

Speech of the European Ombudsman: What is good administration? The European Ombudsman's Code of Good Administrative Behaviour, Speech given by the European Ombudsman, Mr. Jacob Söderman, at the International Seminar 'The Ombudsmen and the European Union Law', Bucharest, Romania, 21-24 April, 2001

Speech

I. Introduction

The European Ombudsman's Code of Good Administrative Behaviour (1) for the officials in their relations with the public saw the light in July 1999. It was the result of a detailed analysis of the principles of good administration existing in the EC law, in the case-law of the Community courts and in the various administrative laws of the Member States. The Ombudsman's Code of Good Administrative Behaviour did not create any new principles of administrative law, but only put the existing principles together in one single Code, and this for the attention of the citizens on the one hand - who are the customers of the Community administration - and the officials of the Community institutions and bodies on the other hand - who provide the administrative services to the public.

II. Maladministration versus good administration

The Ombudsman's Annual Report for 1995 gave only a non-exhaustive list of examples of maladministration, such as administrative irregularities and omissions, unfairness, negligence, discrimination, abuse of power, lack or refusal of information and avoidable delays. In its resolution on the Ombudsman's Annual Report for 1996, the European Parliament requested however that the Ombudsman provide a clear definition of the term "maladministration".

The Ombudsman therefore wrote to all national Ombudsmen in the Member States, asking whether in the administrative law of the various Member States, there existed definitions of "good administration" or Codes of good administrative behaviour. The Ombudsman then gave the following definition of the term "maladministration" in his Annual Report 1997:

"Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it". In dealing with the Annual Report for 1997, the European Parliament



considered that this definition, together with the further explanation provided in the Annual Report gives a clear picture of what lies within the remit of the Ombudsman. Following a proposal on behalf of the Committee on Petitions (2) , the Parliament adopted a Resolution welcoming this definition.

III. The Code of Good Administrative Behaviour

Simultaneously with providing a definition of the term "maladministration", the Ombudsman launched in November 1998 an own initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour for the officials in their relations with the public. From a first inquiry it appeared that none of the 18 Community institutions and bodies concerned by the own initiative had adopted a Code of Good Administrative Behaviour as envisaged by the Ombudsman.

1. The draft recommendations

In July and September 1999, the Ombudsman therefore made draft recommendations to all the Community institutions and bodies to adopt rules concerning good administrative behaviour for their officials in their relations with the public. The Ombudsman considered that a Code which contains the basic principles of good administrative behaviour for officials when dealing with the public is needed both in order to bring the administration closer to the citizens, as foreseen in Article 1 of the Treaty on European Union, and to guarantee a better quality of administration, thus helping to prevent instances of maladministration from arising.

The Ombudsman observed that such a Code is useful for both the Community officials, as it informs them in a detailed manner of the rules they have to follow when dealing with the public, and the citizens, as it can provide them with information on which principles apply in the Community administration and on the standard of conduct they are entitled to expect in dealings with the Community administration. He equally pointed out that, in order to be effective and accessible to the citizens, the Codes should be adopted in the *form of a decision and be published in the Official Journal* of the EC. The Ombudsman also stated that in its Resolutions the European Parliament had stressed the urgent need to draw up as soon as possible a Code of Good Administrative Behaviour, and the importance for such a Code to be, for reasons of public accessibility and understanding, as identical as possible for all European institutions and bodies, and published in the Official Journal.

In his Special Report, the Ombudsman moreover noted that, over the last two decades, many Member States have adopted laws governing their administrations. The administrative behaviour of the Community institutions and bodies should therefore, as far as possible, be consistent with the best standards applicable to the administrations of Member States. The Ombudsman's Code of Good Administrative Behaviour drew inspiration from various provisions contained in the existing administrative laws in the Member States. Important sources of inspiration were for instance the French law n° 2000-231 of 12 April 2000 concerning the rights of citizens in their relations with the administrations, the Danish Public Administration Act n° 571



of 19 December 1985, the Finnish Administrative Procedure Act n° 598 of 6 August 1982 and the Belgian Law on the formal motivation of administrative acts of 29 July 1991. A footnote in the Special Report gives an overview of all the other administrative laws existing in the Member States. Another very valuable document in drawing up the Ombudsman's Code was *"The administration and you"*, a handbook edited by the Council of Europe which sets out the basic principles of substantive administrative law and administrative procedure which are considered to be of primary importance for the protection of private persons in their relations with the administrative authorities, and which contains also references to the relevant case-law of the European Court of Human Rights, as well as examples of implementation of the principles in Council of Europe Member States (Council of Europe Publishing, 1996).

2. The "model" Code of Good Administrative Behaviour established by the Ombudsman

In his recommendation, the Ombudsman indicated that, for adopting rules on good administrative behaviour, the institutions and bodies could take guidance from the provisions contained in the Code of Good Administrative Behaviour established by the Ombudsman's office (see enclosure). This Code contains in first instance the substantive and procedural principles of administrative law, such as the absence of discrimination and abuse of power, impartiality and independence, the obligation to state reasons for decisions and the rights of the defence. Next to these "classical" principles of administrative law, the Code equally contains rules on good administrative practice such as the sending of an acknowledgement of receipt, the indication of the competent official, the obligation to transfer a file to the competent service, the indication of the possibilities of appeal and the keeping of adequate records.

