



A MULTICOLOURED AUTUMN
IN GRUNEWALD
STANISŁAW BIERNAT

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I was pleasantly surprised when, unexpectedly, in June 2017, I received a letter from Rector Luca Giuliani with an invitation to hold a three-month Fellowship at the Wissenschaftskolleg zu Berlin (Wiko). Regrettably, I had to decline the invitation at that time. It was a difficult time at the conclusion of my activity as a judge and Vice-President of the Constitutional Tribunal, which coincided with the escalating constitutional crisis in Poland.

The Rector approved the postponement of the invitation to the following year, when, in the meantime, Professor Barbara Stollberg-Rilinger became the new Rector. I was offered a three-month stay (so-called short-term Fellowship), which is shorter than for most

Fellows. I stayed in Berlin between September and 20 December 2018. My wife accompanied me for some of the time there.

A concise presentation of my stay in Wiko is not an easy task, if it is to include its various aspects. Briefly stated, I could term my stay as multicoloured, literally and metaphorically.

It is worth starting with a short description of the surroundings. Grunewald is a villa district of Berlin amongst lakes, an oasis of peace (to say nothing of Koenigsallee!), even though it is located at a distance of only about one kilometre from the busy Ku'damm. Old villas of the Wissenschaftskolleg, scattered over quite a large area, perform various functions. I was staying in the huge, slightly demonic Villa Walther associated with the dramatic fate of its creator – architect Wilhelm Walther.

The comfortable working conditions created for the Fellows and their family members deserve appreciation. I had a very convenient residence with a separate part of it intended for work. The view from the window offered a chance to observe the changing autumn colours of leaves on the branches and twigs entangled around the entrance gate leading to the courtyard in front of Villa Walther, as winter was approaching. I watched that relaxing colourfulness of nature every day from behind my computer screen.

The friendly approach of Madam Rector and the Wiko staff intended to facilitate the stay of the Fellows and their families should be emphasized. The assistance offered by the library staff in bringing the books that were ordered and scanning articles was quick and faultless. Equally professional and kind were the persons working at the Reception and other departments.

Above all, however, note is to be made of the key characteristic of the Wiko Fellowship: the gathering in one place and at the same time of several dozen academics from various countries and continents, with various specialities and of different ages, as well as artists, writers and musicians. The encounter with such different people who are distinguished personalities in their fields and the intensive contact between them were an exceptionally interesting experience. It was a diversity of colours, metaphorically speaking!

The forms of contact between the Fellows and their families varied. Most educational were the colloquia on Tuesdays and sometimes Thursdays, too, with extensive presentations on various subjects of interest to the particular Fellows, which engendered intensive discussions. When I was at Wiko, subjects in the natural sciences prevailed. I would be lying if I said that I understood everything!

Of great importance for the Fellows' integration were daily common lunches, which were Wiko's specialty, as well as dinners on Thursdays, providing an opportunity for long

discussions on diverse themes. Also, individual Fellows demonstrated initiative organising social events on various occasions (or on no special occasion!), in Wiko buildings or elsewhere. Personally, in November 2018, I organised for the Fellows, their partners and Wiko staff a show of the Polish film *Cold War*, which was then nominated for an Oscar. At the end of my stay, I invited the Fellows and their partners to a social event (with Eva von Kügelgen's help) combined with the screening of the film *Am Ende kommen Touristen / And Along Come Tourists*.

The crowning glory of the social life before I left was a grand ball held in December 2018. After leaving, I checked Wiko e-mails regularly and observed nostalgically, from a distance, the blooming of cultural life and the further intensification of social contacts!

Most relevant from the perspective of the individual Fellows, of course, was the aim behind their coming to Berlin, i.e. what they intended to achieve whilst staying at Wiko. Because of the shortness of my Fellowship, I did not decide to embark on a new project, but rather focused on intensifying several ventures I had commenced before, taking advantage of the most comfortable conditions created by our hosts.

The first of the projects I continued was an analysis of the phenomenon of a crisis of the state governed by the rule of law and democracy in EU member states. This is a problem that has been discussed animatedly for several years now, *inter alia*, in relation to developments in my country – Poland. This phenomenon demonstrates a tendency to expand and takes various forms. Research on this issue is being conducted with regard to its many manifestations and aspects. Of interest to me were its legal and political aspects and, more specifically, matters of constitutional law and EU law. It so happened that I came across issues of a crisis of the rule of law and democracy in my country initially not as a researcher, but as a participant in these developments in the Constitutional Tribunal during the first two years of the crisis in Poland.

