INTERNSHIP REPORT AND RÉSUMÉ

Identification of the participant

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First name: VINCENT

Nationality: French

Country of internship Germany

Publication

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REPORT

Identification of the participant

Nationality: French

Functions. Auditor at the 8th Chamber of the Litigation Section of the Council of State

Seniority: 2 years
Identification of the internship

Host jurisdiction/institution: Bundesverwaltungsgericht (Federal administrative court)

City: Leipzig

Country: Germany

Dates of the internship: 27/08/2018 – 07/09/2018

RÉSUMÉ

This report will first of all focus on the program that we followed (I) before making a brief presentation of the host jurisdiction (II). It will then look at the application of the principle of legal certainty in German administrative law in the context of a decision rendered by the Court when we were present (III). It will evoke three differences of operation between the French and German administrative jurisdictions (IV) before examining the place of oral proceedings before the German administrative judge (V), which we think may be a source of inspiration for our practice in France (VI). It will conclude with some suggestions (VII).

I- Internship program

We participated in an internship of two weeks at the German Federal administrative court (BverwG), which gave us the opportunity, thanks to the excellently-conceived program of our hosts, to observe the activity of the two different chambers (“Senate”), the 2nd and the 9th (preliminary hearing - hearing - deliberation), to meet a great number of magistrates of the court, and to be able to discover the activity of the trial judges thanks to a visit to the Court of Appeal of Berlin-Brandenbourg and the administrative court of Berlin. In addition, since we were curious to know how our German colleagues generally dealt with the question of refugee issues, we were given the chance to visit the office of the Bundesamt für Migration und Flüchtlinge (BAMF) [Federal Office for Migration and Refugees] in Leipzig.

We would like to express our sincere and deepest thanks to Pr. K. R., President of the BVerwG, as well as Ms. S. R. and Ms. U. B., judges at the BVerwG.
II- The host institution

The administrative federal Court is the supreme administrative jurisdiction of the Federal Republic of Germany. Originally located in Berlin, in November 1997 the Bundestag decided to transfer it to Leipzig, which was officially performed on 26 August 2002 with its moving into the previous building of the Tribunal du Reich (court of cassation of the German empire).

The first instance competences of the Leipzig court are much more limited than those of the Council of State: in terms of the legislation on administrative jurisdiction (Verwaltungsgerichtsordnung – VwGO), it is mainly a question of recourse against decisions authorising large infrastructure projects (concerning airports, motorways, rail, water) as well as bans on associations whose action exceeds the territory of a Land, and the measures taken vis-a-vis the information services (Bundesnachrichtendienst). The scope of competence in the domain of infrastructure projects has been increasing since reunification, with the legislator desiring to accelerate the processing time frames for litigation on these projects. It must also be noted that in contrast to the Council of State, recourse brought in first and last instance before the Federal administrative court is subject to the obligation to brief a lawyer.

The Court has no appeal jurisdiction (with the exception of its special chambers with competence in military matters, namely disciplinary measures taken against military personnel and brought in first instance before a special administrative jurisdiction, the Truppendienstgerichte [military service court]).

Finally, with regard to its competences in cassation (which comprises its principal activity) the Court is only competent in the interpretation of federal law, in application of § 137 of the VwGO: if the case only poses a question of interpretation of the law of the Land, it has no jurisdiction. There is thus no means of recourse in cassation in this case.

It must be noted that the la VwGO (§ 134) lays down the possibility of direct appeal in cassation against a judgement of an administrative court, even if the dispute may be appealed (Sprungrevision), if both parties agree to this and if it is authorised by the court in its judgement. This possibility is however very rarely used.

To manage its activity, the Federal administrative court has fifty judges divided into ten chambers which have competences in cassation (Revisionssenate) and two specialised chambers in litigation regarding disciplinary measures taken vis-a-vis military personnel (Wehrdienstsenate). The BverwG processes about 1,500 cases a year.
III- The law of the host country

While tax litigation is very much a minor part of administrative jurisdiction in Germany, the BverwG does handle litigation regarding local contributions (Kommunalabgabe)\(^1\). In this respect, we had the opportunity to attend the preparation, the hearing and the deliberation of the decision of the 9th Senate, which derived the consequences of the decision 1 BvR 2457/08 of 05 March 2013 of the German constitutional court, in which the German supreme judges applied the principle of legal certainty, namely its components of clarity and predictability of the norm.

