

Ceremony for the award of the Alexis de Tocqueville Prize 2001, Speech by the European Ombudsman, Mr Jacob Söderman, at the Provincial Government House, Maastricht, Netherlands, 21 November 2001

Speech

Commissioner of the Province of Limburg, Mr Berendt-Jan Van Voorst tot Voorst!

Mr Chairman and Members of the Board of Governors of EIPA!

Excellencies, Ladies and Gentlemen!

To be here today and have the possibility to speak to you on this occasion is a great honour for me personally and for the Office I represent. I am deeply grateful to the European Institute of Public Administration, to its Scientific Council and to its Board of Governors for awarding me the prestigious Alexis de Tocqueville Prize for 2001. The importance of the Alexis de Tocqueville Prize is in my mind strongly underlined by the fact that previous recipients include Professor Sabino CASSESE and Professor Eduardo GARCIA DE ENTERRIA, two outstanding scholars in public and administrative law, whose works I deeply respect and value.

On this occasion I speak in the name of the European Ombudsman office and of all its staff, since I would like to stress that the performance and results of the office would not have been possible without their hard and dedicated work and professional skills. I do thank them for that. I would also like to mention that in the very beginning of my work I underlined that there could be no good results without a real commitment of the Community institutions and bodies to good administrative values. In my first annual report I even spoke of a partnership with the Community institutions and bodies to protect and advance the rights and interests of European citizens.

Today, I would like to say that the Community institutions and bodies have co-operated constructively with our Office and that they have in many ways demonstrated that commitment. There have been tensions and disputes from time to time, but also continuous progress; sometimes slower, sometimes faster.

At the very beginning of our activities the support provided by the European Parliament and its



administration was crucial. The then Speaker of the European Parliament Klaus HÄNSCH and the present Secretary General Julian PRIESTLEY gave us unlimited support. The Commission's attitude was also important and the responsible Commissioner at the beginning was Anita GRADIN, who comes from the very country where the Parliamentary ombudsman institution was born nearly two hundred years ago. She worked hard to convince the Commission of the need to respond properly to the Ombudsman and to set up procedures for responding to the Ombudsman's inquiries so as to secure fair and comprehensive answers. Under the guidance of the then responsible director in the Secretariat General of the Commission and his team, the Commission led the way in demonstrating how a Community institution should live up to the principle of accountability to European citizens.

After six years experience, I can testify that we have found true partners in the endless struggle for a better administration to serve European citizens. It has also been recognised by the now responsible Commissioner Loyola DE PALACIO, who also comes from a country where the ombudsman institution is strongly represented, at both national and regional level. She has on many occasions emphasised that she is committed to follow and strengthen the practices set up by her predecessor.

Ladies and Gentlemen!

Recently I was asked in a television programme how I felt when I was elected as the first European Ombudsman in July 1995 and the President of the European Parliament spoke to me and underlined my responsibility as the first Ombudsman to set up the Office and give it direction for the future. On such occasions you should, of course, say something inspiring. The only thing I managed to say was that I felt that I was about to depart on a long journey in an unknown environment. In fact, I felt as if I was setting sail on a stormy sea, with only the case law of the Community courts on good administration to follow; cases twinkling as stars in the night sky, showing the way for the lonely sailor and his crew.

I did not feel too badly equipped for the journey because I had been a Parliamentary Ombudsman for many years in a country that is small in population but a true superpower in bureaucratic traditions. In Finland, we were acquainted with the Royal Swedish administration for 600 years, under the Russian Czar's rule for more than 100 years and then close to the German - Prussian administrative traditions, as many of our academics in that field studied in Germany during the 1920s and 30s. The fact that Finnish society still functions shows that we have gained something from the enormous bureaucratic treasure that has been imposed on us, and to which we ourselves, I must confess, have also contributed.

The first test for the new European Ombudsman institution was to establish exactly what is maladministration. There were loud voices in the legal services of some Community institutions suggesting that the Ombudsman could not deal with matters that could, at some future stage, come before a Court. In other words, they wanted to exclude the Ombudsman from inquiring into any question of legality. They argued that this kind of limitation exists for ombudsmen in two of the Member States. To me, it can never be good administration not to follow the law, or a principle binding on a public body. The final proposal that led to the establishment of the



European Ombudsman came from the Danish government. The new institution's main features were taken from the Danish Ombudsman, who is active in dealing with questions of law. So, to my mind there is nothing unclear on this point. By now, our notion of maladministration as including legality has been largely accepted. When the Ombudsman carries out the work it goes without say that the case law of the Court is the true source for applying the law.

Another debate arose when a Member of the European Parliament, Roy PERRY, proposed a Code of Good Administrative Behaviour. The idea of such a Code is to clearly establish not only what is bad administration, but also what is good administration. Scholars from the tradition of common law argued that this should not be a written law with detailed provisions but an unfinished list of requirements developing in the cases over the years. They opposed what they said would be an EU over-regulation of this matter.

To me it only seems fair that if you criticise someone for acting badly, you also say what they should do. I find it difficult to understand how one can demand that the staff of the Community institutions and bodies raise the quality of European administration if they cannot easily obtain an account of what is expected from them. In the same way, how can European citizens know what their rights are unless they are written down? As the Commission for many reasons was delayed in drafting a Code of Good Administrative Behaviour, we undertook to do it and the Parliament adopted it in its session of 6 September this year. The question if it will become a European law is still open, but good forces are working for it.

The Code did not encounter only applause in the debates in Parliament. A provision suggesting that an official should be polite raised many doubts and some impolite comments. For a moment, it seemed that the Committee on Legal Affairs would reject the whole proposal. Then a Scottish Professor of Law took the floor and began by saying quite simply: *"to my mind there are two important issues at stake here. First of all promoting the rule of law and secondly showing respect to European citizens."* This statement drew the debate back to the very core of the Code and in the end it was supported by a clear majority.

For my part, I do not understand the argument that politeness cannot be an obligation. Judges have no difficulty in defining a proper standard of behaviour for the parties who appear in the courtroom. Why should they not, if ever needed, be able to judge when an official is out of line, abusive and impolite?

I am sorry for preaching to you. But I am so used to trying to promote my Office's services and the notion of good administration that I could not hold back.

When we received the first information about the award of the Alexis de Tocqueville Prize it was like seeing the first glimpses from the lighthouse leading to a safe harbour on a dark night in a troubled sea. EIPA has, to my mind, during its 20 years worked without rest to promote the good administrative values of western culture. I do congratulate you on the occasion of your 20th anniversary for the high professional skill, with which you have spread the good message to many officials in both European and national administrations.



For us today it is a safe and friendly harbour, where we can rest and enjoy a true partnership with you and gather strength and provisions for the next stage of the journey towards a real Citizen's Europe. May that be the Prize that awaits us all tomorrow.

Alexis de Tocqueville was in many ways before his time. He even grasps the very soul of European citizenship by saying:

"The gradual development of the principle of equality is, therefore, a providential fact. It has all chief characteristics of such a fact: it is universal, it is lasting, it constantly eludes all human interference, and all events as well as all men contribute to its progress".

I am happy and honoured to accept the Alexis de Tocqueville Prize.

Thank you for your attention.