**Rede des Präsidenten des Bundesverwaltungsgerichts a. D.
Dr. h.c. Eckart Hien anlässlich der Verleihung der Ehrendoktorwürde durch die Universität Warschau am 17. Juni 2008**

Magnifizenz, spectabiles,
Ladies and gentlemen,

This is a very impressive moment for me: To be awarded an honorary doctorate by one of the most honourable Universities of Europe – and of the world – is so overwhelming that it went till now beyond my imagination. Therefore it is very difficult to find the right words as an answer to the laudation, because all I could say will create a certain embarrassment. If I would say e.g. that I do not deserve this honour (what is true) – this could be understood as a criticism of the decision of the law faculty. If I would say I deserve this honour – this would be a sign of mere arrogance. This shows us the truth of the saying: There is no right answer to a praise - except thanks.
So just let me express my deep gratitude to you.
But mentally I can only fully accept this honour, because I am aware, that it aims not only at me personally, but to the work of many people, who were and who are engaged in the establishment and the development of a close cooperation of European administrative jurisdiction. Especially the foundation of the Association of the Councils of State and Supreme Administrative Jurisdiction of the European Union as well as keeping this association alive could only be achieved in a team work. Let me therefore mention the names of some persons - representative for many others – who did a lot for the now reached standard of close cooperation.
The statutes of the association were adopted in the year 2000 during the Colloquium in Vienna, directed by the President of the Austrian Administrative Court Clemens Jabloner. The President of the Finnish Supreme Administrative Court, Pekka Hallberg, organized the next Colloquium and deepened the organisation. Especially under the Vice President of the Council of State of the Netherlands, Herman Tjeenk Willink, the effectiveness of the information network was strengthened. And the President of the Polish Main Administrative Court, Mister Trzcinski, gave the work of the association the necessary continuation. I will also mention my colleague Michael Groepper from the Federal Administrative Court of Germany, who gave me a lot of support in my active years. But last – and in the very sense of the word – not least I refer to the Secretary General of the Association, Mr. Yves Kreins – and his team - :

The main work load was on his shoulders and I cannot imagine how the association could have such a success without his constant and sustainable work.

To all these brave men I will dedicate at least a part of the honour given to me - keeping in mind, that nevertheless it is only me who can use the title “Dr. h.c.” on his visiting card. That is a great pity for you, but the academic rules don’t allow me to divide the title.

Ladies and gentlemen, I am very happy that after the enlargement of the European Union in 2004 the Colloquium of our Association takes place especially in Poland. And I admit, that I was also a little bit responsible for this proposal. There were real good reasons for this decision:

At first: Poland is the biggest – or shall I say: greatest – country of the new members and therefore has a certain weight within the Union.

But the mere size is not really decisive. More important to me was the fact, that Poland had a key position in the development, which led - due to the Solidarność movement - to the opening of the iron curtain as a prerequisite of the enlargement of the European Union in 2004 and – what we Germans will always bear in mind – to the reunification of our country.

Poland was from the very beginning of its membership in the EU a self-confident and independent partner – sometimes to the astonishment of some so called old members. And from Poland still come new ideas. With interest we could hear in the last weeks the Polish proposal to form or create a so called East-European–Partnership, involving e.g. Ukraine and other states of the former Soviet Union. I will not comment here the question, whether this proposal is an answer to the French proposal of a Mediterranean Partnership – of course it is. And I will also not hide a certain scepticism concerning those partnerships, as far as they can lead to a weakening of the consistence of the – recently enlarged – EU.

But in the reasoning of the Polish proposal was an interesting sentence, which says: The southern countries of the Mediterranean Sea are neighbours to the European Union – but the countries in the east of the EU are European neighbours. This may sound at the first glance as a mere sophisticated lingual difference, but at the second glance we realise, that there is a big difference in reality. And I am almost sure that in the further future – not in the next ten years – this difference will have a strong political effect.

In this context it should be mentioned, that the next European Championship of football will take place again in two countries, like now in Austria and Switzerland; it is perhaps in this context not by chance, that these two countries in the year 2012 will be Poland and – Ukraine.

But - Ladies and gentlemen – I don't want to speak here like a politician. I will stay within the field I know better – the judiciary. Let me therefore add some thoughts about the role of the administrative jurisdiction in general and especially within the European Union.
The administrative jurisdiction is – compared to the penal or civil courts – a relative young jurisdiction. And as it is typical for the youth, it is still growing and getting stronger. This process is not restricted to Europe; we can observe it all over the world. This development is a reaction to the growing importance of the administrative law, because the globalisation and accelerated technological progress make it necessary, that the public authorities have to regulate more and more issues in a world of increasing complexity. Let me only mention the task of the protection of the environment – if you take this task seriously, you will have to enact many regulations to change the behaviour or to restrict certain actions. But even the classical branches of public law such as public order and security, municipal administrative organisation, traffic or construction law have become much more diversified.
The administrative law litigation has a particular quality that requires provisions different from the civil or criminal court procedure. Administrative litigation always involves public interest and public welfare, the realization of which should not be dependent on the procedural skills of the parties, especially of a normal citizen confronted as a plaintiff to the powerful state. Thus, an inquisitorial procedure is needed which in contrast to civil law authorises the judges to establish the facts without being bound by the evidence presented by the litigants.
On account of the difference between the state authority and the citizen concerning power and resources there must also be regulations which guarantee a fair trial. At the court the parties have to be treated in an equal way, there has to be equality of arms – which is sometimes not easy to accept for the public authority, especially in countries, where in the recent past the executive power was not used to envisage a control by an independent administrative court.