In the decision of 05 March 2013 in effect, the German constitutional judges ruled that the rules of payment of local contributions which taxpayers must pay in exchange for a benefit may not, on pain of breaching the principle of legal certainty, omit to establish a time frame for prescription counting from the year in the course of which this benefit was recorded. This principle obliges the legislator to conciliate the right of local authorities to deduct these contributions and the right of taxpayers to dispose of a clear and visible rule in the domain. The Court of Karlsruhe, having noted that the law of the State of Bavaria did not have a prescription mechanism for these contributions, ordered the Bavarian legislator to adopt rules respecting the principle of legal certainty, giving it a deadline of one year to come into compliance with its decision, namely by 01 April 2014.

In the case for which the 9th Senate was seised (decision of 06 September 2018 - BVerwG 9 C 5.17), the applicant, who resided in the Land of Rhineland-Palatinate, had in the 1980s acquired multiple plots of land adjoining a road which the local authority had progressively realised and which it finally opened to traffic in 2007. In August 2011, he was the recipient of a tax notice for the “contribution for connection to the road network”\(^2\) for an amount of more than 70,000 euros. He maintained that such a decision, issued more than 25 years after his own plots of land had been the object of a connection (the “benefit”), was illegal in that it breached the principle of legal certainty. After being defeated in first instance, he lodged an appeal, but the administrative court of appeal of Koblenz also ruled against him, stating that the application of this decision, which occurred less than 30 years after the year in which the connection was made, and given that no circumstance could have caused the applicant to be certain\(^3\) that no contribution would be claimed from him, was indeed lawful.

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\(^1\) On this point, we refer to the very enlightening article by Ms. Ulrike Bick, judge at the BVerwG – “Jurisprudence de la Cour administrative fédérale d’Allemagne - La fiscalité communale” [“Jurisprudence at the German federal administrative court - community taxation”] - RFDA, 2018, no. 11 – p. 983 and following.

\(^2\) Which a German owner must pay when they acquire a plot of land, for their participation in the costs of connection and in exchange for the benefit procured for them by the connection.

\(^3\) “Vertrauen des Klägers (trust of the complainant)”.  

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The 9th Senate, before which the petitioner appealed in cassation, was of a different opinion. In the light of the very important already mentioned judgement of the BverG of 05 March 2013, it referred to the supreme court the question of whether the rules of prescription laid down by the code of the local authority of the Land of Rhineland-Palatinate - in that they authorised a municipality, once the triggering event had been recorded, to demand from a local taxpayer the payment of a “connection contribution” without limitation in time - were compatible with the principle of legal certainty.

In this regard, we were able to observe to what extent these principles and the arising issues influenced the reasoning and the jurisprudence of the entirety of the European supreme judges.

IV- The comparative law aspect of your internship

Our stay enabled us to experience many aspects of law and comparative litigation procedures.

(i) Unlike its French counterpart, the German administrative jurisdiction features a filtering process for appeals and appeals in cassation.

Since its entry into force in 1960, la VwGO (§ 132 and 133) lays down that it is the responsibility of the administrative courts of appeal to decide, in the decisions which they render, if recourse in cassation (Revision) is authorised. The law lays down that the appeal must only be authorised if the three following conditions are met: (i) the case poses a question of principle; (ii) the judgement concerned by the appeal raises questions about jurisprudence of the Federal administrative court; (iii) the judgement is tainted by an irregularity of procedure which has a decisive influence on the solution reached.

If the administrative court of appeal authorises the appeal, the Federal court is obliged to judge it (§ 132, para. 3). If it does not authorise it, the applicant may contest this decision (§ 133 VwGO), first before the appeal judge, who may reverse his refusal within a time frame of one month (Abhilfe), then before the Federal court (Nichtzulassungsbeschwerde) (refusal of...
permission complaint). The examination of these disputes by the Court was performed via a simplified procedure (solely written deliberation, formation of three judges, shorter statement). In practice, these decisions mostly confirm the refusal of the authorisation opposed by the court.

