

Speech by the European Ombudsman, Mr Jacob Söderman, Round Table on the Future of Europe, Instituto Superior de Ciências Sociais e Políticas, Lisbon, Portugal, 18 November 2002

Speech

Mr. Rector of the Institute, Mr. Nascimento Rodrigues Mrs. Almeida Garrett Ladies and gentlemen,

This is an exciting time to be a citizen of the European Union.

In December 2001, the Laeken Declaration called for a Convention to discuss the future of the Union. One of the key ideas is a Constitution to bring the European institutions closer to the citizens. Just three weeks ago, the European Convention published a preliminary draft Constitutional Treaty and invited public discussion. This is a much more open and democratic procedure than the traditional secret negotiations on new Treaties. Every citizen now has the opportunity to contribute to the debate on the future of Europe.

That is the good news. I have already congratulated those responsible and I repeat those congratulations here today.

The less good news is that the preliminary draft contains little new of substance for the benefit of citizens and there are clear omissions and errors.

Openness and subsidiarity

The origins of the draft remain a little mysterious. Perhaps that is why it seems to concentrate on power play at the highest level of the Union and on relations between the Institutions. A Constitution should provide a legitimate framework for these matters. However, to me it seems that two of the ideas put forward for discussion, a President of the European Council and a Congress of Peoples, would take EU decision-making to even higher levels rather than bring it closer to the citizens.

There has been some debate about whether the Constitutional Treaty should retain the words "ever closer union", currently in Article 1 of the Treaty on European Union. In my view, the principles that follow those words in the present Article 1 are of even greater significance. They are that the Union is a Union among the peoples of Europe, in which

"decisions are taken as openly as possible and as closely as possible to the citizen."



Taking decisions close to the citizen is the principle of subsidiarity, introduced by the Maastricht Treaty. The Amsterdam Treaty added openness.

This important commitment to openness and subsidiarity is not included in the preliminary draft. Also missing is the citizen's right of access to public documents, laid down in the Art 255 of the EC Treaty, which is an essential element of openness.

In my view, the Constitutional Treaty should clearly establish subsidiarity and openness as fundamental principles of the Union.

Good administration

Another important omission from the preliminary draft is a commitment to a consistent set of good administrative practices in the EU administration.

European citizens in all Member States want a well-managed European administration that is open, accountable and service-minded. The present draft contains some hint of these principles, but there is nothing to remedy the present chaotic situation, in which every institution's administration has its own idea of how to treat citizens. There are now more versions of a code of good administrative behaviour than days in the week.

It would be truly important to establish a clear legal basis for a European administrative law, applying equally to all the Union institutions and bodies. Otherwise the citizen's right to good administration will continue to be frustrated by endless bureaucratic debate.

Remedies and the Rule of Law

One of the most important constitutional principles shared by the peoples of Europe is the rule of law. By happy coincidence, the rule of law is included in the second Article of both the Portuguese and the Finnish constitutions. It is a fundamental constitutional principle in every other Member State as well.

European citizens want European law to be correctly applied as a living reality at all levels of the European Union. For the rule of law to exist in practice effective remedies must be available if the law is not followed.

According to the present preliminary draft Constitutional treaty, the citizens are not to be informed about the remedies available if European law is not applied properly. There is no mention of the right to go to national Courts, nor of the European or national ombudsmen. In fact, the present provision in the Treaty giving citizens and residents of the Union the right to complain about maladministration in the activities of a Community institution or body seems to have been forgotten, even though the Ombudsman's office has been operating successfully on behalf of citizens for seven years and now receives more than 2000 complaints a year.

Fundamental and Human Rights

The European citizens also hope that the fundamental and human rights that the Union should respect will be clearly stated or mentioned in the Constitution.

The Working Group on the Charter of Fundamental Rights and accession to the European



Convention of Human Rights chaired by Commissioner António VITORINO reported to the Convention at the end of October. Its conclusions give hope that a majority will support a proposal to make it possible for the EU to adhere to the European Convention on Human Rights. To my mind, it would be preferable to make it possible to adhere to all international human rights instruments, as the UN and ILO at least have adopted some that are relevant for the wellbeing of the European citizens.

It also seems likely that a large majority will support the idea of making the Charter, proclaimed at Nice, binding in EU law.

This would be a great step forward for the citizens. Europe has now passed the stage where human rights are a new idea, to be applied only by a court specially established for the purpose. Every court, and indeed every administration, should give effect to human rights.

It seems that a second preliminary draft will be published before Christmas, so there is the possibility and the hope that the errors and omissions I have mentioned will be corrected and that the first preliminary draft will therefore have performed a useful function.

To me it seems clear that progress should be made to ensure that:

- openness and subsidiarity are established as fundamental principles
- there is a legal basis for ensuring an open, accountable and service-minded administration through a European administrative law
- citizens are informed of the remedies available if their rights, including fundamental rights, are not respected. These remedies include courts, ombudsmen and committees on petitions at all levels in the Union.

Only in this way can the European citizens truly have confidence in the European Union.

Thank you for your attention.