European Ombudsman

Speech of the European Ombudsman -The Citizen, the Administration and Community law

Speech

(Greetings)

Citizenship of the Union was established by the Treaty of Maastricht. The Union citizenship does not replace, but complements, national citizenship.

The Amsterdam Treaty contributes to further development of Union citizenship with a restatement of the constitutional principles on which the Union is founded. Article A of the Union Treaty, as amended, refers to:
an ever closer union among the peoples of Europe in which decisions are taken as openly as possible and as closely as possible to the citizen.
And as Sweden's minister of Justice Laila FREIVALDS reminded us in the opening session of this Congress, Article F states that:
the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law...
The working sessions on the theme of **"the Citizen, the Administration and Community law"** were expertly chaired by Ms Elizabeth PALM, President of the Administrative Court of Appeal of Gothenburg and Dr Hans RAGNEMALM, judge at the Court of Justice of the European Communities. I would also like to thank all the national rapporteurs and the Community rapporteur Mr GARZÓN CLARIANA for their excellent reports.

The working sessions examined how to bring alive the idea of citizenship through more accountable, more open, more human and more service-minded administration of Community law at all levels in the Union.

Naturally we took full account of the fact that the administration of Community law is partly direct - carried out by Community institutions and bodies - and partly indirect - carried out by the administrative authorities in the Member States.

Each of the four working sessions was devoted to a specific topic.
The first topic was standards of good administration at the Community level. The second topic was the role of the Commission as the "guardian of the Treaty". In particular, we examined the administrative procedures which the Commission uses to deal with complaints from citizens about infringements of Community law by Member States. In the third working session, we

considered citizens' access to documents held by Community institutions and bodies. In the final working session, we examined the judicial and non-judicial remedies which citizens can use to protect their rights.
I will report separately on the debates in each the four working sessions.

1 Standards of good administration at the Community level.

In the first working session, two principles concerning standards of administration were generally agreed. The first is that all public authorities must be subject to the rule of law: it can never be good administration to fail to act in accordance with the law. The second is that the administration exists to serve citizens and not vice versa: administration should therefore be service-minded.

There was also general agreement that a Code of Good Administrative Practice could play a valuable role in raising the quality of administration, by making both citizens and officials aware of the level of service that should be provided.

The general report drew attention to the Commission's intention to adopt a Code of good administrative behaviour, to govern the conduct of its officials. Some participants in the working session felt that it was undesirable for an institution to adopt such rules itself. They considered that the European Ombudsman should be responsible for developing a Code. However, for the Commission itself to adopt a Code, rather than having it imposed from outside, would underline its commitment to service-minded administration.

It was generally agreed that the provisions of a Code would become legally binding, whether it was adopted as "hard" or soft" law. Some people feared that "hard" law would be less open to progressive development of new and enhanced standards. However, citizens' wishes for clear and enforceable rights would best be met if the Commission adopted its Code in the form of a decision.

2 The Commission as the "guardian of the Treaty".

The second session considered the Commission's Article 155 role as "guardian of the Treaty"

and the Article 169 procedure to deal with infringements of Community law by Member States.

It was emphasised that the system of remedies in the Union, like the system of administration, is based on the principle of closeness to the citizen. As part of the development of the Union, however, there is a trend towards greater use of the Article 169 procedure.

Furthermore, the Commission has acknowledged that citizens who complain to it about infringements of Community law by Member States are not just a valuable source of information, but are also entitled to procedural safeguards, which it will continue to develop and improve.

A clear distinction was drawn in the discussion between, on the one hand, the Commission's administrative procedures in dealing with a complaint and, on the other hand, its discretionary decision as to whether or not to bring an infringement before the Court of Justice.

Several national rapporteurs criticised the Commission's current administrative procedures. It was argued that more transparency was needed and that further steps should be taken towards treating complainants as if they were parties in the procedure. It was suggested that the starting point should be a comparison with the procedural rights of complainants in, for example, competition cases and that lesser rights for Article 169 complainants should be expressly justified. It is not to be excluded that the procedural rights of complainants could receive judicial protection.