In an interesting manner, the German legislator decided, in 1996\(^8\), to extend this appeal cassation filtration system (Berufungszulassung) (appeal permission). The appeal must thus be authorised by the administrative court, with the applicant having the right to contest the refusal of permission before the administrative court of appeal. On the other hand, there is no method of recourse against the court’s confirmation of refusal of appeal\(^9\).

(ii) The law on administrative jurisdiction does not lay down an equivalent to the request for opinion on a legal question, as exists in French law.

We understand from our discussions with the members of the Federal administrative court that this filtering system - which enables the supreme judges to gain more useful time to examine the appeals - has the negative consequence of rendering more difficult a unification of jurisprudence, given, at least for some litigation, the overly-low number of disputes which are referred to it. In this context, the option available French administrative judges, at both first instance and appeal (to refer to the Council of State via the mechanism of requesting a legal opinion as laid down in article L. 113-1 of the Code of Administrative Justice) would in our opinion be a useful tool for the German jurisdiction.

(iii) The absence of lawyers specialised in cassation.

While it is obligatory to have recourse to a lawyer to initiate an appeal before the federal administrative court, there is on the other hand no German equivalent to the “lawyers at the Council of State and the Court of Cassation” as is known in France. The hearings which we attended and the discussions we were able to have with the judges of the BVerwG however convince us of the pertinence - particularly in a German system which gives a large place to discussions with the parties at the hearing - of having representatives separate from the cassation technique.

On the other hand, as regards representation before the Court, we were able to appreciate the systematic presence of the defendant administrations, which renders the discussions more interesting and more enlightening for the members of the court formation.

V- The “good practices” aspect of the visited jurisdiction

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\(^8\) 6th revision of the VwGO, adopted on 01 November 1996.

\(^9\) Excluding recourse before the Federal constitutional court (Bundesverfassungsgericht) for violation of the right to effective recourse (some cases have occurred).
In theory, litigation procedures in German use written means as much as those observed in France, and so we were surprised by the significant use made of oral means by the German administrative judge. In this section, we will first highlight the historical bedrock which gave rise to the importance accorded today to the “right to be heard” (i), before describing the procedure of a hearing before the German administrative jurisdiction (ii), and then detailing the opinion which the magistrates themselves hold on this matter (iii).

(i) Conjuring the spectre of a Kafkaesque proceeding.

Adopted just after the World War II, in a Germany traumatised by the Nazi experience, the German “Basic law” (Grundgesetz - GG) proclaims many guiding principles for litigation activity, in order to break with the practices of arbitrary justice. The “right to be heard” (Anspruch auf rechtliches Gehör), which is the subject of article 103, paragraph 1 of the GG, is considered as a “original right to procedure” of Mankind, a fundamental principle of litigation which may in no case be violated. In the many decisions where it applies it, the Constitutional court of Karlsruhe derived the principle according to which the litigant must be able to be effectively heard, in order to not simply be an “object of the litigation proceeding” but to the able to act as a “subject” and usefully intervene before the decision is rendered, in order to influence both the proceedings and their judgement. Before the judge, the parties must thus be in a position to express themselves on all the questions of fact and law and their claims must be taken into consideration, with the Court of Karlsruhe having concluded from the above-mentioned article 103 the absolute ban on an “unexpected judgement” (überraschungsentscheidung) which it defines as a jurisdictional decision rendered in consideration of elements of law or fact which were not debated. This is a solution which one or more parties may never presume with regard to the content of the exchanges.

This “right to be heard” must however not be interpreted literally, and German administrative litigation applies it in a differentiated manner, with a party being capable of being “heard” without necessarily “appearing.”

Certainly, the principle clearly enunciated in article 101 of the law on administrative jurisdiction (Verwaltungsgerichtsordnung – VwGO) remains that of orality. Thus all judgements (Urteile) must be rendered after an oral hearing (mündliche Verhandlung) the object of which is precisely to bring about a useful exchange with the parties. It is only thus

10 “Der Einfluss des Art. 6 EMRK auf die deutsche Verwaltungsgerichtbarkeit” - by judge at the BVerwG Ingo Kraft, in EUGRZ 2014, p. 666.
12 “Unless otherwise stipulated, the court rules on the basis of an oral hearing”.

