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Introduction

ACA seminar “ReNEUAL I”
on 3 and 4 December 2018
at the Administrative Court Cologne

Dear colleagues,

I would like to welcome you all to the seminar of ACA-Europe here in Cologne. I am delighted that so many of you have accepted our invitation despite the dark December days.

This seminar is the first of a total of six seminars that we intend to hold during the two-year German Presidency. As you know, seminars and colloquia are one of the important formats in which ACA-Europe fulfils its tasks. In addition, there is the exchange of judges, which we have been able to intensify considerably in recent times and which I am convinced is one of the most effective institutions of ACA-Europe in order to promote and deepen our mutual knowledge and understanding. In addition, there are our Internet services, especially our database “JuriFast”. The Board has decided to review and modernise “JuriFast” during the German presidency and has set up a working group for this purpose.

If I have just mentioned six seminars during the German Presidency, four of them are to take place in Germany. The other two seminars are organised by our friends in Ireland and the Czech Republic. Surely you have already received the invitation from our Irish friends to Dublin for March 2019.

With the seminars in Germany, my team and I would like to give you an understanding of the geography of Germany. That is why we have carefully selected the seminar locations. Today I welcome you here in Cologne, the venerable cathedral city on the Rhine. Cologne stands for the predominantly Catholic Rhineland and for western Germany, where industry and trade flourished at (almost) all times. The next seminar should take place together with next year's General Assembly in May 2019 in the German capital of Berlin. The choice of date also takes into account the schedule of our head of state, the Federal President Frank-Walter Steinmeier, who has promised to receive us there. Finally, I would like to invite you to the third seminar in Germany and to the General Assembly 2020 in Leipzig, a lively and aspiring city in eastern Germany, in the heartland of the Protestant Reformation, formerly the showcase city of the other socialist German Republic and the scene of the peaceful revolution that led to the reunification of divided Germany almost 30 years ago. Also in Leipzig, a seminar will be held in spring 2020 for the documentation services of the member courts that will deal, among other things, with the modernisation of the ACA databases.

Cologne, Berlin, Leipzig: These three cities also enable you to gain an insight into German administrative jurisdiction. Surely you know that we have a three-tier administrative jurisdiction. In Germany there are 51 administrative courts (*Verwaltungsgerichte*) at the lower instance, 15 higher administrative courts (*Oberverwaltungsgerichte*) at the middle level - basically one in each federal state - and finally the Federal Administrative Court (*Bundesverwaltungsgericht*) as the supreme court. We would like to introduce all three instances to you. That is why all three seminars take place in court buildings: This first seminar here at the Administrative Court Cologne, one of the largest administrative courts of the lower instance in Germany, the second seminar then in the building of the Higher Administrative Court Berlin-Brandenburg in Berlin and the third seminar finally in the building of the supreme court, the Federal Administrative Court in Leipzig. I am very glad that the President of the Administrative Court Cologne, upon my request, immediately agreed to invite all of us here. Please welcome with me in our midst the President of the Administrative Court, Ms Herkelmann-Mrowka. She and her team enriched the concept of this conference with numerous ideas and suggestions and actively supported the organisation. I would already like to express my sincere gratitude for this.

In fact, many items on our programme are based on suggestions from our Cologne colleagues. I would like to draw your attention to the two booklets that you found in your hotel. Both booklets are each in three languages: English,

French and German. The white booklet contains organisational information such as the most important addresses and telephone numbers. This booklet is best taken with you in case you get lost. But also beyond it other organisational questions and problems may arise for each of us. Please feel free to contact the organisation team at any time: Joris Casneuf from the Brussels ACA office, Ms Houba from the local administrative court or Ms Schneider from the Federal Administrative Court. You can also call Ms Schneider at any time. You will find the telephone number and many other useful information in the white booklet.

The green booklet contains the conference programme, both the scientific programme of the seminar and the accompanying programme for the meals and cultural events. Yesterday evening it started already wonderfully with the climb over the roof of the cathedral at night - an event you really do not get every day. Today we will have lunch at the "Früh am Dom" restaurant. This is probably one of the most famous breweries in Germany. Cologne is the home of a special beer that is brewed top-fermented and is proudly called "Kölsch", and "Früh" is considered by connoisseurs to be a particularly good "Kölsch". In order not to jeopardise our afternoon session too much, we should limit ourselves to one "Kölsch". Or two at the most. Tonight we can look forward to a visit to "Westdeutscher Rundfunk", one of the most important German radio and television stations. On our way there, we pass the Cologne Christmas Market. The evening ends with a meal and above all drinks in the "Piazzas im Örgelchen", a cosy restaurant where also wine drinkers can

indulge their passion. Tomorrow our seminar programme will end with a lunchtime snack here in the court building. Afterwards there will be the opportunity to visit the building of this administrative court guided by President Ms Herkelmann-Mrowka. The postal address - Am Appellhofplatz - has nothing to do with the German word "Appell" for a military roll call, but reminds us that the so-called "Appellationsgerichtshof" (in English: Court of Appeal) was established here in 1862. So we are in the middle of Cologne's old judiciary centre.

One last organisational hint. You may have noticed that a photographer is present. He will be at our disposal until about eleven o'clock. We will send you his pictures later so that you may have a little souvenir. I assume you all agree with it. If you do not like it, please contact us. Your pictures will be deleted. And one more thing: In the first coffee break, after the speech by Professor Schneider, we want to take the obligatory group photo. Best suited for this is the large staircase in the foyer of the court building. You reach it by leaving this hall and going downstairs, passing the coffee. Please have a little patience with getting your coffee. It is not very dressing when half of us balance a coffee cup in our hands on the group photo.

