



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

Speech

Mr Chairman, Ladies and Gentlemen:

In the first part of this intervention I shall explain the role of the European Ombudsman and how Human Rights issues relate to his work. In the second part of the intervention I shall address the issue of how to guarantee the respect of Human Rights by the Institutions and bodies of the European Union.

The European Ombudsman

1. The Office of the European Ombudsman was created by the Maastricht Treaty and the European Parliament elected me as the first European Ombudsman in 1995. The Ombudsman's main task is to deal with possible instances of maladministration in the activities of the Community Institutions and bodies. He carries out inquiries; sometimes on his own initiative, but usually on the basis of complaints. The results of the inquiries are published in reports, which may include draft recommendations.

2. It is important to underline that the mandate of the Ombudsman concerns only the Community Institutions and bodies. Community law and Community policies are mostly administered by national authorities, but the European Ombudsman cannot supervise them. It is for the national Ombudsmen and similar bodies - usually Petitions Committees - to supervise national authorities and ensure that they respect the rights that Community law confers upon citizens. In order to enhance the awareness of Community law issues, the European Ombudsman has invited national Ombudsmen and similar bodies to participate in a liaison network.

3. The European Ombudsman inquires into 'maladministration' in the activities of Community Institutions and bodies. The term 'maladministration' is not defined by the Treaty. In the first Annual Report, for 1995, the Ombudsman gave a number of examples of maladministration and made clear that he "must take into account the requirement of Article F of the Treaty on the European Union that Community Institutions and bodies are to respect fundamental rights."

The Annual Report for 1997 contains a definition of maladministration, based on a survey of national Ombudsmen and similar bodies. This definition, which the European Parliament has



supported, is that maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it. The rules and principles with which the administration must comply, obviously include Human Rights standards.

Cases involving Human Rights

4. Up to now, I have not come across many complaints which raise issues of Human Rights. In one case the Ombudsman found that the European Commission should publish guidance about a fair balance between the individual right of freedom of expression of Community officials and their duties and responsibilities under the Staff Regulations for Community officials.

This proposal followed an inquiry into a complaint from Sweden. The background to the complaint was that a Swedish newspaper *Dagens Politik* had published remarks, attributed to a Deputy Director-General of the Commission, which were critical of the working methods of the Commission. In reaction to this, the Commissioner responsible addressed a letter to the official reminding him of the 'duty of reserve' which the Staff Regulations impose on all officials. After the content of this letter was reported by another newspaper, a Swedish citizen made a complaint.

There was no disciplinary action against the official. Taking that into account, the Ombudsman found no maladministration in the specific case. However, he commented on the fact that the Commission had not mentioned the issue of freedom of expression in its opinion on the complaint. The Ombudsman referred to the fact that, according to the Court of Justice of the Community, the ECHR provides a basis for Human Rights as general principles of Community law. The Ombudsman drew attention to the decision of the European Court of Human Rights in the case, *Vogt v Germany* (1). According to this decision the Convention's guarantee of freedom of expression also applies to civil servants and a 'fair balance' must be struck between freedom of expression and the special duties and responsibilities of civil servants.

5. Another Human Rights issue was raised by complaints concerning age discrimination in recruitment by the Community institutions, which routinely apply a maximum age limit, normally 35 years. Given the importance of the issue and the number of complaints, I decided to launch an inquiry on my own initiative. In opening the inquiry, the Ombudsman referred to the ban on discrimination in Art 14 of the ECHR and Article 2 of the United Nations International Covenant on Civil and Political Rights. These provisions amongst others appeared to suggest the need to examine thoroughly the use of age limits by the Community institutions.

How does one improve the protection of Human Rights?

6. There has been much discussion about how to guarantee that the Institutions and bodies of the European Union respect Human Rights, both here and at an earlier Conference which was held in Brussels in May 1998. One long-standing proposal is that the Union should adhere to the ECHR, so that individuals may apply to the European Court of Human Rights in Strasbourg for a remedy against a Union institution and body (2). Others do not find such an adhesion to the Convention necessary (3). It has been suggested that the European Union should



elaborate its own catalogue of Human Rights. Another line of thinking has been that jurisdiction in Human Rights matters, both as concerns the Union Institutions and the Member States, should be conferred upon the Community Courts in Luxembourg, thus leaving the Strasbourg Court only with the control as concerns States which are not Members of the Union (4) . None of these proposals are likely to win ready acceptance.

7. I would like to propose another way forward: 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 the majority of the Member States have ratified.

Also, it would be of great importance that the new Treaty provision informs citizens clearly of the remedies under Community law. In a society governed by the rule of law, the courts constitute of course the main system through which the rule of law is upheld. At the moment, however, there is no provision which informs the citizens of the vital role played by national courts in ensuring respect for Community law, including Human Rights principles. 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 and appropriate non-judicial body to which the citizens may apply for this purpose. The network that the European Ombudsman and the national Ombudsmen Offices and similar bodies are setting up is aimed at making Community law a living reality, also for ordinary citizens.

As well as seminars on Community law issues for officials from the national Ombudsmen Offices and similar bodies, the network allows the national Offices to address queries about Community law to the European Ombudsman who either provides an answer himself or forwards the query to the competent Community Institution for an opinion.

8. Lastly, I would like to suggest that the Union should also co-operate closely with the Council of Europe, in Human Rights matters, especially when drafting new regulations and directives relating to immigration, visas, asylum and other areas of law where Human Rights are of major importance. It would be better for the Union firstly to rely on the long experience and high reputation of the Council of Europe, to which the Union's Member States have largely contributed, before setting up new and untried agencies, whether inside or outside the European Commission.

9. It could also be valuable for Community Institutions and bodies to accept a Code of good administrative behaviour for their dealings with the citizens. Amongst other things, such a Code could help ensure compliance with the relevant Articles of the ECHR (e.g. Articles 6 and 10) and with other principles concerning the relations between administrative authorities and private persons, which the Council of Europe has helped promote. Such a Code could for instance contain provisions on reasoning and the right to be heard. As well as informing citizens, the Code could also provide useful guidance for civil servants on ethical standards, in line with a recent recommendation of the OECD.



Thank you for your attention.

(1) Judgment of 26 September 1995, Series A no. 323.

(2) The European Commission presented its first proposal for the Community joining the Convention in 1979 (see Bulletin of the European Community, 1979, Supplement 2). For the arguments underlying this line of thinking, see amongst others, Gosalbo Bono, 'Derechos humanos y Derecho comunitario', in *Revista de Derecho Comunitario Europeo* 1997, vol I, p. 29.

(3) See for this line of thinking, amongst others, Rodriguez Iglesias and Valle Galvez, 'Tribunal de Justicia de las CC. EE., Tribunal Europeo de Derechos Humanos y Tribunales Constitucionales', in *Revista de Derecho Comunitario Europeo* 1997, vol II, p. 329, Moitinho de Almeida, 'Protección de los Derechos Fundamentales en la jurisprudencia del Tribunal de Justicia de las Comunidades Europeas', in 'El Derecho Comunitario Europeo y su aplicación judicial' (collective work directed by Rodriguez Iglesias and Liñan Noguerras), Madrid 1993, p. 130.

(4) Toth, 'The European Union and Human Rights: The way forward', in *Common Market Law Review* 1997, p. 491.