

## Speech of the European Ombudsman -The Maastricht Treaty and the Citizens of Europe

### Speech

When the Maastricht Treaty on European Union entered into force in November 1993, every national of a Member State became, in addition, a citizen of the Union.

The provisions concerning Union citizenship are contained in the Treaty establishing the European Community. Hence they are part of Community law.

Following the re-numbering introduced by the Amsterdam Treaty, the relevant provisions are now Articles 17 to 22 of the EC Treaty.

Article 17 reads as follows:

*1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship. 2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.*

### **1 The special rights of European citizenship**

Articles 18 - 21 EC set out a number of special rights of European citizens.

Article 18 provides that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States.

Article 19 provides that citizens who are resident in a Member State other than that of which they are a national, shall possess the right to vote and stand as a candidate in elections to the European Parliament, as well as in municipal elections.

Article 20 confers on every citizen in the territory of a third country, in which the Member State of which he is a national is not represented, an entitlement to protection by diplomatic and consular authorities of any Member State, on the same conditions as the nationals of that State.

Article 21 provides for citizens to have the right to petition the European Parliament and to complain to the Ombudsman, in accordance with Articles 194 and 195 of the Treaty respectively.



The Amsterdam Treaty added a new paragraph to Article 21. This provides that every citizen of the Union may write to a Community institution in any official language and have an answer in the same language. The same provision applies when a citizen writes to the Ombudsman.

The final Article of the part of the EC Treaty dealing with citizenship is Article 22, which requires the Commission to report on the application of the citizenship provisions every three years. It also empowers the Council to adopt provisions to strengthen or add to the rights of citizenship and to recommend the new provisions to the Member States for adoption in accordance with their respective constitutional requirements.

## **2 The significance of Union citizenship**

The European Community was first established over 40 years ago as the European *Economic* Community. Its structure and institutions at that time were largely intergovernmental and technocratic. The Court of Justice soon took the initiative to change the situation, by deciding that the subjects of the Community legal order include not only Member States, but also their nationals. The Court has also defined the Treaties as the constitutional charter of a Community which is based on the rule of law and insisted that fundamental rights are an integral part of Community law.

By establishing Union citizenship, the Maastricht Treaty built on the Court's achievements in securing the rights of the individual. Citizenship represents a commitment to give full effect to the principles on which the European Union is founded: liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

In the field of political rights, as well as conferring on citizens the right to vote and stand as a candidate in local and European elections, the Maastricht Treaty gave "constitutional" status to the right to petition the European Parliament. Previously, the right of petition had existed only in the rules of the Parliament. According to Article 194 any citizen of the Union and any natural or legal person residing or having its registered office in a Member State may petition the European Parliament *"on a matter which comes within the Community's fields of activity and which affects him, her or it directly"*.

The Maastricht Treaty also created the office of European Ombudsman, in order to enhance relations between citizens and the Community administration. The European Ombudsman's task is to deal with maladministration and to help secure the position of citizens by promoting good administrative practices. Any citizen of the Union may complain to the Ombudsman about maladministration in the activities of Community institutions or bodies, with the exception of the Court of Justice and Court of First Instance acting in their judicial role. Complaints may also be made by any natural or legal person residing or having its registered office in a Member State.

## **3 Citizens and the administration**

When the European Ombudsman investigates whether there is maladministration, the first and most essential task is to establish whether the Community institution or body has acted lawfully.



It can never be good administration to fail to act in accordance with the law. In this context, I would like to recommend to you the Council of Europe's handbook entitled *"The Administration and You"*, published in 1996 which contains an excellent summary of the main principles of administrative law. Of course, the European Ombudsman is always mindful of the fact that the highest authority on the meaning and interpretation of Community law is the Court of Justice, which often makes reference in its judgements to the principles of good administration.

In many States, the principles of good administration are set out explicitly in a code. The contents of such a code normally include at least some of the following: the giving of reasons for decisions; fair procedures and the rights of defence; avoidance of discrimination; taking into account all relevant considerations and excluding irrelevant ones; maintaining adequate records; avoiding unnecessary delay; providing information in a clear and understandable form; giving correct advice; applying established rules and procedures; if a decision is unfavourable, providing information about the possibilities of review; acting consistently; acknowledging and replying to letters; transferring letters to the competent service; apologising for errors; having a proper system for dealing with complaints.

In the case of the Community administration, there are numerous sets of rules applying to specific areas of administration, but no general code. My view is that a Code of good administrative behaviour would have benefits both for the administration and for citizens, provided that its provisions were sufficiently concrete and precise. By informing officials of the service they should provide it would enhance the quality of administration and help to maintain consistency between different institutions and agencies. For citizens, a code would have the additional advantage of making more transparent and concrete the service which they are entitled to expect. For these reasons, I began an own-initiative inquiry in November 1998 into the matter and have produced a first draft of a possible such Code, which is available here today. I would be glad to hear your views on the draft.

#### **4 Remedies for citizens at national level**

Although I am convinced that the adoption and publication of a code of good administrative behaviour would enhance relations between citizens and the Community institutions and bodies, it must be remembered that Community law and policies are administered largely by authorities at national, regional and local levels in the Member States.

Take, for example, the right to move and reside freely in the territory of the Union. This is a right of citizenship (Article 18) and is one of the Union's main achievements for citizens. 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.

These obstacles to free movement often result from the incorrect or incomplete application of Community law by national, regional and local administrations.

In the negotiations leading up the Maastricht Treaty, the Spanish government made a proposal for a European Ombudsman to promote and supervise the application of the European citizens' rights at *all* levels of administration in the Union. As this was not accepted by all Member States at the time, the Danish government put forward a proposal for an Ombudsman whose primary task would be to supervise the activities of Community institutions and bodies.

Subsequently there have been voices raised calling for the European Ombudsman's mandate to be broadened, along the lines of the original Spanish proposal. Personally I continue believe in the principle of subsidiarity.

As regards *judicial* remedies, the Court of Justice invented and implemented the principle of subsidiarity before the word itself was ever heard in debates about the Union. From the time of its decision in *van Gend en Loos* (1) , the Court progressively developed the principle that national courts must uphold the rights that individuals enjoy under Community law. In particular, national courts should protect such rights vis-à-vis the public authorities of the Member States, through the application of directly effective provisions of Community law and indirectly through the award of damages, according to the principle established in the *Francovich* case (2) .

Since Community law is law in the Member States, its application by the national authorities can be also supervised by national ombudsmen. 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. The Catalanian ombudsman, Antonio Canellas, organized in Barcelona in October 1997 a similar seminar for the regional ombudsmen and regional petition committees to promote the knowledge of Community law on that level. 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.

## **5 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, successful cooperation between national ombudsmen and the European Ombudsman is a better way to promote the rights of European citizens than to widen the jurisdiction of the European Ombudsman beyond the Maastricht boundaries. However, I also believe that 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.

(1) Case 26/62 [1963] ECR 1.

(2) Joined Cases C-6 and C-9/90 [1991] ECR I-5357.