"The Lisbon Treaty and citizens' rights - the role of the European Ombudsman"

Presentation by the European Ombudsman, P. Nikiforos Diamandouros

Introduction

Good morning Ladies and Gentlemen! I am delighted to be here for this EPC Breakfast Policy Briefing. I would particularly like to thank Mr Martens, the Chief Executive of the EPC, and his team for giving me the opportunity to share with you some thoughts on "The Lisbon Treaty and citizens' rights - the role of the European Ombudsman".

This is, in fact, the second time that I have had the pleasure of addressing a breakfast meeting organised by the EPC. The first was on 28 June 2007, when I shared with EPC guests my reflections on another important topic concerning the work of the European Ombudsman, that is, transparency in the Union and how to promote it proactively and systematically.

The Lisbon Treaty has now been in force for over a year and has already been the subject of numerous heated debates and detailed analyses, both before and since its adoption. Two of its salient features are, first, that it provides for new levels of European co-operation in the fields of foreign affairs, economic governance, energy security, the budget, and immigration, and, second, that it introduces more flexible decision-making procedures.

Efforts to advance the implementation of the Lisbon Treaty have, to be sure, been affected by the economic crisis, which many Member States are still struggling to overcome.

It is often forgotten, however, that there is a third aspect to the Lisbon Treaty: its impact on citizenship and the rights of citizens. This is, of course, also valid for the Charter of Fundamental Rights, which now has the same legal value as the Treaties and which is binding on the Member States when applying EU law.

Many provisions in the Treaty and the Charter also affect the European Ombudsman's mandate and work. They open up valuable opportunities for closing the gap between European citizens and the European Union level.

Let me start my remarks by briefly explaining the role of the European Ombudsman in
serving citizens. I will then outline the impact the Lisbon Treaty has on my mandate. Finally, I would like to explain the new rights which the Treaty and the Charter provide for citizens and the possibilities available to the Ombudsman to enforce those rights.

The European Ombudsman

The right to complain to the European Ombudsman was established by the Maastricht Treaty. Citizens, companies, lawyers, associations, NGOs, and interest groups, to name but a few of those who contact me, have the right to complain about maladministration by the European Union administration.

What is maladministration? It encompasses all kinds of poor or improper administrative behaviour, from late payment for EU projects to the unjustified refusal to give out a document, and from publishing inaccurate information to failure to reply to a letter.

The Ombudsman's decisions are not legally binding. His task, rather, is to persuade the institutions to observe the principles of good administration. Where possible, he aims to achieve friendly solutions. This gives him the opportunity to ensure a win-win outcome, satisfying both the complainant and the institution involved. Where maladministration can still be rectified, he issues recommendations designed to bring about redress or, at times, closes cases with critical remarks. When an institution does not comply with his recommendations in cases which raise fundamental questions of principle relating to his mandate, he can issue a special report to the European Parliament.

Last week, I published my Annual Report 2010. In total, I received 2,667 complaints in 2010 and closed more than 300 inquiries. The most common subject matter of inquiries was lack of transparency in the EU administration. This accounted for one third of cases closed. Other cases concerned problems with the execution of EU contracts or calls for tender, unfairness, abuse of power, or discrimination.

One of my main priorities is to help the EU administration to become more open, accountable, and citizen-friendly; in other words, to create a culture of service that includes a proactive approach to good administration. Quite a lot remains to be done in this respect. I am, however, delighted that in more than half of the cases I closed in 2010, the institution concerned accepted a friendly solution proposal or settled the matter.

Since my mandate is limited to investigating complaints about maladministration in the EU administration, complaints against public authorities of the Member States are not within my mandate, even if they concern EU law. Many such complaints, however, are within the mandate of national and regional ombudsmen in the European Network of Ombudsmen. I, therefore, cooperate closely with my colleagues in the Network to ensure that EU law is correctly applied and inform the members of the Network of the latest developments in EU law on a continuous basis.
The impact of the Lisbon Treaty on the Ombudsman

Although the Treaty of Lisbon did not create new competencies for the European Ombudsman, nevertheless, in terms of institutions covered by his mandate, the scope of application has grown from "Community institutions and bodies" to "Union institutions, bodies, offices or agencies". The Ombudsman’s mandate was thus broadened in two main ways.