There is another speciality: In contrast to civil law litigation the impact of rulings on the field of public law is often not limited to the case in question, but has far-reaching consequences for the whole administration. It is quite frequent that administrative courts´ decisions bring about general changes in the administrative practice, even though the underlying ruling in an individual case takes effect only between the parties – inter partes.

Today an independent and effective legal system clearly plays an important economic role as location factor. An investor will always need licences or permissions for his project and, thus, might favour a location where the administration is obliged to integrity and judicial relief is guaranteed within reasonable time. Therefore it is no surprise that in the last years also countries like China or Russia are at least promising to improve the judicial system. Even if the reasons in these cases are not the better protection of the human rights of the citizens, but to create better conditions for foreign investment, this is a good thing. Because I am convinced that the rule of law – even if implemented only partially and following mere economic reasons – will develop its own force and tendency to enlarge itself.

Ladies and gentlemen, the ever-closer European Union has brought and still brings significant challenges for the administrative jurisdiction. Our role has changed from a mere national to a European jurisdiction and our work is fundamental for the European matter in many aspects.

Europe is built on some different pillars: Of course, the idea of Europe had and has a strong influence. Like in the life of individuals, so also in the life of institutions or political entities it seems to be necessary for a good performance, to be supported by a sort of philosophy, of imagination – of an idea.

Politicians mostly use to invoke those ideas when they speak of Europe, the history, the religious and philosophical roots and the effects of the Age of Enlightenment. Their speeches sound mostly like poetry.

But all those ideas can only come true and can only survive in reality, when there is a solid construction, and that means in the field of political entities: A solid construction in terms of law. This can only be achieved in the language of prose, not of poetry: Europe – as it appears today – is defined by its legal framework. This framework is certainly the most important pillar of the actually existing European Union.

The courts of all the member states – we all – have the challenging mission to defend this pillar, which supports the present state of cooperation and integration. It is our duty to interpret, to explain, to develop and to apply the community law in our daily work, in thousands of individual cases. It is only the right application of the European law in the practice of the administration and the administrative courts that brings this law into force. A written law without application and implementation is only paper!
The administrative courts are often the first to assess the meaning of European provisions. Moreover, the preliminary reference procedure before the European Court of Justice has deeply influenced the role of the Supreme Administrative Courts. In cases where Community law is involved they are bound by the interpretation given by the European Court of Justice. But the Court of Justice is limited to the role of an expert, acting on behalf of the national judge. It is still the national judge who has to give the final judgement and to settle the case.
Every national judge is – thus – a European judge as well. He – or she – is the judge entrusted with the care for the main pillar of the European Union.
Therefore, the European Union has implied new chances and responsibilities for the administrative jurisdiction. Our competence is no longer confined to the national sphere only. In cooperation with the European Court of Justice we control the implementation of European law by our national authorities.
As a consequence the modern administrative judge must always be aware of his European role and the impact his rulings might cause at Community level.

And exactly this situation was the background to the foundation of the Association of Supreme Administrative Courts and Councils of State of the European Union. We can only sufficiently achieve the task to be also a European judge, if we have a well functioning information network between the courts of all member states.

Ladies and gentlemen, I now will come slowly to the end, which you are already longing for.
So let me stress again, that Poland in both issues I dealt with – namely administrative jurisdiction and European Union – always was at the top of the development, taking into account the real circumstances, which – of course – confined the possibilities of action.

Poland was the first country in the region under the influence of the Soviet Union, which created an administrative Court. Three years ago we celebrated the 25th anniversary of the Polish Main Administrative Court in the Royal Castle of Warsaw. And four years ago, the big reform of the Polish administrative court system came into force with the new two level court organisation. With this new structure the Polish administrative jurisdiction increased and intensified its effectiveness.
And concerning Europe: In the hall of the Polish Parliament there is just now a small exhibition, which mainly contains a book written in the year of 1831. The author is Wojciech Bogumil Jastrzebowski, and the title reads: “Draft for a European constitution”.
This Polish scientist and freedom fighter anticipated 175 years ago exactly the main issues, we now think are also of importance. He spoke of the Europe of the fatherlands and emphasized that a European Parliament (he called it Congress) can enact laws for the whole of Europe only by strictly observing the principle of subsidiarity.
You see, Warsaw is really a good place for a European conference on administrative law!

But now let me finish with a personal remark. In the last days I had again the opportunity to visit Warsaw and again I remembered the painful period of history, which fills me – as a German – with deep shame.
Being aware of this background you can imagine that it fills me – as a German – with deep gratitude to be awarded an honorary doctorate especially by the University of Warsaw.