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that the judges may avoid the risk of unexpected judgement already mentioned, which is prohibited by article 108, paragraph 2 of the VwGO in that it specifies that the judges may only base their decision “on facts and proof upon which the parties had the opportunity to express their point of view.” However, like in France, the exchanges between the parties and communication with the jurisdiction is done by means of statements of case\textsuperscript{13} and the judge may rule without hearing the parties. Article 84 of the VwGO thus authorises the courts to use their own discretion on the holding of hearings for decisions rendered in simplified form (\textit{Gerichtsbescheid}) when the case does not present any particular difficulties of law or fact. Similarly, article 101 of this law specifies that the parties may themselves renounce an oral procedure, which is for example the case for litigation series, for which it is sufficient to state the solution already adopted in cases presenting the same configuration (\textit{Konstellation}). Finally, all decisions which are not characterised as judgements (\textit{Urteil}) may take place without an oral hearing\textsuperscript{14}. And from here, in a rather counter-intuitive fashion for a French administrative magistrate, we move to “urgent decisions” (\textit{Eilverfahren}) where exchanges only take place in principle in writing.

(ii) The process of the hearing in German administrative proceedings.

A hearing before the administrative jurisdiction always proceeds in two phases: the presentation of the dispute and the “legal conversation.”

\textbf{Presentation of the dispute.} Under the terms of article 103 of the VwGO, after the case has been called, the president of the court (\textit{Spruchkörper}) ascertains the identity of the parties present. Then comes the presentation of the case (\textit{Sachverhalt}) by the rapporteur, a step which the parties may waive. It is not a brief reiteration of statements of case exchanged, like in France, but rather a presentation which may be relatively long (up to 5 minutes) of the history of the case, the arguments of the parties, even sometimes the content of the exhibits of the case (\textit{Akten}). This presentation not only enables the parties to ensure that their statements of case have been read, but also aims, as the Federal administrative court reiterates,\textsuperscript{15} to ensure that non-professional magistrates (\textit{Ehrenamtliche Richter}) comprehend the tenets and conclusions of the case.\textsuperscript{16}

\textsuperscript{13} See, among others, articles 81, 82 and 85 VwGO.
\textsuperscript{14} Article 101, paragraph 3.
\textsuperscript{15} BVerwG 18/04/1983 – 9 B 2337.80.
\textsuperscript{16} Under the terms of article 5 of the VwGO, each chamber of the administrative court is comprised of 3 professional magistrates and two non-professional magistrates, who, if they do not participate in the hearings of cases, are entirely separate members of the formations of the court, with a voting right.
In theory, it is following this presentation that the statement of the conclusions of the parties takes place (Stellung der Anträge). In virtue of the rule laid down in article 86, paragraph 3 of the VwGO\textsuperscript{17}, it is very often the case that a reformulation of the conclusions (Umformulierung) is proposed and accepted. It is also not rare that the statement of the conclusions be moved to the end of the hearing, when the exchanges have enabled the confirmation of the meaning of the application. This is evidently not a modification of the substance of the conclusions, but a means of legally improving the presented application.

The “legal conversation” (Rechtsgespräch). Article 104 of the VwGO does not establish a rule for the conducting of a “legal conversation” with the parties, and the various hearings which we had the opportunity to attend, both at the Federal administrative court in Leipzig and before the administrative appeal court of Berlin-Brandenburg, confirmed to us that it depends on the nature of the case and the personality of the president of the formation of the court.

In a general manner, this legal conversation consists, for the judge, in discussing with the parties the questions of fact and law which will decide the fate of the application. To render the hearing as efficient as possible, it may occur that the judge alerts the parties in advance regarding the points which will be particularly touched upon. This possibility, which is of purely practical interest, seems to be little-used, the president of the formation of the court generally preferring to indicate directly in session the salient points of the adversarial debate. The hearing is often held in a quite free fashion: frequently, the president very quickly indicates to the parties the grounds that the court formation consider as a priori unfounded, and those which it believes at this point are of real interest. Article 104, paragraph 01 indeed “obliges” the judge to “debate the dispute with the parties from the viewpoint of fact and law”. However, the legal conversation may in no case be a simple formal exchange, but must truly permit the parties to state their claims, and allow members of the court formation to pose them their questions and reflections.

