

## **Speech of the European Ombudsman -Committee on Petitions Introductory remarks by the European Ombudsman, Jacob Söderman**

Speech

Mr Chairman!

I am grateful for this opportunity to address the Committee concerning my Annual Report for the year 1998, which is already in the course of preparation. As the Committee is aware, elections to the European Parliament are to be held next year. It is therefore necessary to advance the normal timetable for the presentation of the Ombudsman's Annual Report, so that it can be dealt with by the present Legislature. I understand that the report of the Committee on the Ombudsman's Annual Report could be debated in the plenary session in April 1999, together with the report on its own activities.

Establishing the office of European Ombudsman was one of the most important achievements of the Maastricht Treaty in relation to the citizenship of the Union. The possibility to apply to the Ombudsman is one of the rights of European citizenship, alongside the right to petition the European Parliament. In my first Annual Report for 1995, I announced that I would propose possible reforms and changes in the mandate, powers or procedures of the Ombudsman in the Annual Report for 1998, in the light of the experience gained since we began work in September 1995. In view of the importance of these questions, it is right for me to share with the responsible Committee at an early stage my thoughts on what is still needed fully to establish the Ombudsman's office, so that it may serve the European citizens as effectively as possible.

The structure of the 1998 Annual Report will be the same as that for the two previous full years of activity, 1996 and 1997. All cases which raise significant issues of principle will be included, as well as those raising new issues about the competence or procedures of the Ombudsman, and those which contain findings of general interest. For those who wish to study all cases closed after an inquiry, the Website has provided this information in a fresh and comprehensive form since July 1998 by publishing all decisions in English and in the language of the complainant.

*RESULTS*



When the 1997 Annual Report was dealt with by the European Parliament, some critical voices suggested that the Ombudsman had success in only a small percentage of cases. This view was reached on the basis of all received complaints, including those which are outside the mandate. I do not believe that this way of judging the results of an Ombudsman's activities is really fair. There is not much that can be done about a complaint which is outside the mandate, other than to try to advise the complainant or to transfer the complaint to a competent body. We manage to do this in almost 80% of such cases.

Naturally the statistics for the full year of 1998 will not be available until early next year. However, I can inform you that up to 15 November, the Ombudsman's office has received 1203 new complaints in 1998, compared with 1181 for the whole of 1997 and 842 in 1996. We have also launched one own-initiative inquiry. We have closed a total of 1113 cases, compared with 1271 in 1997 and 816 in 1996, including 152 cases closed with reasoned decisions as compared with 101 in 1997. In 45 % of these cases, either the institution settled the matter, a friendly solution was found, or the case was closed with a critical remark. In 1997 and 1996, the equivalent figures were 40% and 35% respectively, so we are continuing to make steady progress. One draft recommendation has also been made.

We have also opened 143 new inquiries so far this year. This compares with 200 for 1997 and 201 for 1996. I expect the figure for new inquiries to be higher by the end of the year because my staff have had to devote considerable time to drafting decisions and preparing the Annual Report. For the rest of this month and next, priority will go to dealing with the new admissible complaints.

During 1998, there was a finding of no maladministration in half the cases. A finding of no maladministration is not always negative for the citizen. The process of inquiry requires that the institution explain to the complainant what it has done and why. In some cases, it even convinces the complainant that it has acted properly.

It is always necessary for an Ombudsman office to keep close watch over its results from the point of view of the citizen. There is still much to be done in this field, but we should not forget that there has been a continual improvement in the outcome of the cases and the number of cases dealt with. The main aim should be that the time taken to deal with a case be shortened during the next year. The target of one month to decide on admissibility and one year to close a case after an inquiry has not yet been fully reached, but should become a reality during the years to come.

Positive results can often be achieved through own-initiative inquiries conducted by the Ombudsman. The day to day handling of complaints from citizens may bring particular problems or recurring issues to the Ombudsman's attention. In such cases, a positive initiative by the Ombudsman to address the matter in question may be necessary. In November 1998, I launched an inquiry into the existence and the public accessibility, in the different Community institutions and bodies, including the European Parliament, of a Code of good administrative behaviour for officials in their relations with the public.



The idea of such a Code has had the consistent support of the European Parliament, where Mr Roy PERRY MEP, rapporteur for the report of the Committee on Petitions on its own activities in 1996-1997, called for a code of good administrative behaviour to be established for Community institutions and bodies. The Parliament has stressed *"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"*.

The terms of the inquiry and the draft list of rules and principles to be contained in a Code are available here today in French and English. I hope that it will be possible for the Ombudsman to announce positive results from this initiative in a future Annual Report.

#### *FREEDOM OF MOVEMENT*

In the original Spanish proposal to establish a European Ombudsman office, the idea was that the Ombudsman should supervise the rights of the European citizens under Community law at all levels in the European Union, even at the national, regional or municipal level. The high number of complaints which are outside the mandate, still about 70% of complaints received, indicates that the European citizens do not understand that the mandate of the European Ombudsman is limited only to the activities of the Community institutions and bodies.

An analysis of complaints outside the mandate shows that many such complaints concern the right to freedom of movement within the Union. Freedom of movement is one of the rights of Union citizenship guaranteed by Article 8a of the Treaty. Would it not be appropriate for the European Ombudsman to be able to assist the European citizens, in order that they benefit from this fundamental right conferred upon them?

