WALTER HALLSTEIN-INSTITUT FÜR EUROPÄISCHES VERFASSUNGSRECHT

FORUM CONSTITUTIONIS EUROPAE

FCE 3/07

THE EUROPEAN OMBUDSMAN AND A CITIZENS' EUROPE

P. NIKIFOROS DIAMANDOUROS

EUROPÄISCHER BÜRGERBEAUFTRAGTER

Vortrag an der Humboldt-Universität zu Berlin
am 19. März 2007

- ES GILT DAS GESPROCHENE WORT -

Das Forum Constitutionis Europae ist eine gemeinsame Veranstaltung des Walter Hallstein-Instituts und der Robert Bosch Stiftung.

Good evening, ladies and gentlemen

I. Introduction

I am delighted to be here this evening to present my work as part of the series of *"Forum Constitutionis Europae"* lectures at the Humboldt University. I would particularly like to thank Professor Pernice for inviting me to speak this evening. I would also like to express my appreciation to the Walter Hallstein Institut and the Robert Bosch Stiftung which, I understand, are jointly responsible for organising the "*Forum Constitutionis Europae*" events.

As a university professor of political science, I am always pleased to come back to the academic world which, in many ways, is my natural home. As European Ombudsman, I am honoured and delighted to be in this particular forum, where so many key speeches on European integration have been made. I plan to speak for about 45 minutes, so as to allow time for questions and discussion.

My visit to Berlin forms part of my series of information visits to each of the EU Member States. These visits have a dual purpose.

Firstly, I want to raise awareness generally about citizens' rights under EU law and the possibility to complain to an ombudsman if those rights are not respected. The European Ombudsman is competent if the complaint is against a European institution or body. If the complaint is against national, regional or local authorities, it should be addressed to the appropriate ombudsman or similar body in the Member State concerned.

The second purpose of my visits is to further intensify the close working relations that I have with my colleagues in the Member States. Tomorrow, I will meet the Chair of the Bundestag's Committee on Petitions, Ms Kersten Naumann, and on Wednesday morning will participate in a meeting of the Committee.

The overriding objective of our co-operation is to help European citizens and ensure that their complaints are dealt with as quickly and effectively as possible. Hence, the subject of my presentation today is particularly apt: "The European Ombudsman and a Citizens' Europe".
My predecessor, Jacob Söderman, spoke at Humboldt University in 2001 on the subject of "Transparency as a fundamental principle of the European Union". In his conclusion, he emphasised that transparency, or openness, is fundamental to democratic accountability. He said, and I quote, "The citizens of the Union need information about what their institutions have done, what they are doing and what they plan to do. ... This is essential if citizens are to have the confidence in the Union which it so badly needs."

While progress has been made in the area of openness - and I will speak about this later - much remains to be done to strengthen citizens' trust and confidence in the Union.

II. The Current Situation

The future of Europe is currently the object of an intense and turbulent public debate, in which politicians struggle to find a way to bring Europe closer to its citizens and, indeed, to create a "citizens' Europe".

This debate is all the more significant as the Union celebrates its 50th anniversary this year. No-one can doubt the enormous contribution that the Union has made to Europe's progress over the past half century. But the Union, much like anyone else, cannot live on past achievements alone. Whilst this is surely a time for celebration, it is also a time to plan the journey for the future and to ask how we can do better for citizens in the years ahead. Where do the areas for improvement lie?

In a recent Eurobarometer opinion poll, almost one third of Europeans asked said that they think the EU is going in the wrong direction. 43% think that the Union is inefficient — in Germany this rises to 53%. It is clear that citizens do not feel sufficiently involved in EU decision-making and that they feel removed from what they see as the "bureaucratic" and "technocratic" institutions in "Brussels". In 2005, citizens in France and the Netherlands voiced these concerns, among others, through their NO votes on the European Constitution.

The gap between Europe and its citizens raises the issue of the Union's legitimacy. The issue is not a new one. Fifteen years ago the framers of the Maastricht Treaty tried to tackle the problem in a number of ways. They established the citizenship of the Union and the European Ombudsman, to help bridge the gap between citizens and the Union Institutions and bodies. The Maastricht Treaty also introduced the principle of subsidiarity, to ensure that decisions are taken as closely as possible to the citizen. I will devote considerable attention to this important principle during my speech this evening.