In a manner which is surprising for a French judge, it is not only admissible but welcome that the judges indicate the direction of their decision (Neigung) upon the conclusion of the hearing (Vor-Beratung), so that the parties can usefully intervene to confirm or reverse the judges’ belief, it being specified that the latter is provisional (vorläufig). The Rechtsgespräche which we attended enabled us to note the level of transparency which the German administrative judgements can ensure in the debates in the context of the formation

\textsuperscript{17} “The president must see to it that flaws in the form are corrected, unclear applications are clarified, pertinent applications are filed, that insufficient statements of facts are completed and also that all the essential declarations for the establishment and evaluation of the facts are made.”
of the court, all the while avoiding any display of difference of opinion among its members (which could be a source of confusion for the parties). However, with no rule or principle obliging the formation of the court to state its provisional position\textsuperscript{18}, it must ensure, when it does so, that it maintains a certain restraint so as not to be accused of partiality (\textit{Befangenheit}) through giving the impression that its opinion has already been definitively formed\textsuperscript{19}. The legal conversation also permits the avoidance of the risk of an “unexpected judgement”, prohibited by article 108 of the VwGO and which would lead to the quashing of the judgement rendered\textsuperscript{20}. Indeed, as soon as (in contrast to his French counterpart) the German administrative judge is not bound by the grounds of the parties, it may occur that he settles the case submitted to him in a domain completely different to that envisaged by the parties. It is the responsibility of president of the formation of the court to indicate this very clearly to the parties during the hearing, in order that the latter can pronounce upon this possibility.

(iii) The virtues of oral proceedings before the administrative jurisdiction according to the German magistrates themselves.

\textbf{A development supported by the judges...} Until the 1980s, the culture of orality was, it seems, much less developed before the German administrative jurisdiction. In this respect, while the hearing was already considered as an important element of the litigation procedure, it less often gave rise to exchanges as they are known today, and these were much closer to the French model: the parties were invited to express themselves, but the judges intervened rarely and maintained a certain distance.

In an interesting manner, and one which is not intuitive for a French mind, the very important development not just of the oral exchange but also of debate with the parties did not arise from a legislative amendment, but rather originated mainly from the practice of the judges themselves.

...and now regarded as indispensable, both for the quality of the judgements and for the overall acceptability of the administrative jurisdiction. The hearing is indeed considered as a “two-way street”, that is, it is as useful to the judges as to the parties.

\begin{footnotesize}

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\item[18] BVerfG, Judgement of 27/07/1971 – 2 BvE 443/70 “Kein Anspruch auf Rechtsgespräch in der mündlichen Verhandlung”.
\item[20] Insofar as the parties advance a ground drawn from the irregularity which taints, for this reason, the rendered judgement.
\end{itemize}

\end{footnotesize}
Useful for judges since it very often permits them to clarify the factual elements and enrich their legal reflection. Thus, as soon as the hearings classically reunite the complainants (Kläger) and the administration, the judges are in a position to directly confront the affirmations of each of the parties. In our experience in the Federal administrative court, we noted how the magistrates prepared the hearing through collegial debate during the preliminary hearing (which occurs two days before the principal hearing) of the questions which they intend to pose. The importance attributed the discussions is explained in the first place by the desire to make the judgements as credible as possible; that is, to write nothing which is factually nor legally inaccurate in the justification of their decisions (Begründung), which are incomparably longer and more developed than in the French administrative jurisdiction; and also address the aspect of the “enforceability” (Praxistauglichkeit) of the judgements. This concern explains the attention which is given to the responses of the administration on the concrete application of a legislative provisions or on the practices of a service. We were thus able to observe that even the members of the BVerwG who, as cassation judges (Revision), are only competent on points of law (Rechtsfrage), do not hesitate to pose factual question in order to better understand the overall context of the dispute submitted to them and to ensure insofar as possible that the solution which they envisage is effectively practicable. Having had the opportunity to participate in multiple deliberations, we we struck to see how many of the discussions at the hearing had a real influence, if not on the sense, at least upon the justification of the decision.