Allow me now to say a few words about the concept of our seminars. Together with our Irish friends we want to try something new: the double seminar. These are two seminars that complement each other in terms of content. Each seminar has its own topic, so there are no repetitions. You can

also attend one of the two seminars profitably, even if you missed the other one. Nevertheless, the second seminar should continue and deepen the first one. This also makes it possible to learn from mistakes or incompleteness, to close gaps and to correct misunderstandings. In this sense, the seminars in Dublin and Berlin, both next spring, thematically belong together. They form a double seminar. And in this sense, today's seminar in Cologne and the last seminar in Leipzig also thematically belong together. They form another double seminar.

We have placed the seminars here in Cologne and then in Leipzig under the motto "ReNEUAL". "ReNEUAL" is an acronym which stands for "Research Network on European Administrative Law". This was first an academic project of a group of professors from law faculties in several European countries. In the meantime, numerous practitioners from the administrative courts have joined in. This was initiated by the European Parliament when, in 2007, calling on the Commission to submit a draft regulation laying down general rules for its own administrative action. The Commission has not yet done so. But the professors have produced such a draft, which has been available since 2015 and has by now been translated into many European languages. The printed result is available here in several language versions for viewing - please only for viewing. Unfortunately, the publishers have not given us any free copies. But you can buy it. So take a look at the books and order a few copies in your language for your court library, it is worth it!

Why do we want to deal with this project as part of ACA-Europe, and do so twice? Dear colleagues: We are not interested in the concrete regulatory proposals made by the professors and practitioners. We are concerned with the method by which they arrived at these proposals. Here, evaluative legal comparison is practised in the best manner: First, a concrete regulatory problem is described, for example: under what conditions may an administrative act be withdrawn; or: is a contract under public law effective although the civil servant who acted for the authority was drunk. Then it is examined how this problem is solved in the different member states of the European Union. Finally, these solutions are compared with each other and their persuasiveness is questioned.

In this way, the national legal cultures are brought into dialogue with one another, and one learns not only about the law of the European partner countries, but also about one's own law. One understands one's own law better when one sees it from the outside, as it were, with somebody else's eyes. And if we are to further develop our own law, our own jurisprudence, then in case of doubt we could choose the path that also corresponds to the legal opinions of our partner countries. Thus, national legal cultures can converge without merging into one.

Dear colleagues: Legal comparison is necessary! We should become accustomed to taking an even greater interest in the solutions of our partner countries. And this not only at

international seminars, but also in our daily work. The actual aim of this seminar is to promote this.

Carsten Günther and Alban Barrón have prepared the seminar very thoroughly. Together with Professor Schneider they designed a concept and developed a questionnaire. It was very extensive and complex, and hence I was a little worried. All the more I was pleased about your numerous participation and the thorough answers. Carsten and Alban then had a lot of work to do to evaluate these answers, but that was the deserved punishment and it was worth it. We have prepared a final report on this, which you have received over the past few days. I do not want to repeat it all. But there is one thing I will not hide. As you know for sure, national legal cultures in Europe are traditionally divided into three more or less clearly defined families: the Anglo-Saxon legal system, the Romance legal system and the Central and Northern European legal system. Personally, I was curious to see whether such a three-way division would be reflected in the answers to our questionnaires. The result is clear at first glance, and it is clearly negative: It is not possible to group according to legal systems or legal families. There was a certain range of answers to each question, a certain scale, but no country was at the same place on the scale for all the questions. I do not know whether a more precise analysis will after all reveal general relationships according to certain criteria. Such an analysis is still pending.

Perhaps our being together today and tomorrow offers more detailed information. As usual, we have selected some topics

from the entire spectrum of the questionnaires in order to discuss them in more detail here. I am looking forward to your ideas and contributions. I am sure that we will have two extremely productive, exciting and fulfilled days.

A few remarks on the course of the seminar. First, Professor Schneider from the University of Freiburg will present the ReNEUAL project itself to us. Professor Schneider was instrumental in shaping and organising the ReNEUAL project. He is one of the best experts on the subject in Europe. And when we asked him to participate in our seminar, he was immediately ready to do so. Thank you very much for this and for your cooperation in the conception and preparation of the seminar!

Afterwards, in two panels, we would like to pick out two topics that seemed to us to be the most profitable. On the one hand, we want to shed light on the various parties involved in the administrative procedure, with their interests and in their respective legal positions, which can be quite different. On the other hand, we would like to ask how the authority determines complex facts of the case and with what accuracy the administrative court reviews these facts if they are called into question by the claimant. These two panels will occupy us today, one in the morning and one in the afternoon.

For tomorrow morning we have something special in mind: We want to have a moot court. I am pleased that many of you have found yourself willing to play an active part in this. Of course, here too we are not so much concerned with external

performance, but rather with the understanding of the roles of the various parties to the process according to the interpretation of different national rules of procedure. After a coffee break, the judges will pronounce their judgment before Ms Dr. Molnár-Gábor summarises the findings of this simulation and puts them into context with the ReNEUAL project. I would like to introduce Ms Dr. Molnár-Gábor to you and welcome her warmly to our midst. She is Hungarian, but lives in Heidelberg in southern Germany. Here she works as a scientist at the Academy of Sciences and Humanities. She is well-read, sharp-sighted and subtle at the same time. We can be curious about her point of view.

But enough with the preface. I thank you for your attention and give the floor to Professor Schneider.