The Amsterdam Treaty in 1997 addressed the legitimacy problem through greater transparency. Decisions in the Union should be taken as openly as possible and there is a right of public access to documents for Union citizens and residents. At the end of the year 2000, the inter-governmental conference on the Nice Treaty recognised that the problem of legitimacy remained unsolved. A year later, the Laeken Declaration set in train the process that led, through the European Convention, to the Treaty Establishing a Constitution for Europe, the future of which is the focus of current public debate among political leaders in Europe.
I shall refrain from offering you a grand design for the Union's legitimacy or a road map of how to get there. Those are indeed tasks for political leaders, not for the Ombudsman. I prefer to focus instead on explaining how my everyday work contributes to building a citizens' Europe.

The main theme that I shall develop is the need to ensure that the Union's declarations of values and intentions lead to concrete results in practice. As an Ombudsman, my principal concern is that citizens' rights should be fully respected. This is a huge task, but it is of fundamental importance. Failure to ensure respect for citizens' rights will only lead to greater alienation, disillusionment and scepticism.

But how can we go about this critical task? Ensuring correct and full implementation of European laws and policies at <u>all</u> levels in the Union is vital. I firmly believe that this can only happen

if we succeed in promoting a sense of ownership by the public administrations of the Member States that should put these laws and policies into effect. If they see them as something "external", imposed from "Brussels", rather than as instruments of governance developed with local circumstances and sensitivities in mind, there will be no real willingness to take them on board and implement them fully. The Union's laws and policies will remain ink on paper, and will never become concrete rights enjoyed by citizens.

A vital step in promoting this sense of ownership of EU laws and policies is to encourage participation in EU policy-making. In his speech at this University in 2001, my predecessor underlined the importance of an open and accountable administration in allowing citizens fully to play their part. Equally important are proper procedures for consultation. These are issues that I am regularly called upon to deal with as European Ombudsman, and I will later describe in some detail my efforts to ensure that citizens and civil society organisations can participate effectively at the EU level

Before presenting the work of the European Ombudsman to you in detail, I shall briefly trace the evolution of the ombudsman institution in Europe and beyond. I will then address the evolution of rights under EU law, with a focus on the rights linked to citizenship of the Union, human rights, and the right to good administration. I will then move on to talk about the landscape of available remedies, and in particular, the role that ombudsmen and similar bodies throughout the Union can play in providing an effective non-judicial remedy to citizens who are attempting to exercise their rights under EU law. In concluding, I will underline the importance of ombudsmen working together to promote and defend citizens' rights in the EU.

III. The Evolution of the Institution of Ombudsman

The basic function of an ombudsman is to investigate complaints against public authorities. The courts are the essential institutional guarantors of the rule of law and the possibility to bring judicial proceedings against public authorities is a fundamental right. The ombudsman's role is complementary to that of the courts, offering citizens an alternative remedy, with a different balance of advantages and disadvantages.

Unlike a court, an ombudsman normally has no power to make legally binding decisions. His effectiveness is based on moral authority and, ultimately, on publicity and the ability to persuade public opinion, which can provide public authorities with an effective incentive to comply with an ombudsman's recommendations.

The non-binding nature of decisions allows an ombudsman's procedures to be more flexible than those of a court, so that the ombudsman can act relatively quickly and cheaply, normally at no cost to the complainant.

Moreover, an ombudsman takes into account not only the legal rights of the parties, but also broader principles of good administration, which are vital if citizens' rights are to be fully realised. I will go into more detail about this later.

The world's first parliamentary ombudsman was established in Sweden in 1809 to check the legality of public officials' behaviour. Not until 1919 was the Swedish model adapted to the needs of another country, Finland. Then nearly half a century passed before a third Ombudsman was established, in 1955, in Denmark.

In the 1960s and early 1970s, a first wave of global expansion began when older democracies, such as Norway, New Zealand, the UK and France, adopted the ombudsman institution as a way of tackling citizens' problems in dealing with public administration which expanded greatly and took on new roles, especially after the Second World War, as the social role of the state grew exponentially.

From the mid-1970s onwards, ombudsmen were established in post-authoritarian states, such as Greece, Portugal and indeed Spain, as well as in many countries of Latin America. After 1989, the transition from communism to democracy in Central and Eastern Europe resulted in a large increase in the number of ombudsman institutions in this region.