3. The Special Report to the European Parliament

From the responses to the draft recommendations, it appeared that only two out of the 18 institutions, bodies and decentralised agencies, namely the European Agency for the Evaluation of Medicinal Products (EMA) and the Translation Centre for the Bodies of the European Union had adopted, respectively on 1 December 1999 and on 10 February 2000, the Code of Good Administrative Behaviour proposed by the Ombudsman. He therefore concluded his own initiative inquiry with a Special Report to the European Parliament in April 2000.

In his Special Report, the Ombudsman recommended to the Parliament that a European administrative law is needed to ensure that officials of all the Community institutions and bodies observe the same principles of good administrative behaviour in their relations with the public. The Ombudsman indicated that such a law could take the form of a Regulation applicable to all the Community institutions and bodies and that the European Parliament, in its capacity as the only European institution democratically representing all European citizens, could consider the procedure referred to in Article 192 (2) of the EC Treaty in order to initiate the adoption of a European administrative law in this form. The Ombudsman observed that the substance of this law could be based on the Ombudsman's Code of Good Administrative Behaviour which was already adopted by two decentralised agencies.

As regards the legal basis for a European administrative law, the Ombudsman stated that it



could be Article 308 of the EC Treaty which provides that "if action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures". One of the objectives of the Community is certainly to apply good administration. This appears implicitly from Article 1 of the Treaty on European Union, which states that decisions are taken as openly as possible and as closely as possible to the citizens, and from Article 195 of the EC Treaty which foresees the possibility for citizens to complain to the European Ombudsman when they are victim of maladministration in the activities of the Community institutions and bodies.

IV. Article 41 of the Charter of Fundamental Rights : a right to good administration

Since the end of the year 2000 there is a new and very strong legal basis and argument for having a European administrative law, namely the Nice Charter. The Charter of Fundamental Rights which was officially proclaimed in Nice on 7 December 2000 now includes an Article 41 entitled "Right to good administration". This Charter was signed jointly by the President of the Commission, the President of the Parliament and the President of the Council of Ministers. For the first time in the history of the European Union, the Community institutions at the highest level have officially and explicitly declared that the European citizens have a right to good administrative behaviour when they address the Community administrations.

Article 41 and 42 of the Charter of Fundamental Rights are of course only setting out the basic principles of good administration, without going into the details. However, when studied more closely, the Charter already foresees the following principles of good administrative behaviour: 1) the impartial treatment of citizens' affairs, 2) fair treatment, 3) reasonable time-limit for dealing with citizens' files, 4) the right to be heard before a decision affecting the citizen is taken, 5) the right of every person to have access to his personal file, 6) the obligation to state reasons for decisions (cfr. Article 253 EC Treaty), 7) the right to reparation of damage caused by the institutions or their servants (cfr. Article 288 § 2 EC Treaty), 8) the right to receive a reply in one of the Treaty languages (cfr. Article 21, § 3 EC Treaty), 9) the right of the citizens to have access to Parliament, Council and Commission documents (cfr. Article 255 EC Treaty).

In order for the right to good administration enshrined in Article 41 of the Charter to be effective and have concrete results for the citizens, it is obvious that the principles set out in it should be more clearly defined in a Code of Good Administrative Behaviour as proposed for instance by the Ombudsman.

V. The follow-up of the Special Report

Since the presentation of the Special Report to the Parliament in April 2001, nearly all institutions and bodies, including the Commission and the Parliament, have in the meantime



adopted Codes of good administrative behaviour for their officials in their relations with the citizens. Eight of the ten decentralised agencies have even adopted the Code as proposed by the Ombudsman. The Commission and the Parliament have adopted other and quite different versions of the Code which are less detailed and merely contained in an annex, respectively are included in apparently non binding "guidelines".

On 11 April 2001 the Ombudsman wrote to the Council, which has not yet adopted a Code of Good Administrative Behaviour, and drew its attention to Article 41 of the Charter of Fundamental Rights and consequently to the importance to adopt a Code. The Ombudsman also observed that, before the proposed European administrative law sees the light, it is important that in the meantime all the Community institutions and bodies adopt Codes of good administrative behaviour in the form of decisions which are accessible for the public.

The Ombudsman's Special Report is for the moment being discussed in the various committees of the European Parliament amongst which the Committee on Legal Affairs and Internal Market and the Committee on Petitions. It is expected that in its plenary session of July 2001 the Parliament should vote on the Special Report which foresees the adoption of the European administrative law on the basis of Article 308 of the EC Treaty. It seems that the Parliament will decide to take a legal initiative in accordance with Article 192 (2) of the EC Treaty to promote the enactment of a law of good administration concerning the EU institutions and bodies and their administrative activities.

(1) The Code of Good Administrative Behaviour has been circulated separately.

(2) A4-0258/98 (OJ 1998 C 292/168)