To me it seems totally proper to believe in the principle of subsidiarity and to try consistently to promote the idea that national ombudsmen and similar bodies be encouraged and assisted in dealing with complaints from European citizens concerning Community law. This will be even more relevant when the Treaty of Amsterdam enters into force, questions of visa, asylum and foreigners' rights, which are classic complaints issues for ombudsmen and similar bodies at a national level, into the domain of Community law. The right to petition the European Parliament should also be made better known, especially in matters of principle or with more political significance.

As our cooperation with the national and regional bodies has been developing so positively, I am not prepared to propose any change at this point concerning the mandate of the European Ombudsman as laid down in the Treaty, but undertake to increase my efforts in this field.

What really could help the citizen would be that all remedies under Community law be clearly mentioned in the Treaty, in order properly to inform the European citizens of their rights in this respect. In a society governed by the rule of law, the courts constitute the main system through which the rule of law is upheld. At the moment, however, there is no provision which informs the



citizen of the vital role played by national courts in ensuring respect for Community law. Furthermore, the right to complain to national ombudsmen and to petition parliaments in cases of conflicts with the administration involving Community law should also be mentioned in the Treaty. Each Member State should have an obligation to ensure that its legal structure includes an effective and appropriate non judicial body to which citizens may apply for this purpose.

I also wish to underline that the right for a European citizen to complain to the European Commission about a possible breach of Community law of a Member State should be included in the Treaty.

This seems to be the only way to guarantee the status of the citizens as a party in this process, and to ensure proper and transparent dealing with their complaints in the future.

#### *THE NEED TO CHANGE THE OMBUDSMAN'S STATUTE*

The European Parliament has taken an initiative to change the Financial Regulation in order to establish an independent budget for the European Ombudsman. This initiative is to be welcomed if our office is given the necessary time to adjust, so that the dealing with complaints is not hampered. An independent budget from the year 2001 would be realistic in this respect. This timetable would also give the time necessary to make the required amendment to the Ombudsman's Statute.

Another issue concerning the Statute is of more substantial importance. It concerns the limitations for inquiries set out in Article 3 (2), according to which access to a file can be refused on "*duly substantiated grounds of secrecy*" and officials and other servants of Community institutions and bodies, when testifying at the request of the Ombudsman, "*shall speak on behalf of and in accordance with instructions from their administrations and shall continue to be bound by their duty of professional secrecy*".

I believe these limitations are unnecessary and inappropriate. The whole idea of an Ombudsman inquiry is that the citizens can expect that all relevant facts and documents are available to the Ombudsman, even when the information cannot be fully released to the public because it is classified. In every case, the citizens should know that the Ombudsman's inquiries are not restricted, and that he can inspect all necessary files and take all needed testimonies.

The limitations laid down on the hearing of witnesses are unacceptable because, if understood literally, they could even oblige a witness to lie (for example to cover up a fraud case) if instructed to do so by superiors in the administration. To make a reliable inquiry possible, witnesses should only be required to speak the truth and release all relevant facts during an inquiry. The reasoning behind the present provision in the Statute is in fact an obstacle to dealing properly with cases of corruption and fraud within the European administration. If the aim is that the Ombudsman's inquiries should contribute to fighting possible corruption and fraud in the administration on the basis of complaints or initiatives, these inappropriate



limitations should be removed.

In practice, the process of taking testimony has not so far been initiated in any case. Nor has the Ombudsman yet been refused access to a file, although conversations and disputes have arisen with the European Commission because of legal analysis suggesting that the rules on public access to documents can be used to restrict the Ombudsman's power to inspect the files in a case. This error reveals a fundamental misunderstanding of the nature of the Ombudsman's power to inspect the file, which is mainly to verify the administration's answers to a complaint. It does not result in public access to the documents concerned.

To avoid doubt, it would be better for the Treaty to make clear that the Ombudsman has full access, for the purposes of his inquiries, to the files and documents held by Community institutions and bodies and that officials must give full and truthful testimony to the Ombudsman. Naturally, the requirement in Article 4 (1) of the Statute that the Ombudsman and his staff must not disclose documents or reveal information obtained in the course of inquiries should remain in force.

#### *FRUITFUL COOPERATION*

The Rules of the European Parliament concerning the European Ombudsman have recently been renewed and are almost up to date. It seems necessary however to insert a provision concerning how Parliament deals with the Annual Report and with possible special reports of the Ombudsman, in order to ensure that the main responsibilities in this respect be conferred to one responsible committee within the Parliament, which when appropriate could request expert opinions from other committees depending on the substance of the report. There is already a draft report ready about this issue and most likely the matter will be settled before the end of this Legislature.

There might be discussion about further rules regarding cooperation between the European Parliament, its responsible committee and the Ombudsman, but to me this does not seem necessary. The goodwill so far demonstrated in the cooperation has produced positive results and most likely the constructive and flexible cooperation will continue and produce ever better results. Such a positive attitude and atmosphere can never be successfully replaced by even the most detailed and sophisticated rules.

Mr Chairman!

I conclude these introductory remarks by expressing my heartfelt thanks to you and to all the Members of the Committee on Petitions for your profound efforts and consistent help in the establishment of the Ombudsman's office, in order that it might serve and support the citizens of Europe, and thus enhance the relations between those citizens, the European Union and its administration.



Appearing before the Committee is always a precious opportunity for the Ombudsman and I look forward to the discussion and exchange of views that will now take place.