The spread of the ombudsman institution has been particularly impressive in the European Union. When the Maastricht Treaty was negotiated, national ombudsmen existed in only a bare majority of the Member States; 7 out of 12. The combined effect of successive enlargements and of the establishment of new offices is that, today, there is a national ombudsman in 25 of the 27 Member States.

In Germany, there is no Ombudsman at the national level but the "Petitionsausschuss" in the "Bundestag" is its functional equivalent. There are also Petitionsausschüsse in the different "Landtage" and four ombudsmen at the Länder-level, in Rheinland-Pfalz, Thüringen, Mecklenburg-Vorpommern and Schleswig-Holstein.

The European Union itself took the decision to create a Union ombudsman in the early 1990s. Let me now address my own role.

IV. The European Ombudsman

In the words of my predecessor, Jacob Söderman, "[t]he work of the Ombudsman should focus on helping European citizens and others entitled to apply to the Ombudsman, to exercise their rights fully and, in so doing, to give the European administration a more human face".

In the original Spanish proposal, circulated during the negotiations leading to the Maastricht Treaty, the European Ombudsman was meant to supervise the application of the rights of European citizens at both the European and the national levels. However, the text finally adopted in the Maastricht Treaty, based on a Danish proposal, set a different task for the new institution. As a result, when the first European Ombudsman began work in September 1995, his mandate was confined to dealing with maladministration in the activities of the Community institutions and bodies alone.

The Treaty of Amsterdam in 1997 brought the so-called "third pillar" of police and judicial co-operation in criminal matters into the mandate, so that I can now also inquire into complaints against Europol and Eurojust.

The Treaty establishing a Constitution for Europe, which as we know is high on the agenda of the German EU Presidency, would expand the mandate of the European Ombudsman to cover the "Union, institutions, bodies, offices and agencies". This would bring into the European Ombudsman's mandate the European Defence Agency, which was established under the Common Foreign and Security Policy, as well as --perhaps surprisingly-- the European Council, which consists of the Heads of State and Government.

In practice, most of the admissible complaints that I receive are against the European Commission. This is understandable, since the Commission is the main EU body that has direct relationships with the Union's citizens and residents, and with legal persons, such as companies and associations; in other words, with those entitled to complain to me.

The thrust of the European Ombudsman's mandate is the notion of "maladministration", a term that is defined neither by the Treaties nor by the Ombudsman's Statute. In response to a request from the European Parliament, the Ombudsman presented a comprehensive definition in his 1997 Annual Report, according to which, "maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it". This definition was later endorsed by the European Parliament.

Among the rules and principles binding on public bodies are, of course, those that define the protection of human and fundamental rights. The European Ombudsman has therefore always regarded violation of these rights as a form of maladministration. This approach accords with the one adopted by an overwhelming majority of my colleagues in the international ombudsman community, for whom defence of fundamental rights is an essential part of their function.

Since starting work in 1995, the European Ombudsman has dealt with over 25,000 complaints. Much progress has been made in that time to render the EU administration more open, accountable and service-minded.

The number of complaints has increased over the years from about 1,000 in the early years, to 2,000 in the earlier part of this decade, and now to around 4,000 complaints each year.
I see this as a positive development, indicating that European citizens are learning about the rights the Union grants them and are becoming increasingly willing to take action to defend these rights.

The rise in complaints is also linked to the accession of ten new Member States in May 2004, and Bulgaria and Romania at the beginning of this year.

Any citizen of the Union or any natural or legal person residing or having its registered office in an EU Member State can lodge a complaint with the Ombudsman by mail, fax or e-mail. In case I receive a complaint from an unauthorised complainant, I have the option of opening an own-initiative inquiry, if I determine that the matter raised appears to be sufficiently serious.

As I mentioned, the original Spanish proposal which provided for the European Ombudsman to supervise the application of the rights of European citizens at the national level was not finally adopted. The European Ombudsman cannot therefore deal with complaints about national, regional or local administrations, even when the complaints concern European Community matters. As I will develop later, such complaints should normally be addressed to the national, regional or local ombudsman, in line with the principle of "subsidiarity" and, more specifically in this case, "subsidiarity in remedies". It is equally important to point out that the European Ombudsman is not an appeals body against decisions taken by national courts or ombudsmen.

If I cannot deal with the complaint in question, I try, if possible, either to transfer the case to a body that can deal with it or to advise the complainant who to turn to. We help around 70% of complainants, by opening an inquiry into the case, transferring the complaint to a competent body, or advising the complainant where to turn. This figure of 70% of complainants helped is comparable to that of my national ombudsman colleagues.

