

## Speech of the European Ombudsman -The European Ombudsman and Human Rights

Speech

Mr Chairman!

Ladies and Gentleman!

I would first like to thank you for inviting me to take part in this European Forum, which is devoted to the idea of a new Charter of Fundamental Rights for the European Union. I hope to contribute with some reflections that spring from my almost four years' experience as European Ombudsman.

### 1 The European Ombudsman

My task during that time has been to enhance the relations between the Union and its citizens. The mandate of the Ombudsman, as set out in the Treaty, is to deal with instances of maladministration in the activities of the Community institutions and bodies, with the exception of the Court of Justice and the Court of First instance acting in their judicial role. Every citizen or resident of the Union may apply to the Ombudsman, whether or not they are personally affected by the instance of maladministration.

The term 'maladministration' is not defined by the Treaty, but I proposed a definition in the 1997 Annual Report:

*"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, the European Parliament welcomed this definition.

Naturally the most important rules and principles binding on Community institutions and bodies are those concerning human rights and fundamental freedoms. Within the Community's fields of activity, these rights and freedoms can mostly be guaranteed by ensuring the full and correct application of Community law. Many of the problems that arise result from the often confusing situation concerning the remedies available to the citizen if Community law is not respected. Let me illustrate these points by discussing the free movement of persons.

### 2 Free movement of persons.



For citizens, the right to move freely in the territory of the Union is one of the Union's main achievements. There appears, however, to be a real concern among citizens that free movement of persons is not a reality. The increasing number of complaints to the European Ombudsman about such problems seems to confirm this view.

The problems most frequently raised range from the existence of border controls, the difficulties encountered when moving to another Member State and exercising an economic activity there, to problems concerning the issuing of residence permits for students, retired and non-working persons, and discrimination on the basis of nationality. Since these problems directly affect fundamental social rights, they appear to be a source of confusion and disappointment among citizens.

Obstacles to free movement often result from the incorrect implementation of Community law by national, regional and local administrations. Since Community law is law in the Member States, its application by such administrations can be supervised by national ombudsmen and similar bodies (usually parliamentary petitions committees).

At present, however, citizens seem generally unaware of the possibility to complain to national ombudsmen and similar bodies about Community law matters. If they are from another Member State, they may not know the system of remedies and sometimes have a poor knowledge of the language of the host country. Hence they refrain from complaining on the national level and either their grievance is not dealt with at all, or it ends up at the European level.

To me, it seems right to believe in the principle of subsidiarity and hence to encourage and support ombudsmen and similar bodies in the Member States to deal with complaints about the application of Community law. For this reason, I have promoted a liaison network linking all the national ombudsman's offices. Liaison network seminars to inform about Community law have been held every year since 1996 and the next will take place in Paris in September this year. We publish a regular "Liaison letter", to inform about significant new case law from the Court of Justice and Community law cases dealt with by national offices. The European Ombudsman's website has links to the websites of national ombudsmen and similar bodies and further development of cooperation through the website is in the pipeline. The liaison network also allows the national offices to address queries about Community law to the European Ombudsman, who normally forwards the query to the competent Community Institution for an opinion.

### **3 A new Treaty article to inform citizens of their remedies.**

In a society governed by the rule of law, the courts are naturally the main protection for the rights of individuals. The ombudsman is a non judicial institution, something extra, who helps citizens when they have difficulties with the administration. At the moment, however, there is no provision in the Treaties which informs European citizens of the vital role played by national courts in ensuring respect for Community law.

In my view, the opportunity should be taken at the next Inter-Governmental Conference to



include a new article in the Treaty which informs the citizens about all the means of redress available to them if their Community law rights are not respected.

As well as the role of the courts, a citizens' right to complain to the Commission about infringements of Community law by a Member State should be included in the Treaty. This might give a basis for a thorough reform of the often secretive procedures used by the Commission in such cases.

Furthermore, national and regional ombudsmen and similar bodies such as parliamentary petitions committees should also be mentioned in the Treaty as having a responsibility to help citizens in case of conflicts with the administration involving Community law, including human rights issues. Each Member State should have an obligation to ensure that its legal order includes an effective non-judicial body to which the citizens may apply for this purpose.

#### **4 The Treaty of Amsterdam.**

I am committed to deepening the cooperation between the European Ombudsman and the national ombudsmen and similar bodies in order to help make Community law a living reality for citizens. This cooperation is even more necessary now that the Amsterdam Treaty is about to bring into the scope of Community law a number of issues which form a significant part of the workload of most national ombudsmen.

In order to ensure the right of citizens to move freely in a Europe without internal borders, the Treaty makes the establishment of an area of freedom, security and justice one of the objectives of the Union. To achieve this objective, the Treaty brings into the Community realm a number of policy areas related to the free movement of persons, in particular those governing visas, asylum, and immigration (new Title IV of the EC Treaty).

Other related issues, namely police and judicial cooperation in criminal matters, remain outside the Community framework (Title VI of the Union Treaty), even though some elements of the Community scheme will be applicable to them, including the supervisory role of the European Ombudsman.

It is essential that the drafting of the texts to apply in all these new areas take full account of existing human rights treaties, for example in relation to such matters as the granting of asylum and the definition of "refugee". Furthermore, there also needs to be effective supervision of the implementation of activities such as the fight against illegal immigration, the exchange of police files and The work of Europol, where there is great potential for human rights abuses.

#### **5 Human rights at the Union level.**

The definition of human rights and the appropriate mechanisms to ensure their full and correct implementation, have long been discussed at Community level. The deficiencies of the present situation are easily identifiable. There is no chapter in the Treaty which informs citizens about the precise human rights that should be respected by the Union administration. The Union has



neither adhered to the European Convention of Human Rights and Fundamental Freedoms, nor to any other Convention in this field. The new situation after the entry into force of the Treaty of Amsterdam makes it even more pressing to find an appropriate solution to remedy these deficiencies.

One of the solutions which has been proposed is the elaboration and adoption of a Charter of Human Rights for the Union. The discussions in this Forum should help decide whether this option could be a good solution. However, the exact contents of such a Charter and its relationship with the European Convention on Human Rights and other existing international Conventions such as those prepared by the ILO, are likely to prove controversial. There are also many legal and political difficulties to overcome before such a project could find general acceptance. I would therefore like to make a more modest and pragmatic proposal, which could be accepted quite rapidly.

The proposal is to insert a new provision in the Treaty to require that the Union's institutions and bodies respect all the existing human rights conventions that all or a majority of its Member States have ratified. In my view, it would be justified and understandable for the European citizens that the Union administrations should have to respect the same human rights provisions as the Member States. Or to put it the other way round, I doubt that any European citizens believe that the Union administrations should be exempt from the duty to respect these provisions in their fields of activity.

As I have already mentioned, it is also of great importance that there should a Treaty provision which clearly informs citizens of the remedies available to them in cases of conflict with the administration involving Community law, including human rights issues.

In putting forward these proposals for change, I am conscious that the Treaty of Amsterdam is about to come into effect. The challenges created by the Treaty's provisions concerning an area of freedom, security and justice demand a solution which could be accepted and implemented rapidly. The project that is before the seminar is more comprehensive and demanding. Anyhow, I believe that looking for the ideal solution may take a lot of time, but usually everybody benefits from discussing such an ambitious project by the inspiration it gives and it also opens the possibility for partial reforms.

I hope that these thoughts can help stimulate the discussions of this Forum.

Thank you for your attention.