Useful for the parties, so that they appropriate the procedure and accept the judgement. In the eyes of the German judges, the culture of orality takes on a cathartic function and the commentators of administrative litigation practice sum up the usefulness of the hearing with the expression; “pacification and satisfaction” (Befriedung und Befriedigung). Thus, the legal debate enables the parties to be heard and taken seriously (berücksichtigt) in their claims, which contributes to a better acceptance of the decision when it is rendered against them. In this respect, the hearing may be the occasion, while rejecting the application of the litigant, to indicate to the administration the shortcomings of its practice, thereby offering the

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21 The administration is often represented by two people: a jurist of its own departments, as long as they have the requisite academic legal training, that is a level equal to that of a judge, or, failing this - notably for small local authorities - a lawyer, who is generally accompanied by a representative of the department to which the decision pertains (urban planning, HR, etc.)

22 It is interesting to note in passing that the administrations are systematically represented, except in exceptional cases and excluding asylum cases, where they are almost never represented, with the inverse being considered by the judges as a lack of respect for justice (Affront).


24 See “Mündliche Verhandlung”, § 485 p. 411 precited (note no. 14) and “Der Conseil d’Etat in Frankreich”, p. 25, precited (note no. 2).
petitioner a kind of moral compensation. From what we were given to see, the judges perform a pedagogical exercise and vulgarisation of law, which they believe is an integral part of their function. In an interesting manner, the parties are also invited to pronounce upon questions of law, which seemed to us to contribute to a kind of attribution of responsibility to the litigants. We have thus seen judges interrogating a lawyer on the consequences of a decision which he invited them to issue, if it were to be applied, beyond the dispute in question, to other configurations. This is an occasion to restate the particular function of cassation, the object of which is precisely to create jurisprudence which must guide the lower courts.

VI- The benefits drawn from the internship

In line with the preceding developments, the practice of orality before the German administrative judge comprises without doubt the greatest lesson for our daily practice as a member of the Council of State, and more broadly as a member of the administrative jurisdiction.

Certainly, orality in administrative litigation is inscribed in a broader legal culture, in many respects foreign to our own, which represent an obstacle to a transposition without nuances of the practices observed at the other side of the Rhine. Therefore, while mediation\textsuperscript{25}, seen as a promising instrument to settle disputes at a pre-litigation phase, is barely starting in the French administrative jurisdiction, it is consubstantial with the role of the German administrative judge. Thus article 87 § 1 and 2\textsuperscript{26} of the VwGO not only authorises but indeed obliges the judge to seek an amicable (gültlich) solution if at all possible. While we don’t have any statistics for this means of settling differences at hand, it seems that it represents a significant portion of the cases processed in first instance.\textsuperscript{27} In this respect, when an application seems destined to be refused the hearing often permits judges to warn the applicant thereof, hence enabling them to desist and thereby also to benefit from a very large reduction in the legal costs (Gerichtsgebühr). This practise, which may be surprising at first sight, is seen as the jurisprudence of the Federal administrative court as one of the virtues of

\textsuperscript{25} Decree no. 2017-566 of 18 April 2017 relating to mediation in disputes falling under the purview of the administrative judge.

\textsuperscript{26} \textsuperscript{1}The president or the rapporteur must take, even before the oral hearing, all the measures necessary to settle the dispute in progress, if possible in a single oral hearing. \textsuperscript{2}He may in, particular :1. Convole the parties to debate the factual questions and matters relating to the dispute to be settled, and settle it on an amicable basis and record a settlement (...)". See also article 173 of the VwGO in connection with article 278, 1 of the Code of Civil Procedure (Zivilprozessordnung).

\textsuperscript{27} A magistrate of the administrative court of Berlin having explained to us the evaluation of a third party.
litigation debate\textsuperscript{28} In addition to the reasons previously evoked, showing the extensive character of the position of judge and the justification of their decisions, it seems to us that the importance accorded to oral debate is explained by much deeper cultural factors, which are not possible to examine here, but which seem possible to summarise in the following manner: the relationship between the judge and the parties is defined by its egalitarian character (Augenhöhe); each party to the proceedings (including the formation of the court) must each contribute at their own level to a judgement founded in fact and law.