Around 25% of the complaints that I investigate concern lack of transparency, such as refusal of access to documents. Other complaints concern contractual disputes, both as regards the process of award and subsequent performance and payment. I also deal with grievances related to recruitment, with allegations that fundamental rights have been infringed, and with complaints against the Commission in its role as Guardian of the Treaty.

1. Complaints from Germany

Let me now give you an overview of the situation in Germany. To begin with, Germany is the only EU Member State which saw a significant increase in complaints in 2006. In 2005, we counted 410 complaints from Germany. This was 10.5% of the total number of complaints. Last year, the number of complaints from Germany was 537, or 14 % of the total. Put otherwise, between 2005 and 2006 the number of complaints from Germany increased by just over 30%.

I believe that this increase is due mainly to the specific efforts undertaken both by my team and by myself to inform German citizens, enterprises, associations and regional authorities about the services the European Ombudsman can offer them. This visit forms part of that same effort. Germany is the biggest Member State in the Union and thousands of companies, schools, universities, associations, etc. operating on its soil are in regular contact with the EU institutions. It is to be expected that some will now and then encounter problems with one or more of these institutions. When they do, it is important that they are aware of how the European Ombudsman can help.

Let me give you some examples of German complainants I have helped:

a. Language Choice on EU Presidency Website

I called on the Council to reconsider the choice of languages used in the websites of the EU Presidencies. This followed a complaint from the "Verein Deutsche Sprache" which claimed that these websites should be available not only in English and French, but also in German. The Council argued that the Member State holding the Presidency is solely responsible for its website. I disagreed

and, following the Council's rejection of my draft recommendation, brought the matter before the European Parliament.

b. Working Time Directive

I urged the Commission to deal as rapidly as possible with a complaint about the European Working Time Directive. A German doctor had complained that Germany was in breach of the Directive, as far as the work of doctors in hospitals and the time they spend on call was concerned. The Commission argued that changes to the Directive were under way. I considered, however, that the Commission was not entitled indefinitely to postpone dealing with the complaint, on the grounds that the Directive may be amended some time in the future.

c. Openness in the Council

Another important case to mention is the further opening up of Council meetings. Following a complaint I received from the German MEP, Elmar Brok, and a representative of the youth group of the CDU, I called on the Council to meet publicly whenever it acts in its legislative capacity. As I explained in my introduction today, openness in this regard is vital, so that citizens can understand what is being done in their name in Brussels. In 2006, the Council agreed to allow for greater transparency in its legislative proceedings. While there is still room for improvement, I consider this to have been an important step forward.

2. Results Obtained by the Ombudsman

With regard to more general achievements for citizens since the Ombudsman began work in 1995, I can mention the following: in response to pressure from the Ombudsman, most of the EU institutions and bodies introduced rules on access to documents, age discrimination in recruitment competitions was ended, and the fundamental right to good administration was included in the European Charter of Fundamental Rights. Following this latter development, the Ombudsman drafted the European Code of Good Administrative Behaviour to explain what this right means in practice. The European Parliament adopted the European Code in 2001, and most institutions and bodies have adopted similar codes to govern relations between citizens and the administration.

We published a new edition of the European Code of Good Administrative Behaviour in 2005 and distributed over 100,000 copies throughout the Union. We have had tremendous feedback to this initiative, receiving requests for thousands more copies from all over the Union and beyond. Copies of the Code are available here today.

All of these individual success stories make for a more open, accountable and service-minded EU administration. The importance of these improvements in facilitating citizens' participation in the EU policy making process, thereby laying the groundwork for greater trust in the EU administration and for an enhanced sense of ownership of EU laws and policies, should not be underestimated. Neither should their potential contribution to the strategic objective of strengthening the Union's overall legitimacy.

V. EU Law Rights

As I have already mentioned, the Ombudsman was established by the Maastricht Treaty. The right to complain to the Ombudsman forms part of a series of rights linked to citizenship of the Union which the Maastricht Treaty introduced.

Allow me to speak briefly about the rights linked to citizenship of the Union, before moving on to address the subject of human and fundamental rights. I will then devote particular attention to the right to good administration which is of relevance to both fields.

1. Citizenship of the Union

The Treaty provides that 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.

