

Speech by the European Ombudsman, Jacob Söderman to the European Convention, 24 June 2002

The Treaty of Maastricht established the European Ombudsman to enhance relations between the citizens and the Union, mainly by tackling maladministration in the Community institutions and bodies.

I have now been working for nearly seven years and received the ten-thousandth complaint earlier this month.

It is difficult to explain in 5 minutes what we have done in 7 years. The latest Annual Report will be published next week and our website has detailed information on our work. We will send an e-mail to all the organisations here present to explain how to get this material. Today, I would just like to thank the institutions and bodies of the Union for their co-operative attitude to the Ombudsman's work and their will to correct maladministration when it occurs.

There has also been real progress towards making citizenship of the Union a reality:

- The right of public access to documents is embodied in a Regulation
- Fundamental rights are laid down in the Charter
- The European Code of Good Administrative Behaviour was adopted by the European Parliament on 6 September 2001. The Code gives substance to the right to good administration in Article 41 of the Charter.

Some important problems remain:

- First, my experience as Ombudsman is that citizens do not know how to protect their Community law rights. This is not surprising, because the Treaty says little about the remedies that they can use. Furthermore, national administrations do not always apply Community law correctly, either because they do not know how to, or because they do not feel that it is really part of their law.
- Over the past 7 years we have created a network of ombudsmen and similar bodies, such as petitions committees, but citizens do not seem to know that it can deal with Community law cases.
- Next, there is the Article 226 procedure in which the Commission investigates complaints about infringements of Community law by Member States. Despite recent improvements, the procedure is

secretive, the complainant is still not recognised as a participant and delays occur because the Commission has too many cases.

- Furthermore, the Charter is not yet fully effective in the institutions and bodies. Generally the politicians are committed to it, but the administration can be reluctant to follow their lead. The Charter has been proclaimed but citizens have no idea if it will be applied in practice.
- Finally, the Code of Good Administrative Behaviour is not yet a European administrative law, applied uniformly by the institutions and bodies. The Treaty should include provision for such a law.

I also have some other proposals for your consideration.

First and foremost, the Treaty should contain a chapter on remedies. It should clearly set out the possibilities for judicial and non-judicial redress when Community law rights, including fundamental rights, are not respected.

- Access to the courts is the fundamental remedy in a democracy governed by the rule of law. We should inform citizens that they have the right to go to national courts to defend their rights under Community law. The important constitutional role of the Court of Justice should be duly mentioned.
- The chapter should make clear that citizens have the right to petition the European Parliament about infringements of Community law by Member States. The Commission should have a duty to cooperate with the European Parliament in ensuring that the complaint is examined using a fair procedure.

Many complaints about infringements could be dealt with effectively by a non-judicial remedy in the Member State.

- The chapter should therefore mention that citizens have the right to complain to an ombudsman or similar body in each Member State. The European Ombudsman is willing to provide assistance and, if necessary, to deal with cases of principle involving fundamental rights, assuming that the Charter will be made binding whenever Community law is being applied.
- The European Ombudsman could be responsible for referring cases where a fundamental right is at stake to the Court of Justice. This would be in keeping with the Court's constitutional role.

A draft of the Chapter on Remedies will be circulated next month.

Mr President!

Members of the Convention and of civil society!

Thank you for your attention!