

Keynote Speech by the European Ombudsman, Mr. Jacob Söderman, Seminar on 3 A's to connect citizens to the EU, European Forum of Citizens Advice Services, Brussels, Belgium, 5 December 2002

Speech

Dear participants,

For the citizens of Europe, the clear priority for the new Constitutional Treaty is the safeguarding of their fundamental and human rights. The European Union's relations to international human rights conventions and the legal status of the EU Charter of Fundamental Rights must be made clear.

The best way forward would be to make it possible for the European Union to adhere to international human rights conventions, including the European Convention of Human Rights and to make the EU Charter of Fundamental Rights binding wherever EU laws are applied.

The European citizens also need effective legal remedies to be clearly established in the Constitutional Treaty. These remedies should make it as easy as possible for citizens to obtain justice. The judiciary should be the main guarantor of the rule of law and of respect for fundamental rights. Extra-judicial remedies, such as ombudsmen and similar bodies at all levels of the European Union, should also be clearly set out to promote these rights and to solve disputes between the administration and the citizen in a flexible way.

Positive initiative

The initiative taken by the President of the Convention, Mr. Giscard d'Estaing, to publish a preliminary draft Constitutional Treaty is very positive. This open procedure invites everyone who is interested in the future of the Union to discuss and to make proposals for the draft Constitutional Treaty. This procedure is much more democratic than previous ones and is to be warmly welcomed.

As you may know, I have the honour of participating in the debates of the European Convention as an Observer. I have made some proposals that directly concern the Ombudsman, the right to petition and fundamental rights. I would therefore welcome an exchange of views on these proposals and would also be ready to answer questions about my work as the European Ombudsman.

Fundamental and Human Rights

The Constitutional Treaty that is currently being drafted should include the fundamental and



human rights that the Union must respect. These should be presented in a way that is clear and accessible for European citizens.

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 the hope that a large majority will support a proposal to enable the EU to adhere to the European Convention on Human Rights. To my mind, it would be even better if the Union could adhere to all international human rights instruments, as the UN and the ILO have each adopted some that could enhance the wellbeing of European citizens.

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

This would represent great progress for the European citizens. As well as ensuring that citizens' rights are recognised in the Constitutional Treaty, I believe that it is important to explicitly state the means of redress available when those rights are not respected.

Remedies and the Rule of Law

In one of the proposals that I made to the European Convention, I suggested an amendment to the Treaty in order to recognise the existing co-operation among ombudsmen and Parliamentary bodies dealing with petitions in the Union. The network of ombudsmen and committees on petitions should be available to every citizen in the Union as an effective remedy. This means of redress should be formalised in the Treaty and made known to citizens.

European citizens want European law to be correctly applied and fundamental rights to be respected at all levels of the Union. Effective remedies must be available if the law is not followed.

The current preliminary draft Constitutional Treaty does not envisage that citizens should be informed of the remedies available if European law is not correctly applied. It contains neither mention of the right to go to national courts, nor of the European or national ombudsmen. The present provision in the Treaty that gives 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. This is despite the fact that the European Ombudsman's office has been operating successfully on behalf of citizens for seven years and now receives more than 2000 complaints a year.

I have widely made known my view that the network of ombudsmen and committees on petitions should be mentioned in the Treaty as a means of redress for citizens. For such a network to be truly effective, it must include ombudsmen or similar bodies at appropriate levels in all Member States.

An ombudsman in all Member States

Having worked as an ombudsman for more than 13 years - first as a national ombudsman and then as Ombudsman of the European Union - I believe that European citizens should have the right to an extra-judicial remedy when they have a dispute with the public administration. This



remedy can either be an ombudsman, or a similar body with a constitutional mandate.

It is of course for every Member State to decide for itself on the scope and powers of this body, as long as it guarantees the promotion of good administration and the rule of law, thus enhancing relations between the administration and the citizens. In the case of a dispute with a public administration, a body should exist with a remit to solve individual complaints. This body may also take initiatives to promote better administrative procedures and practices.

It is possible to have both a committee on petitions and an ombudsman, which co-operate successfully. This is the situation in the European Union where the co-operation works clearly to the benefit of the citizens. The committee on petitions, as a political body, should focus on matters of principle where political experience and influence are needed to put things right. The ombudsman should deal, as a rule, with citizens' individual complaints. It is useful for the committee to oversee the work of the ombudsman by dealing with his annual report and thus giving the ombudsman guidance and advice.

National ombudsmen are currently established in 12 of the 15 Member States of the European Union. Germany has a well-functioning Committee on Petitions at the national level and ombudsmen operating at the regional level. Italy does not currently have a national ombudsman or committee on petitions, but has an active network of regional ombudsmen. In Luxembourg, there is for the moment no extra-judicial remedy for individual disputes with the public administration. There are however proposals in both Italy and Luxembourg to establish a national ombudsman. All 10 of the countries due to join the European Union in 2004 have national ombudsmen or similar bodies already established.

Good administration

A commitment to a consistent set of good administrative practices has been established at the EU level as a new fundamental right in Article 41 of the Nice Charter.

European citizens in all Member States want a European administration that is open, accountable and service-minded. The present preliminary draft Constitutional Treaty contains some hint of these principles, but there is nothing to remedy the present situation, in which every institution's administration may have a different idea of how to treat citizens. The European Parliament adopted a Code of Good Administrative Behaviour in September 2001 and instructed the European Ombudsman to follow the Code in his daily work. It is not yet a binding law, even if its principles are based on the jurisprudence of the Court of Justice of the European Communities.

I believe that the Constitutional Treaty should establish a clear legal basis for a European administrative law, applying equally to all the institutions and bodies of the Union.

Openness and subsidiarity

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 Article 255 of the EC Treaty, which is an essential element of openness.

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

It seems that a second preliminary draft will be published before Christmas. It is my hope that the skeleton draft that was presented in October will be refined and developed to take account of the important issues that I have mentioned.

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

- constitutional authorization is given for the EU to adhere to international human rights conventions, including the European Convention of Human Rights
- the EU Charter of Fundamental Rights, proclaimed in Nice in December 2000, be made binding in EU 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
- there is a legal basis for ensuring an open, accountable and service-minded administration through a European administrative law
- openness and subsidiarity are established as fundamental principles.

In this way, the European citizens could truly have confidence in the European Union.

Thank you for your attention.