

Speech of the European Ombudsman -Lex Mundi European Regional Meeting

Speech

Mr Chairman,

Ladies and Gentlemen,

The European Ombudsman was established by the Maastricht Treaty as one of the elements of citizenship of the European Union. The creation of the Ombudsman's office was meant to underline the commitment of the Union to open, democratic and accountable forms of administration. The setting up of the office was meant to enhance relations between European citizens and the administration.

One of the rights of Union citizenship is to complain to the Ombudsman about maladministration in the activities of Community institutions and bodies. The Ombudsman can also start an inquiry on his own initiative. He has the power to obtain documents and information from Community institutions and bodies as well as from Member States. When the Ombudsman finds maladministration, he seeks a friendly solution where possible. He can also make recommendations to the institution or body concerned and, as a last possibility, make a report to the Parliament.

The Ombudsman also helps promote - within the limits of his mandate - both the effective implementation of citizens' rights at all levels of governance in the Union and transparency in the work of Community institutions and bodies.

Therefore, it is of importance that the Ombudsman's own activities should be as open and transparent as possible, both so that European citizens can follow and understand his work and to set up a good example. The Ombudsman's reports to the European Parliament, including the Annual report, are published in the Official Journal. A register of complaints is open to the public and the decision which finally closes each complaint is also available. The complainant has the right to ask for a confidential treatment of his complaint and this has to be granted. Only a few complainants have asked for a confidential treatment so far.

An initiative on transparency



Right from the beginning of the mandate, there have been a lot of complaints about lack of transparency. In the present stage of the Community law there is no Treaty provision or general Community legislation about public access to documents. However Declaration 17 attached to the Final Act of the Treaty on European Union is in the following terms: "*The conference considers transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration.*"

It also recommended the Council and the Commission to adopt their own, publicly available, rules about access to documents. They adopted a joint Code of Conduct (OJ 1993 L341/41) implemented through separate Council and Commission decisions in 1993 and 1994. Furthermore the commitment to transparency appears from a judgement of the Court of Justice (Netherlands v. Council) given in April 1996. The court states that Community institutions and bodies have a legal obligation to take appropriate measures to deal with requests for access to documents and to act in conformity with good administration.

However, the other Community institutions and bodies had not adopted any rules on public access to documents. This led me to begin an own-initiative inquiry into public access to documents in June 1996. The inquiry covered fifteen Community institutions and bodies, most of which, but not all, intended to follow the example of the Council and the Commission and to adopt rules governing public access to documents.

In January this year, the conclusion of the inquiry was published: European citizens are entitled to expect every Community institution and body to have rules about access to documents and the failure to adopt such rules could be maladministration. A recommendation was then addressed to the institutions and bodies that had not already adopted rules that they should do so. The principle of adopting rules has been generally welcomed. Some institutions and bodies have already sent me a copy of the rules they have adopted in response to the recommendation and others have asked for a delay of a few months to do so. The own-initiative inquiry will resume in September - October 1997.

A duty to have rules is one thing. What the rules should contain is another question. In its present state, Community law does not provide an answer. The Commission and Council rules are quite restrictive. For example, they allow a blanket refusal of access to documents that do not originate in the institution itself. In my view, the best way forward is to make access to documents a right of citizenship. This is a task for the conference that is now considering revision of the Union treaties to be considered in its scheduled final meeting in Amsterdam in June 1997. A citizen's right of access to documents would have to be subject to a clearly defined list of exceptions of the kind that exists in most national legislation on this matter. These should be set out in the Treaty itself.

The secrets of the guardian of the treaty

I have also received a lot of complaints about the European Commission's activities in supervising the Member States's fulfilment of their obligations under Community law. The



Commission's role as the "Guardian of the Treaties" is of vital importance for the rule of law in the Community, because only the Commission has power to bring a Member State before the Court of Justice under Article 169 of the Treaty. The Commission has invited individuals to make complaints to it about infringements of Community law by Member states. In several cases, citizens who have complained to the Commission have subsequently complained to the Ombudsman, alleging maladministration in the way the Commission has dealt with their complaint.

It is clear from my inquiries into these complaints that the procedure currently used by the Commission causes considerable dissatisfaction amongst European citizens, some of whom regard the Commission's approach as arrogant and high-handed. It is fair to state that there is no legal obligation for the Commission to improve the transparency of these procedures. On the other hand, nor is there any legal obstacle to doing so. It is basically a question of credibility of the commitment to improve the relations between the European administration and European citizens.

I have recently begun an own-initiative inquiry to assess the possibilities of improving the quality of these procedures. I have asked the Commission to inform me by the end of July 1997, of the procedural guidelines and instructions issued to staff dealing with the administration of citizens' complaints and about any reform plan that the Commission envisages for improving the transparency of its activities in this field and allowing citizens to participate more fully in the administrative procedure under Article 169. I believe that the inquiries into public access to documents and the article 169 procedure deal with aspects of transparency that are of great significance for European citizens. They will soon be joined by a third own-initiative inquiry, also dealing with transparency.

A more open recruitment procedure

The recruitment procedures for Community officials are a frequent subject of complaint to the Ombudsman. It appears from these complaints that many citizens who participate in competitions are dissatisfied with the extent of the information available to them about their performance. The proceedings of selection boards are confidential, but it appears worthwhile to examine how much information could be given, to improve the transparency of the selection process, without impairing that confidentiality. Is it necessary, for example, that the names of members of the selection board should be kept secret?

An open and transparent European administration

I am personally convinced that all public administration should be open and transparent to give the citizens a fair chance to follow, understand and judge how the administration and its civil servants are carrying out their obligations and activities. I do believe this is essential in improving the relations between the administrations and the European citizens.



Many have asked me how I have found the quality of the work done within the Community institutions and bodies. The greatest part of the work I have had a possibility to follow has been carried out by competent and dedicated civil servants, who usually have proved extraordinarily high language skills. On the general level, I have not seen any reasons to hide this performance or the results of this work behind the curtains of confidentiality. Of course there must be exceptions from the general rule of publicity, as for example in the case of privacy, defence and security or business secrecy, but confidentiality should be an exception, not a general rule. Transparency is of course a true precondition to guarantee a true notion of accountability for any activity.

For the European Union, it is a must to go for a more transparent and open way to perform in order to ensure to confidence of the European citizens in its activities.