During my stay at Wiko, in addition to an analysis of general and theoretical issues, I followed and commented upon current events, e.g. innovative case law of the Court of Justice of the European Union (CJEU). Immediate effects of my interest in these subjects included a commentary on the *Verfassungsblog* – a popular blog devoted to problems of European and world constitutionalism, an interview for the *Frankfurter Allgemeine Zeitung* and several articles in Polish newspapers. My Donnerstagskolloquium presentation at Wiko on 6 December 2018, entitled “The Rule of Law and Its Enemies” was devoted to the issue of threats to the rule of law in member states and the European Union's response to them.

Very useful and instructive for me were discussions with distinguished lawyers: Permanent Fellows Dieter Grimm and Christoph Möllers, as well as my Co-Fellow at Wiko, Christoph Grabenwarter.

The themes relating to my area of interest, as presented, were the subject of several lectures I gave during my stay at Wiko, at conferences or workshops, entitled 1) *Law and Revolution. Disruption and Continuity of Legal Development: in Central and Eastern Europe* (University of Cologne, November 2018); 2) *The Role of National Constitutions in European and Global Governance* (European Research Council, London, November 2018); and 3) *Die europäische Dimension der Krise des Rechtsstaats in Polen* (Humboldt-Universität zu Berlin, November 2018). I did not manage during my Fellowship, however, to deliver a pre-arranged guest lecture at the University in Heidelberg on *Rechtsstaatlichkeit in Polen – eine verfassungs- und unionsrechtliche Analyse*. I gave that lecture after I had left Berlin, at the beginning of 2019.

An interesting experience was co-operating with Christoph Grabenwarter to organise the workshop on *Verfassungsgerichte und politischer Wandel*. The workshop was devoted to the transformations experienced by constitutional courts in some European and non-European states in connection with the political changes departing from the principles of liberal democracy. The workshop was attended by judges and academics from several countries, mainly Germany, Hungary and Poland. The workshop took place in January 2019, which was not very long after the end of my Fellowship. I moderated one of the sessions and took part in discussions.

During my Fellowship at Wiko, I had a chance to participate in several other conferences in Berlin. I consider two of these to be the most interesting: the first one was *Constitutional Resilience* (WCB Center for Global Constitutionalism) and the other was *Verfassungsstaat im Wandel* (Berliner Rechtspolitische Konferenz, Konrad-Adenauer-Stiftung).

The other project I dealt with at Wiko was about the issue of EU citizenship. In Berlin, I worked on an extensive study of the subject. It will form a chapter in Volume I of *System Prawa UE* (System of EU Law) to be published in Poland, with papers written by more than ten authors. I am the editor of this volume, and at Wiko I was also engaged in partial coordination of the contributions from the particular authors.

The third project I carried out during my stay in Wiko was named *Kamienie milowe orzecznictwa ETS* (Milestones of the CJEU case law). Its effect was an extensive collective study with me as the scientific editor. The study was to provide a picture of CJEU jurisprudence in six areas of the EU's substantive law: EU citizenship, environmental

protection, public procurement, state aid, EU funds and copyright. My role in the project was to evaluate the merits of the elaborations of the individual authors, harmonise the structure of the entire publication and write a foreword to the whole of it. It contained concise characteristics of the relevance of CJEU case law for the development of EU law. I wrote the first version of that foreword in Berlin.

No one needs to be convinced of how attractive and multicoloured Berlin is. I used my stay there also to get to know the city better, as far as possible. On my own or with my wife or friends from Wiko, we went sightseeing in attractive parts of the city and its surroundings, e.g. Kreuzberg, Neukölln, Dahlem, Potsdam, palaces – Schloss Sanssouci, Schloss Charlottenburg, Jagdschloss Grunewald – and museums such as the Bode Museum and the Kulturforum: the Gemäldegalerie, Kunstgewerbemuseum, Brücke Museum, Museum Berggruen and Sammlung Scharf-Gerstenberg. Exceptionally attractive were concerts and performances in the Berliner Philharmonie, the Konzerthaus and the Deutsche Oper. Towards the end of my stay, a must on the agenda was to see the numerous *Weihnachtsmärkte*.

Yes, for sure, even though short, my stay in Berlin was intense, varied and multicoloured.