ALS AUTOPOIETISCHES SYSTEM 96, 120 (1989).

that every *Sperrerklärung* under section 96 StPO has to be subject to judicial review by an administrative panel.[34] Only within such a legal framework is it rational to establish a legal argument that states that the executive has legitimate interests in state secrecy and that these interests allow interference with the right to a fair trial; otherwise any weighing of rights would lack argumentative basis.

The case of Motassadeq shows that these assumptions lose their very basis. The threat to the right to a fair trial is no longer an executive that is bound in a domestic legal system of due process. It seems as though the "coalition of the willing" increasingly entitles a network of executive authorities, which interact in a global context to implement its own rationalities into domestic trials.[35] Those "Networks of government officials - ... – increasingly exchange information and coordinate activity to combat global crime and address common problems on a global scale."[36] What becomes apparent is the possibility for foreign executives to interact within these networks in a way that entitles them to control domestic trials and thus cause an interference with the basic rights of the accused. Cases like the one of the Canadian Maher Arar[37], the German-Lebanese Khaled al Masri[38] and the Turkish Murat Kurnatz (born in Bremen, Germany),[39] show how transatlantic cooperation between executive authorities causes severe consequences for terror suspects. Already during the first trial before the OLG Hamburg the German authorities had information provided by US officials.[40] However, at least during the first trial, this information was blocked by the German executive authorities.[41] Unlike the executive which intervenes into these rights within a domestic context, the

[34] BGH, decision of 24 June 1998, published in NEUE JURISTISCHE WOCHENSCHRIFT, 3577 (1998).

[35] Similar argument: Gaede, *supra,* note 30, 607.

[36] ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 1 (2004).

[37] Maher Arar, a Canadian software engineer, was detained by US authorities during a stopover in New York on September 26, 2002, and deported to Syria via Jordan, *see* Report of the Events Relating to Maher Arar, 27, available at: www.ararcommission.ca, last accessed: 13 March 2007. On the way to Jordan, the airplane transporting Arar landed in Rome, *see* working document No. 3, PE 374339, of the European Parliaments *Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners,* available at: http://www.europarl.europa.eu/comparl /tempcom/tdip/working_docs/pe374339_en.pdf, last accessed: 13 March 2007.

[38] El-Masri was allegedly detained in Skopje by the CIA and removed to Afghanistan on January 2004. There, el-Masri claimed, he has been interrogated by a German, *see* European Parliament, *supra,* note 37.

[39] Kurnatz allegedly was to be released from Guantanamo in 2002, which, however, was allegedly refused by German authorities, *see* Süddeutsche Zeitung, 24 January 2007, available at: http://www.sueddeutsche.de/deutschland/artikel/ 226/99127/, last accessed: 13 March 2007.

[40] BGH, *supra,* note 6, 1260.

[41] *Id*.; *see also* Gaede, *supra*, note 30, 607.

transnational network of executive acting eludes control under principles of due process. In Motassadeq's case there was no possibility to bring the USA's decision to block the witness to judicial review. Further, invoking national security interests within a *Sperrerklärung* veils transnational security interests behind these seemingly national decisions. This is the point that deprives the BGH's decision of its very basis.

Does this description lead to a different legal treatment of the case? Since every criticism requires a better proposal I will try to give a different legal analysis. The difficulty is in reformulating the above described scenario in terms of existing legal arguments. The connecting point might be the above mentioned *Prozesshindernis*.[42] Even the BGH discussed this principle in its first decision, however, rejected its application with the described arguments.[43] Since the BGH points out that a *Prozesshindernis* applies only if the act interferes with the accused's rights to an extent that it deprives the trial of its very basis, we can now argue that, against the background of emerging networks of executive authorities, the interference with the rights of the accused deprives the ties of due process. It is thus possible to apply the doctrine of *Prozesshindernis* to this case.

Again, from a theoretical point of view, we can see how the application of this doctrine functions somewhat like a stop-mechanism against attempts to partially define the content of "due process" in a transnational context.[44] This is deeply intertwined with Habermas' argument that the development of Modernity is characterized by an increasing phenomenon of 'inclusion'[45] and Luhmann´s prediction that `Inlcuison/Exclusion´ will become the Meta-Code which transcends every other rationality on the global level.[46] The blurred distinction between domestic and foreign politics on a global level demands further procedures of a *Weltinenpolitik* (domestic politics on a global level).[47] This claim can be understood

[42] *See also* Gaede, *supra,* note 30, 607.

