

# **‘DEMOCRACY, ACCOUNTABILITY AND THE INSTITUTION OF OMBUDSMAN’**

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In modern democracies, citizens call public authorities to account not only at elections, but also through on-going processes of monitoring and scrutiny. One such mechanism of accountability is the right to complain to the Ombudsman. The Ombudsman has a key role to play in improving the quality of democracy for the benefit of citizens.

The need to improve the quality of democracy in the EU, or to resolve the vexed issue of the Union's democratic deficit, has long been acknowledged. The European Ombudsman was established by the Maastricht Treaty to help bring the Union closer to citizens. More recently, great efforts have been made to improve the quality of democracy for citizens, most notably in the form of the draft Constitution for Europe, currently being discussed in the Intergovernmental conference. The draft Constitution rationalises the existing Treaties, helps clarify the distribution of powers in the Union and takes up the Charter of Fundamental Rights. One of the references to the European Ombudsman in the Constitution comes in Article 48 under the heading ‘The democratic life of the Union’.

There is still work to be done to improve the Constitution in the interests of a better democracy. The future Constitution should include a clear and comprehensive system of non-judicial remedies for citizens. As European Ombudsman, I will continue my quest to improve the Constitution for the benefit of citizens, with the help of my national colleagues from the current and future Member States.

- As an academic by profession, it is a great pleasure to speak in one of the oldest universities in the country; one that has played a key role in the history of Hungarian education and culture; one that has opened its doors to students from abroad right from the start.

- Interested to read that the Faculty of Law aims to produce graduates who have a thorough knowledge of the legal and political theory of the legal system of the Republic of Hungary, its specific laws and the procedures involved in their implementation; an exciting time to study law, in view of the significant changes that are being introduced with a view to EU accession; I hope that my speech today, that will touch upon the most ambitious „law-making” project in the Union's recent history – the draft Constitution for Europe –, will address some of the key issues that you encounter in your studies.
- Purpose of my visit to Hungary is two-fold: to increase awareness among citizens of the rights under Union law that they will enjoy from 1 May 2004; to further develop relations with my ombudsman colleagues, the Parliamentary Commissioners. Met already today with Mr. Lenkovics, the Parliamentary Commissioner for Civil Rights and his Deputy, Mr. Takács, Mr. Kaltenbach, Parliamentary Commissioner for National and Ethnic Minority Rights and Mr. Péterfalvy, Parliamentary Commissioner for Data Protection and Freedom of Information.

### **The development of the institution of Ombudsman**

- In modern democracies, citizens call public authorities to account not only at elections, but also through on-going processes of monitoring and scrutiny. One such mechanism of accountability is the right to complain to the Ombudsman. The Ombudsman has a key role to play in improving the quality of democracy for the benefit of citizens.
- The establishment of ombudsman has been an important element of the transition to democracy in many parts of the world.
- The institution of ombudsman has become a reality in most European countries. The national legal systems provide for the possibility either to complain to an Ombudsman or petition the Parliament as a constitutional or legislative principle. From the current 15 EU Member States, 11 include this right in their Constitutions. All accession countries joining the EU in 2004 have an ombudsman. In Hungary, the ombudsman enjoys constitutional status, while the right to petition the Parliament is equally contained in the Constitution.

## The European Ombudsman

- The need to improve the quality of democracy in the EU, or to resolve the vexed issue of the Union's democratic deficit, has long been acknowledged. The European Ombudsman was established by the Maastricht Treaty to help bring the Union closer to citizens.
- The proposal for a European Ombudsman had been brought up in the discussions about Citizens' Europe when the idea that the European Union is not just economic, but also for citizens, came to the fore. The Maastricht Treaty also introduced the notion of European citizenship.
- The Ombudsman is elected by the European Parliament. The Parliament elected the first European Ombudsman in 1995.
- I was elected European Ombudsman on 15 January of this year and began work on 1 April. Before becoming European Ombudsman, I was the first National Ombudsman of Greece, having set up the office there in 1998.

## My priorities

- *To build on the achievements of the first European Ombudsman:* as the Union's second Ombudsman, I have the benefit of an office that is already well established and respected by the EU institutions. I am keen to build on that success, to raise the bar higher and to continue to improve the service that the Ombudsman provides to European citizens.
- *It is incumbent upon me to lead the institution of the European Ombudsman forward during a historic moment* in the long process shaping the identity of modern Europe. The Decision at the Copenhagen summit in December 2002 to launch the most ambitious enlargement in the history of the EU constitutes a further step in the reunification of Europe. For the European Ombudsman, the challenge associated with this moment of transition is dual: in line with the traditional role of ombudsmen, the European Ombudsman will be called upon to help *promote the rule of law and good administration* in the accession countries; at the same time, he will have to actively address the major concerns which, for historic reasons, citizens in these countries have with respect to the *defence of human rights*.