In addition to the right to complain to the Ombudsman, citizenship of the Union provides for the right to petition the European Parliament on a subject which comes within the Union's fields of activity.

Union citizens also have the right to vote and to stand in local and European Parliament elections, and to consular protection from the embassies of any Member State, when outside the Union.

The first right laid down in the section of the Treaty on Union citizenship pertains to the right to move and reside freely within the territory of the Member States. These mobility rights are at the heart of Union citizenship.

Rules pertaining to the free movement of natural persons have of course been enshrined in the Treaty since the very beginning but, as part of the provisions aimed at creating a common market, they were originally focused on the situation of workers. Associating freedom of movement with citizenship of the Union has already had, and will continue to have, important consequences.

While the right to free movement has been written into the Treaty since 1957, problems still arise when citizens seek to exercise this right, for example when it comes to the transfer of social security rights, to the recognition of professional qualifications and to family reunification, to mention but a few illustrative examples.

Problems stem from the failure of Member States properly to transpose directives, lack of awareness among officials in the public administrations about the relevant rules, and different interpretations of what the relevant legislation actually entails.

When problems arise, it is vital that citizens know where to turn. This is where we might invoke the maxim "Ubi ius, ibi remedium".

For present purposes, however, it is the converse proposition, which can be loosely translated as "rights without remedies are not worth the paper they are written on". In other words, discussion

of the protection of rights should make reference to a concrete system of remedies. I will move on to this question shortly, but before I do so, I would like to briefly trace the evolution of human rights in European Union law. This is obviously an area of particular relevance in any discussions about a Citizens' Europe.

2. Human Rights in EU Law

By the time the European Communities were established in the1950s, the European Convention on Human Rights had already been put in place within the framework of the Council of Europe. Moreover, the logic of the Convention is that primary responsibility for the protection of human rights lies with the national legal and constitutional orders. It is thus unsurprising that the authors of the original Community Treaties saw no need to include provisions on human or fundamental rights.

By the early 1960s, however, it was becoming clear that the European Communities were more than just another international organisation. The Treaties had, in fact, established supranational legislative and executive powers, capable of imposing obligations on private persons. Furthermore, as established by the European Court of Justice as early as 1964, EU law has primacy or supremacy over national law, meaning that it prevails over inconsistent national law, including national constitutional law on fundamental rights.

In these circumstances, the only way to safeguard fundamental rights was for EU law itself to recognise such rights and ensure their protection.Because the Treaties were silent on the matter of fundamental rights, the task of working out their implications in this regard fell to the Court of Justice.

Beginning in the late 1960s, the Court established that fundamental rights are an integral part of the general principles of Community law and, as such, are binding not only on the European Institutions and bodies, but also on all the public authorities of the Member States, whenever EU law applies.

To identify such rights, the Court of Justice drew on the constitutional traditions common to the Member States and on international agreements, especially the European Convention on Human Rights and the case-law of the European Court of Human Rights in Strasbourg concerning the Convention.

In 1996, however, the Court of Justice gave an unfavourable opinion on a proposal that the European Communities should sign the Convention, holding that the EC Treaty does not contain a sufficient legal basis for accession. The resulting gap in international supervision of fundamental rights is difficult to justify, especially to citizens of the former communist States which recently joined the Union.

This situation was undoubtedly one of the elements that led the Cologne meeting of the European Council in June 1999 to launch a process for drawing up a Charter of Fundamental Rights of the European Union.

The Charter was drafted by a Convention consisting mainly of representatives of Heads of State or Government, the European Parliament and national Parliaments. The European Ombudsman participated in the Convention as an official Observer and successfully proposed that the Charter should include the right to good administration, which I shall address shortly.

The Charter draws together rights already contained in the case-law of the Court of Justice and in a variety of texts including the European Convention on Human Rights; the Council of Europe's Social Charter; the Community Charter of Fundamental Social Rights of Workers; and the provisions of the EC Treaty concerning the rights of citizens. It is thus a broader document than the European Convention on Human Rights, containing not only the classical civil and political rights, but also social and economic rights, such as the right to health care, the rights of the elderly and the protection of the family.