Added to these cultural elements a much more factual consideration which also partly explains Germany’s more marked use of orality: while in 2014 the German administrative courts issued 33,000 judgements, their French counterparts processed more than 188,000 cases. While the disproportion must be relativised, given the specificity of the German jurisdictional organisation\textsuperscript{29}: a difference exists between an “Urteil” (judgement) and a case before an administrative court, the volumes processed are comparatively larger in France. In this regard, whereas the Council of State settles on average 10,000 cases a year, its German equivalent is seised for only 1,500 applications\textsuperscript{30}. Confronted with an ever-increasing amount of applications, the French magistrate is thus less inclined than his German colleague to dedicate time to debate at the hearing.

**It comprises a promising future source of inspiration for the French administrative jurisdiction.** We will refrain from an overly-generalised remark on the recourse to orality before the administrative judge, and we are aware that many judges on the merits colleagues already do not hesitate to question the parties at the hearing, in a pragmatic fashion and where they deem it necessary.

Recent evolutions, which aim to develop mediation and reject more quickly unfounded applications\textsuperscript{31}, enable the administrative judge to dedicate more useful time to more complicated cases, for which a debate with the parties could be of real benefit. However, if we want orality to become the norm, it seems necessary to us to re-imagine the methods of

\textsuperscript{28} See for example the decision of the 9th Senate of the BVerwG of 10 October 2017 – 9 A 16.16, § 7 and § 8 in its Juris version.

\textsuperscript{29} Note that Germany possesses not two but five orders of jurisdiction. In addiction to the civil-criminal and administrative jurisdictions, there are also three jurisdictions which are respectively competent in employment law, social litigation, and financial litigation. Thus the German administrative jurisdiction is competent in a narrower material field than its French equivalent.

\textsuperscript{30} On this point, Bastien Lignereux, “La cour administrative fédérale d’Allemagne, modèle de cour suprême?” (The German federal administrative court, a model for the supreme court?), RFDA September-October 2016, p. 1055 and following.

\textsuperscript{31} See for example article 3 of the JADE decree and the recent decision of the Litigation Section, CS, 05 October 2018, no. 412560, Finamur company.
French administrative proceedings. To ensure that hearings are not excessively long, it would be doubtless necessary to design new methods of intervention of the public rapporteur, which could enable the communication of a more extensive “meaning of the conclusions” to the parties. It also seems to us that the exchanges at the hearing would only make sense in the presence of the administration, which would raise the question of its representation.

A pure judge of law, the Council of State a priori does not regard the oral exchanges at the hearing with great interest, except in the event of recourse to dedicated tools which come under the purview of its investigative power and which we cite in the introduction. If our experience of Auditor causes us to think that recourse to legal discussion “in German style” is not necessary in all cases - many of them simply calling for the application of established jurisprudence, this same experience nonetheless convinces us that it would be desirable for court formations of the Council to have easier recourse to the oral exchange by soliciting the parties at the hearing to give specifics on the context of the case. Such a possibility seems to use to usefully respond to the issue of the judge in cassation, confronted with a dossier presenting grey zones which neither the author of the appeal nor the defendant have truly clarified during the examination, to dissipate these doubts without resorting to more cumbersome procedures which are offered by the Code of Administrative Justice, and this less in order to state the direction of his decision but more rather to ensure the robustness of the solution which he envisages.

VII- Suggestions

We formulate the following recommendations to European magistrates interested in an internship with the BverwG, in order to render the experience as beneficial as possible:

(i) prepare your stay in advance, in order to be able to rapidly participate in the activity of the BverwG upon arrival. Before departure, you should aim to:

- master legal German as best possible (for colleagues who do not speak German as a native language);
- well know the operation of the German administrative jurisdiction;

(ii) stay at least two weeks, to attend the activity of the two different “Senates” and have the opportunity to discuss with multiple magistrates, to “immerse” yourself as much as possible in the spirit of this jurisdiction;

(iii) in line with recommendation (i), identify in advance a study topic (comparative approach of the law of one’s State of origin/German administrative law) which will permit the deriving of yet more benefit from the very rich interviews which the jurisdiction will organise for you.