[43] *See also* Henning Ernst Müller, ANMERKUNG ZU BGH VOM 4 March 2004, JURISTENZEITUNG 926, 928 (2004).

[44] Arguing explicitly against partial attempts to define the contents of legal terms Andres Fischer-Lescano, *Monismus, Dualismus? – Pluralismus. Selbstbestimmung des Weltrechts bei Hans Kelsen und Niklas Luhmann*, in: Hauke Brunkhorst (Ed.), VÖLKERRECHTSPOLITIK. HANS KELSENS STAATSVERSTÄNDNIS, 2007; against imperialism of "ideas" Philip Allott, *The Emerging International Aristocracy*, 35 N.Y.U. JOURNAL OF INTERNATIONAL LAW & POLITICS 309 (2003).

[45] *See* Jürgen Habermas, *Staatsbürgerschaft und nationale Identität*, in: FAKTIZITÄT UND GELTUNG 647 (1992).

[46] Luhmann, *supra*, note 31, 582.

[47] Jürgen Habermas, *Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?* in DER GESPALTENE WESTEN 176 (2004).

as arguing within the Meta-Code of 'Inclusion/ Exclusion,' since *Weltinnenpolitik* would, in our case, address problems of the content of 'due process' on a transnational level by means of public procedures, thus piercing the 'executive veil' which hides attempts to partially define this content. If further, in the transnational sphere, nothing more is required than the constitutionalisation of different societal spheres[48] then the law has to become "reflexive"[49] in a way that it remains connected to struggles in other societal spheres. This would mean in our case that the application of a *Prozesshindernis* would keep opportunities for communication about "due process" open in a transnational context of emerging networks of executive authorities since it may require the involved parties to comply with a "minimum" standard of due process.

[48] *See* Gunther Teubner, *Globale Zivilverfassungen: Alternativen zur staatszentrierten Verfassungstheorie*, 63 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 1 (2003). For the english version *see Societal Constitutionalism: Alternatives to State-centred Constitutional theory? in*: Christian Joerges, Inger-Johanne Sand and Gunther Teubner (Eds.), CONSTITUTIONALISM AND TRANSNATIONAL GOVERNANCE 3 (2004); ANDREAS FISCHER-LESCANO, GLOBALVERFASSUNG, DIE GELTUNGSBEGRÜNDUNG DER MENSCHENRECHTE (2005); Andreas Fischer-Lescano/Gunther Teubner, *Regime Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law*, 25 MICHIGAN JOURNAL OF INTERNATIONAL LAW 999-1045 (2004). *See further* the increasing debate on comparative constitutionalism: Ruti Teitel, *Comparative Constitutional Law in a Global Age*, 117 HARV. L. REV. 2570 (2004); Miguel Schor, *Constitutionalism through the looking class of Latin America*, 41 TEXAS INTERNATIONAL LAW JOURNAL 1 (2006); NORMAN DORSEN, MICHEL ROSENFELD, ANDRÁS SAJÓ & SUSANNE BAER (EDS.), COMPARATIVE CONSTITUTIONALISM: CASES AND MATERIALS (2003); Anne-Marie Slaughter, *A Global Community of Courts*, 44 HARVARD INTERNATIONAL LAW JOURNAL 191 (2003) ; Harold Hongju Koh, *International: Law as part of our Law*, 98 AMERICAN JOURNAL OF INTERNATIONAL LAW 43 (2004); Günther Frankenberg, *Comparing Constitutions: Ideas, Ideals, and Ideology--toward a layered narrative*, 4 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW 439 (2006); Mark Tushnet, *Interpreting Constitutions Comparatively: Some cautionary notes, with reference to affirmative action*, 36 CONNECTICUT LAW REVIEW 649 (2004).

[49] Seminal: Gunther Teubner, *Reflexives Recht. Entwicklungsmodelle des Rechts in vergleichender Perspektive*, ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE 13 (1982).