The questions of whether, when and how the Charter should become legally binding were set to one side during the process of drafting the Charter. Nor was any agreement on these matters reached in the negotiations leading to the Treaty of Nice. Instead, the Presidents of the European Parliament, Council and Commission jointly proclaimed the Charter at the Nice summit in December 2000. Since then, the European Ombudsman has consistently taken the view that the institutions that proclaimed the Charter should respect its provisions and that failure to do so would be maladministration. This has been of particular importance in inquiries carried out into allegations of discrimination on the basis of age, sex and disability.

3. The Right to Good Administration

A Europe in which the rights of citizens are respected in practice, as well as solemnly acknowledged in declarations of various kinds, depends on more than the activities of the EU institutions.

EU law and policies are, for the most part, administered by the public authorities of Member States at the national, regional and local levels. Respect for citizens' EU law rights therefore depends largely on the quality of their everyday work, and on the extent to which supervisory bodies, including ombudsmen, succeed in promoting high quality administration.

I am convinced that promoting good administration deserves a central place in an agenda focused on citizens. It was for this reason that I proposed that the principle of good administration should figure prominently in the Berlin Declaration being prepared by the German EU Presidency to mark the 50th anniversary of the Treaty of Rome later this week.

Shortcomings in the quality of services delivered by public administrations at the European and Member State levels limit the practical benefit that citizens derive from European cooperation. In my view, "good administration" means a citizen-centred administration, an open and accountable administration and an administration focused on results.

A citizen-centred administration acts impartially, fairly and within a reasonable time. It avoids unnecessary red tape and keeps administrative costs for citizens and enterprises to a minimum.

With regard to greater openness, I believe - as did my predecessor - that transparency and accountability go hand in hand, and are key to building citizens' trust in the Union. Greater access to information and more open decision-making procedures should, therefore, form an integral part of any strategy designed to enhance the Union's legitimacy in the eyes of its citizens.

Finally, EU law should be put into effect by public administrations throughout the Union so that citizens can make full use of their EU law rights. Where problems arise, quick and effective remedies should be available.

VI. Remedies

Let me now examine the remedies available for citizens when things go wrong.

The first and most obvious candidate to resolve the problem is of course the national, regional or local administration responsible for putting citizens' EU law rights into practice. Where possible, the administration itself should put things right.

The European Commission has also put in place a network, called SOLVIT. The idea is to solve, without legal proceedings, problems that citizens encounter as a result of the misapplication of EU law by public authorities. SOLVIT centres are part of the national administration and are committed to providing real solutions to problems within ten weeks. While this service is relatively new, it seems to be working well and to be resolving many problems for citizens in areas such as social security rights, recognition of diplomas and residence permits.
But problems stemming from the incorrect interpretation of legislation, or inadequate implementation, may require the citizen to go further in search of an appropriate remedy.

Understandably, citizens who believe that a Member State is not respecting Union law often seek a remedy at the Union level.

Some citizens complain to the European Commission, in its role as guardian of the Treaty. This can eventually lead the Commission to refer the matter to the Court of Justice under Article 226 of the EC Treaty. Many complainants, however, hope that the Commission will solve their case quickly in the administrative stage of the Article 226 procedure, without going to Court.

Citizens also petition the European Parliament concerning infringements. In practice, it often falls to the Commission to examine these cases as well.

I believe that it would be more effective and in accordance with the principle of subsidiarity for most such cases to be dealt with locally, at the level of the Member State itself. That would also avoid overloading the Commission's Article 226 procedure and the European Parliament' petitions procedure.

1. Subsidiarity in Remedies

Within the European Union, subsidiarity is a fundamental principle of governance.

As I already mentioned, EU law and policies are, for the most part, administered by the public authorities of Member States at the national, regional and local levels.

In practice, therefore, the rule of law, and respect for individual rights deriving from EU law, depend largely on the quality of administration in the Member States and the availability of effective remedies when needed.

As is well known, one of the greatest success stories of European integration has been the development of subsidiarity in judicial remedies.

One of the first landmarks was the *Costa v Enel*[1] case in which the Court of Justice said that the EEC Treaty had created its own legal system, which had become an integral part of the legal systems of the Member States and that their courts are bound to apply it.

That was just the beginning. The Court of Justice went on to develop an abundant case-law which empowers and gives responsibility to national judges to provide effective remedies against public authorities of the Member States, in order to protect individual rights under EU law.

I am convinced that the logic of subsidiarity should also apply to non-judicial remedies. Let me explain why.

As you know, my mandate as European Ombudsman is limited to the institutions and bodies at the level of the Union. I cannot investigate complaints against public authorities in the Member States, even when rights under EU law are involved.