Firstly, before the Lisbon Treaty, the Ombudsman’s mandate was limited to the first, “Community”, pillar and the third pillar, that is, police and judicial cooperation in criminal matters. The Ombudsman was not empowered to open inquiries in relation to actions in the field of Common Foreign and Security Policy. However, after the Treaty of Lisbon abolished the so-called “pillar” structure of the EU, the former second pillar — the Common Foreign and Security Policy — now also falls within the Ombudsman’s mandate.

Secondly, the European Council is now explicitly included in the Union’s institutions. As a result, its actions or omissions now also fall within the Ombudsman’s mandate.

The implications of these two changes are potentially quite significant, because many of the above-mentioned institutions and bodies give rise to complaints to the Ombudsman.

How do European citizens benefit from the Lisbon Treaty?

Now let me turn to the European citizens. Almost twenty years ago, the framers of the Maastricht Treaty introduced the concept of citizenship of the European Union, whereby every national of a Member State shall be a citizen of the Union.

Among the rights linked to Union citizenship are the right to complain to the European Ombudsman, to petition the European Parliament, and to vote and to stand in local and European Parliament elections. Also of major importance is the right to move and reside freely within the territory of the Member States.

The entry into force of the Treaty of Lisbon and the decision to grant the Charter of Fundamental Rights equal legal value as the Treaties mark the latest stage in the long, evolving process of empowering European citizens. The Charter, in particular, gives a strong signal regarding the importance the Union attaches to citizens’ rights.

The right to good administration

The section of the Charter entitled ‘Citizens’ Rights’ contains, of course, the right to complain to the European Ombudsman. It also contains the right to good administration, a right which lies at the heart of what the European Ombudsman does.

The right to good administration was included in the Charter following a proposal by the first
European Ombudsman, Jacob Söderman. He thought that modern developments in human rights standards and in the relationship between the citizen and the public administration should be taken into account. Foremost amongst these developments, he said, was the idea that the citizen has a right that his or her affairs be dealt with properly, fairly, and promptly by an open, accountable, and service-minded public administration.

The fundamental right to good administration, as laid down in Article 41 of the Charter, is the right to have one's "affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union".

This principle includes:
- the right of every person to be heard, before any individual measure which would adversely affect him or her is taken;
- the right to have access to his or her file, while respecting legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions;
- the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States;
- the right to write to the institutions of the Union in one of the Treaty languages and to be provided with an answer in the same language.

I am about to publish results of a Special Eurobarometer survey concerning citizens' rights, which was commissioned by the European Ombudsman and the European Parliament and carried out by TNS Opinion. One third of the 27 000 citizens who responded to the survey stated that the right to good administration is the most important citizens' right for them, with only the right to move and reside freely in the EU scoring more highly.

**Participation of civil society**

The Lisbon Treaty also strengthens the right of citizens and associations to participate in the democratic life of the Union. It requires that the Union institutions maintain an open, transparent, and regular dialogue with representative organisations and civil society.

It is equally important to highlight that holding a "regular dialogue" implies engaging in a genuine debate on policy with representative organisations and civil society, which, in addition to potentially supporting the institutions' initiatives, may well criticise or even oppose them.

Moreover, the European Commission must carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent. It is for the Court of Justice to decide whether these obligations are legally enforceable by natural or legal persons. Clearly, however, failure to comply with them could be a reason for complaint to the Ombudsman. An increase in the Ombudsman's workload therefore seems likely.
In the context of citizens' participation, it is also important to note that the Lisbon Treaty reinforces the powers of both the European Parliament and national parliaments in the law-making process. The greater role for national parliaments gives citizens and organised civil society at the Member State level the opportunity to be involved in Union law-making also within their national democratic framework, where some of them may feel better able to participate than at the Union level.