- *To make European citizens aware of their rights and how to use them:* it is only when citizens can exercise their rights and enjoy them as a daily reality that they will develop trust and confidence in the Union and its administration. Such an eventuality will enhance the quality of democracy at both the national and the European levels.

### **The work and achievements of the European Ombudsman**

- The European Ombudsman investigates complaints about maladministration in the institutions and bodies of the Union, for example the Commission, the Parliament and the Council.
- Examples of maladministration are unnecessary delay, discrimination, abuse of power, negligence and refusal of information.
- The European Ombudsman cannot deal with complaints about national, regional or local administrations, even when the complaints concern European Union matters. Such complaints should normally be addressed to the national, regional or local ombudsman.
- The European Ombudsman is not an appeals body for decisions taken by national courts or ombudsmen.
- Since starting work in 1995, the Ombudsman has dealt with over 13,000 complaints. Much progress has been made in that time to render the EU administration more open, accountable and service-minded – key components of a modern democracy.
- Examples of the Ombudsman's achievements: most of the EU institutions and bodies introduced rules on access to documents, the European Parliament and Commission ended age discrimination in recruitment competitions, the European Parliament adopted the European Code of Good Administrative Behaviour and most institutions and bodies have adopted similar codes to govern relations between citizens and the administration.

### **The European Ombudsman's broader role**

- The European Ombudsman was an Observer to the European Convention, as in the earlier Convention which drafted the *Charter of Fundamental Rights*. The European Convention adopted the draft Constitution for Europe in July this year. The draft Constitution is currently being discussed in the Intergovernmental conference that began on 4 October.

- The draft Constitution goes a long way towards improving the quality of democracy in the Union. It rationalises the existing Treaties, helps clarify the distribution of powers in the Union and takes up the Charter of Fundamental Rights.
- The European Ombudsman is included in the Constitution in Article 48 under the heading 'The democratic life of the Union'. The right to complain to the European Ombudsman is mentioned in Article 8 under the heading 'Fundamental Rights and Citizenship of the Union'.
- Among the Ombudsman's proposals to the Convention were the need to include the Charter of Fundamental Rights in the Constitution and the importance of making judicial and non-judicial remedies available to citizens to give effect to their rights.
- The Convention agreed to make the Charter of Fundamental Rights Part II of the Constitution.
- The Charter contains the *right to good administration* (Article 41). Ensuring good administration is essential for citizens to be able to enjoy their rights, including human rights, as an everyday reality.
- When the Constitution comes into force, the Charter will become legally binding as such, not only for the Union institutions, but also for public administrations in the Member States *when they implement Union law*.

### **Rights and remedies**

- In societies governed by the rule of law, rights and remedies go together. If there is no effective remedy when things go wrong, citizens' rights tend to be ignored and the rule of law is weakened.
- To whom can the individual complain if his or her rights under Union law are not respected by the public administration of a Member State? Citizens and residents have the right to petition the European Parliament and the European Commission has certain enforcement powers. Whilst essential, these mechanisms should be remedies of last, not first resort. Citizens who have a dispute with the public administration should normally be able to find a remedy in the Member State concerned.
- National courts have a duty to provide effective judicial remedies, to help ensure fulfilment of their Member State's obligation to implement Union law fully and correctly.

**Non-judicial remedies – the role of the national Ombudsman**

- National ombudsmen should play an important role in helping to make individual rights under Union law, including the Charter rights, a living reality in their public administrations.
- It is my view that the Constitution should include a clear and comprehensive system of non-judicial remedies for citizens. I will continue to press this issue during the Intergovernmental conference.
- The role of the national ombudsman is both to provide an effective non-judicial remedy in cases involving Union law (the Ombudsman's reactive role) and to promote good administration (the pro-active role).

**Co-operation with national ombudsmen**

- My staff and I are ready to assist the national ombudsmen in the accession countries to play a full part in ensuring that individual citizens obtain their rights under Union law and in promoting good administration.
- As a first step, I wrote to the Ombudsmen of all the countries that will be joining the Union next year, inviting them to appoint liaison officers for the European Ombudsman's liaison network. This network facilitates the exchange of information about Union law via a newsletter, an Internet summit and regular meetings.
- The European Ombudsman enjoys close and constructive working relations with the office of the Parliamentary Commissioners in Hungary. I look forward to continuing this collaboration with the Parliamentary Commissioners so that citizens' rights are fully protected and we fulfil our task of holding the public administration to account.

Thank you for your attention.