It is my counterparts in the Member States, at the national, regional and local levels, who are competent to deal with complaints that public authorities in their Member State have failed to apply EU law, or to respect rights under EU law.

2. Primacy

The primacy of Community law is also relevant in this regard.

Primacy requires all public authorities in the Member States to apply Community law fully and correctly. Since ombudsmen supervise public authorities, they have a key role to play in ensuring the fulfilment of this obligation. Less obvious perhaps, is that, since ombudsmen themselves are public authorities, they must, within their field of competence, act to protect rights that derive from EU law. Indeed at the last Seminar of the National Ombudsmen of EU Member States, held in The Hague in 2005, Advocate General Maduro went so far as to say that, within their field of competence, ombudsmen, like courts, must disregard any national rules which prevent them from protecting such rights.

Taken together, all of these aspects give us an insight into the potential role that ombudsmen in the Member States can play in protecting citizens' rights under EU law. This is something that I have been particularly keen to promote among my colleagues.

[1] Case 6/64, *Costa v ENEL* 1964 ECR 585

I am reinforced in this belief by the fact that ensuring full and correct implementation of Union law is not just a matter of providing effective remedies, vital though that is.

It also involves the difficult and painstaking task of strengthening the capacity of public authorities of the Member States to follow the law, observe principles of good administration and respect human rights.

Ombudsmen are particularly well suited to combining such reactive and proactive functions and to creating synergies between them.

This is also something that Advocate General Maduro stressed in The Hague. In his words, "ombudsmen can perform a key role in 'educating' public authorities about their obligations regarding the implementation of EU law." This educational function is also vital, if we are to encourage the sense of ownership of EU laws and policies that I mentioned earlier within the public administrations in the Member States.

Before I move on to discuss the role that ombudsmen can play in more concrete terms, it is worth recalling the Advocate General's remarks in The Hague with regard to the "comparative advantage" an ombudsman has over courts. In the area of free movement, for example, judicial redress is often not effective, because of the expense and the length of time involved. Individuals confronted with a serious obstacle to the exercise of their freedom of movement, such as lack of recognition of a diploma for example, cannot afford to wait several years for a judicial remedy. Ombudsmen are therefore particularly well placed to complement the courts and address citizens' concerns in this area.

VII. The European Network of Ombudsmen

The European Ombudsman has always given high priority to co-operation with ombudsmen in the Member States. In 1996, he organised a seminar for the national ombudsmen in the EU, at which it was agreed to set up, on equal terms, a flexible form of voluntary co-operation, whose aim would be to promote the flow of information about Community law and its implementation and facilitate the transfer of complaints to the body best able to deal with them.

The initial concrete step in this direction was the creation of a network of liaison officers to act as a first point of contact within each ombudsman's office for other members of the network. A pattern was established for organising seminars of the national ombudsmen, every two years in principle, as well as regular meetings of the liaison officers. To date, we have developed effective means of communication through a lively website and internet discussion forum, an electronic daily news service and a biannual newsletter.

The result is that we can now truly speak of a "European Network of Ombudsmen", comprising some 90 offices in 31 countries throughout Europe, which co-operates systematically to ensure the effective transfer of complaints, exchange information about EU law, and encourage the spread of best practice. In Germany, we work with the "Petitionsausschuss" in the "Bundestag" and the Petitionsausschüsse in the different "Landtage", as well as the four ombudsmen at the Länder-level, in Rheinland-Pfalz, Thüringen, Mecklenburg-Vorpommern and Schleswig-Holstein.

The European Network of Ombudsmen naturally contains a great deal of diversity. The member institutions comprise those of the ombudsman's original Nordic homeland, including (a) the rather different Swedish and Danish varieties; (b) ombudsmen created at various points in time during the first wave of global expansion, (c) second wave ombudsmen such as those of Spain, Greece, and Portugal and (d) ombudsmen in post-communist central and Eastern Europe, created during the third wave.

Diversity results from one of the keys to the success of the ombudsman institution -- its flexibility -- a distinctive feature which enables ombudsmen to adapt prudently to different constitutional, legal, cultural and political environments and to complement the fundamental role of the courts in the protection and promotion of human and fundamental rights.

Together we aim to ensure that citizens enjoy their EU law rights as an everyday reality.