The European Citizens' Initiative

Quite naturally, the "European Citizens' Initiative" constitutes yet another important Treaty innovation. Thanks to this initiative, one million citizens from at least seven Member States will have the possibility to call on the Commission to bring forward new legislative proposals. It should make a vital contribution to the empowerment of European citizens.

The Ombudsman participated in the public consultation concerning this initiative, with a view to making sure that it will function in the most transparent way possible and with a minimum of bureaucracy.

In his contribution, the Ombudsman tried to anticipate aspects of the Commission's future role that might lead to complaints. The suggestions made were designed to promote good administration by the Commission, in order to help ensure the success of this valuable new instrument for citizens. It is, nevertheless, foreseeable that there may be complaints to the Ombudsman if citizens are dissatisfied with the Commission's handling of a citizens' initiative.

Openness and transparency

Let me now turn to the important area of transparency and openness which are of crucial importance for citizens and the Ombudsman's work.

Of the persons questioned in the Special Eurobarometer survey, 42% are not satisfied with the level of transparency in the EU administration. And, as I mentioned before, by far the most common allegation examined by the Ombudsman is lack of transparency in the EU administration. This allegation forms the basis for more than one third of all inquiries and includes refusal of information or access to documents. I remain very concerned about the outcome of the survey and the consistently high number of transparency related complaints, since an accountable and transparent EU administration is key to building citizens’ trust in the EU.

A range of articles in the Lisbon Treaty now provides for greater transparency in the activities of EU institutions. To give one example, the Treaty includes a provision for the Council to meet in public when it deliberates and decides on draft legislation. I have long argued that full transparency of the legislative process in the Council should strengthen both national and Union citizenship. It should let Europeans see what the governments they have elected
as national citizens are doing at the European level. It would also allow them, as Union citizens, to monitor more effectively the work of a vital EU institution, thereby promoting accountability.

The Treaty also requires other Union institutions and bodies to conduct their work as openly as possible, in order to promote good governance and ensure the participation of civil society.

Article 42 of the Charter of Fundamental Rights is especially important in this context. It provides that citizens shall have a right of access to the documents of the Union institutions. This constitutes a significant improvement with respect to past practice, since it extends the right of access not only to documents held by the European Parliament, Council, and Commission, but also to those in the possession of all other EU institutions, bodies, offices, and agencies, including, for the first time, the European Council.

**Conclusion**

To conclude: **The European Union is often perceived as a remote bureaucracy, detached from the every day life of its citizens.** If we look at the new provisions in the Lisbon Treaty and in the Charter of Fundamental Rights, however, we can clearly see that citizens' rights and the role of civil society have been strengthened.

Furthermore, many of the new provisions in the Lisbon Treaty and the Charter are geared towards making the EU institutions and bodies more open, accountable, and citizen-friendly. They allow citizens to monitor more effectively the work of the EU institutions, but also of the governments they have elected at the national level.

The mandate of the European Ombudsman has also been broadened and I expect an increase in complaints as a result.

Much, however, remains to be done before the Union and its citizens can reap the full benefit of many of these provisions, particularly those concerning increased transparency and a stronger involvement of civil society.

The biggest problem remains the fact that most European citizens are still not aware of their rights. In the Special Eurobarometer survey, I mentioned earlier, more than 70% of the respondents did not feel informed about the Charter, and a further 13% had never even heard of it.

In addition, many citizens do not know where to turn if they encounter problems either with the application of EU law in general or in the exercise of their rights, whether at the regional, national, or European levels.

- This lack of knowledge is disconcerting, especially given that the Charter is the key instrument developed by the Union to protect and promote citizens' rights. The Ombudsman's office, together with the other EU institutions and the European Network of
Ombudsmen, obviously still has a lot more to do to in order to inform citizens better and to help them make use of their rights. Doing so constitutes one of my top priorities during my current mandate.

Thank you very much for your attention. I am now happy to answer you questions.