It was generally acknowledged that the Commission enjoys a broad discretionary power as to whether or not to bring an infringement before the Court of Justice. It was suggested, however, that the Commission should motivate a decision not to bring proceedings. Another point of view was that there could be valid political reasons for not bringing proceedings, but that sometimes it could be too embarrassing to reveal those reasons publicly. It was not made clear how this could be reconciled with the idea of citizenship of a Union which is based on the principle of the rule of law.

3 Citizens' access to documents

The general report has a section about transparency, but it contains detailed discussion of only one aspect of the subject: public access to documents. In the working sessions, discussion ranged more widely. Many participants emphasised the need for legislative procedures to be more transparent. In particular, there was considerable discussion of comitology. Differing views were expressed about the relationship between comitology and the enhanced role of the European Parliament in the legislative procedure following the Maastricht and Amsterdam treaties.

The question of access to comitology documents returned discussion to the main theme of the session. Debate focused on the present Community rules. These consist of the Decisions adopted by the Commission and Council, giving effect to their joint code of conduct on access to documents. Other Community institutions and bodies have also adopted rules based on those of the Commission and Council.

A number of criticisms of the current rules on public access to documents were expressed. In particular: they do not apply to incoming documents; they do not require registers of documents to be established; the time-limits for giving a decision on access are too long; and the exceptions are too restrictive.

As regards registers, it was explained that the Council does have a register of documents and that it will publish the register during the course of 1998: it is to be hoped that other Community institutions and bodies will follow this good example.

Differing views were expressed about time-limits. Some people supported the idea that access should, in principle, be immediate - especially so as to facilitate the work of journalists in informing the public.

Others emphasised that the decision-making procedures of, in particular, the Council made it difficult to give access promptly. It was also argued that the Courts' case-law requiring a balancing of interests in applying certain of the exceptions should imply time for adequate reflection.

A large number of other interesting points were made, of which I have time to mention only three.

First, it was emphasised that an institution should always consider whether it can give access to a document even if it is not obliged to do so by its rules. Naturally, however, the principle of equality requires that if access is given to one citizen it should not be denied to others.

Second, the question was raised of how to challenge a refusal of access to documents by an agency or other Community body not mentioned as a potential defendant in Article 173 EC. It appeared that, through one procedure or another, a judicial remedy would be available, in addition to the possibility of complaint to the Ombudsman.

Third, an important point was made about the future: although the new Article 191a EC concerning a right of access to documents refers only to the European Parliament, the Commission and the Council, the principle of transparency which it embodies should apply throughout the Community administration.

4 Citizens' access to judicial and non-judicial remedies

The final session examined the judicial and non-judicial remedies which citizens can use to protect their rights. The starting point for discussion was general agreement that citizens should have effective mechanisms for redress if their rights under Community law are not respected and that those mechanisms should be as close as possible to the citizen.

Mention was made of the valuable work done by the Euro-Jus system of part-time lawyers giving advice to citizens in the Commission offices in the Member States.

There was general agreement that the national ombudsmen could deal with complaints concerning Community law and that they should inform citizens of this right. They should also receive the necessary advice on Community law to enable them to help the citizens, in

particular concerning freedom of movement and - when the Amsterdam Treaty comes into force - issues of asylum, immigration and visas.

It was emphasised however, that Ombudsmen are a complement, not an alternative, to judicial protection of Community law rights which, according to a constant jurisprudence of the Court of Justice should always be available. However, co-operation between the European Ombudsman and national Ombudsmen to create an effective system of non-judicial protection could help relieve the burden both on the Courts and on the Commission in its role as guardian of the Treaty.

In conclusion, I would like to thank FIDE President Professor Dr Ulf BERNITZ and all his collaborators in the organisation of the Congress for their hard work to make the occasion a success and for their kind hospitality.

Thank you for your attention.

The European Ombudsman, Jacob Söderman, was the general rapporteur for the theme "The Citizen, the Administration and Community Law" at the XVIII Congress of FIDE (Fédération internationale de droit européen) held in Stockholm 3-6 June 1998. His general report is available in English [Link] *and* French [Link].