Let me give you a few examples of cases where I liaised with my national colleagues to help ensure respect for citizens' EU law rights. In a number of cases concerning the discriminatory nature of a Spanish statute on social security benefits for disabled people, I, unlike my colleague, the Spanish Ombudsman, had no power to launch an inquiry. Similarly, I was not entitled to start an inquiry into the different entry fees a Greek citizen and a foreign tourist were asked to pay when visiting the Parthenon, in Athens. My Greek counterpart, however, did. In a complaint lodged by the foreign spouse of a British soldier, who argued that she was unfairly charged tuition fees on the basis of her nationality, I could not question the UK authorities, whereas the UK Parliamentary ombudsman had the power to do so. In all of these cases, with the prior consent of the complainant, I transferred the matter to the relevant national ombudsman.

Close cooperation with my colleagues is thus a central aspect of my work designed to facilitate the prompt and effective resolution of individual complaints.

The links section of the European Ombudsman's website includes links to the sites of national and regional ombudsmen throughout Europe. Over 44 000 visits were made to the links pages during 2006, clearly demonstrating the added value for citizens of the European Ombudsman's work in co-ordinating the European Network of Ombudsmen.

Such cooperation is all the more important in light of the fact that, in recent years, contact between and among the various Member States' administrations and the EU institutions has continued to grow in scope and intensity, especially in fields related to security. Bodies such as the European Police College, the EU Borders Agency, the European Network and Information Security Agency, Eurojust and the European Aviation Safety Agency have strong national representation. Networking is essential to their functioning. They constitute the visible EU tip of an increasingly intensive cooperation among administrations at all levels of the European Union.

In order to promote and protect the rights of citizens and residents, cooperation among administrations needs to be matched by cooperation among ombudsmen. Ombudsmen are well placed not only to provide individual remedies when public administrations fail to apply EU law correctly, but also to avoid such maladministration happening in the future, by educating and encouraging public authorities and by dealing with systemic problems.

Despite the undoubted success of our cooperation to date, the ombudsmen of Europe should not be complacent. Our fast evolving societies bring great benefits, but also pose potential new threats to the full enjoyment of the rights of citizens. We can mention, for example, data protection and privacy, freedom of expression, and the right to equal treatment, as areas in which ombudsmen may need to be particularly vigilant. Against such a backdrop, there is both the opportunity and the need to further secure and promote the contribution of ombudsmen to the evolving European legal and political order.

VIII. Conclusion

Ladies and Gentlemen, the process of European integration has moved at a varying pace, but every successful step forward taken has resulted in greater attention being given to the expectations of our fellow citizens.

The rights of citizens and residents of the Union should constitute the very foundation of Europe. Only by ensuring that these rights are real and readily accessible can individuals see the concrete results issuing from European integration and be protected from abuses and arbitrariness on the part of European Union institutions, or of national authorities when they are implementing EU law.

Correspondingly, the acknowledgement of these rights and the provision of effective means to secure them help legitimate the Union's activities. As we have seen, from the days of the Maastricht Treaty right up to the present, the vexed question of the Union's legitimacy has been a salient and persistent feature of our political reality. Although political vision and leadership are needed to tackle the problem, so is a focus on delivering results. In particular, it is not enough to promise citizens certain rights. Those rights must be delivered and respected in practice and there must be quick and effective remedies available to citizens when things go wrong.

The protection of the rights of citizens is also a positive integrating factor, since it helps reinforce the democratic fabric of the Union and strengthen common European values.

Since the establishment of the institution, the European Ombudsman has striven for a more open and democratic European Union in which the rule of law and respect for human rights are paramount principles. The Ombudsman's strategy has consistently been to facilitate citizens' participation in the development of EU laws and policies, leading ultimately to their empowerment. The work of the European Network of Ombudsmen has helped ensure that these laws are implemented by the public administrations in the Member States, thereby realising the rights that citizens have been promised. We should continue to work together to strengthen ombudsmen's role in this regard.

The challenge for ombudsmen is to help put citizens' rights and interests at the forefront of developments in the Union, not just in rhetoric but in reality. Ombudsmen have a critical role to play in improving the everyday business of administration throughout the territory of the Union.

I remain deeply convinced that success in this difficult task is possible only when ombudsmen at all levels, European, national, regional and local, effectively collaborate and co-ordinate their efforts towards the common goal of better service for the European citizens.

Thank you for your attention. I look forward to discussing these issues with you.

* * *