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22 June 2000

## REPORT

on the activities of the European Ombudsman in 1999 (C5-0303/2000)

Committee on Petitions

Rapporteur: Astrid Thors



## CONTENTS

	<u>Page</u>
PROCEDURAL PAGE .....	3
MOTION FOR A RESOLUTION.....	4
EXPLANATORY STATEMENT .....	8

## PROCEDURAL PAGE

By letter of 7 April 2000 the European Ombudsman, Mr Jacob Söderman, forwarded his Annual Report to the European Parliament, pursuant to Article 195(1) of the Treaty establishing the European Community and Article 3(8) of the Decision of the European Parliament on the regulations and general conditions governing the performance of the European Ombudsman's duties.

At the sitting of 3 July 2000 the President of the European Parliament will announce that she had referred this Annual Report to the Committee on Petitions as the committee responsible (C5-0303/2000)

At its meeting of 23 February 2000 the Committee on Petitions appointed Mrs Astrid Thors rapporteur.

The European Ombudsman presented his report to the committee at the meeting of 17 and 18 April 2000.

At its meeting of 22 May, 6, 21 and 22 June 2000 the committee considered the Annual Report of the European Ombudsman and the draft report.

At the last meeting it adopted the motion for a resolution by unanimously with 1 abstention.

The following took part in the vote: Vitalino Gemelli, chairman, Roy James Perry, Proinsias De Rossa, vice-chairmen, Astrid Thors, rapporteur, Mary Elizabeth Banotti (for Rainer Wieland), Herbert Bösch, Ascensio Camison, Jonathan Evans, Francesco Fiori (for Vasco Graça Moura), Janelly Fourtou, Laura González Álvarez, Margot Keßler, Jean Lambert, Véronique Mathieu, Hans-Peter Mayer, Mario Mauro (for Raffaele Costa), Pietro-Paolo Mennea (for Luciana Sbarbati), Guido Sacconi (for Enrico Boselli), María Sornosa Martínez.

The report was tabled on 22 June 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session at which the report is to be considered.

## MOTION FOR A RESOLUTION

### European Parliament resolution on the annual report on the activities of the European Ombudsman in 1999 (C5-0303/2000)

*The European Parliament,*

- having regard to the Annual Report of the European Ombudsman for 1999 (C5-0303/2000),
  - having regard to the Treaty establishing the European Community and especially Articles 21 and 195 thereof,
  - having regard to the Treaty establishing the European Coal and Steel Community and, in particular, Article 20D thereof,
  - having regard to the Treaty establishing the European Atomic Energy Committee and, in particular, Article 107D thereof,
  - having regard to its resolution of 17 November 1993 and its decision on the regulations and general conditions governing the performance of the European Ombudsman's duties adopted by the European Parliament on 9 March 1994 and, in particular, Article 3(8) thereof<sup>1</sup>,
  - having regard to its resolution on the role of the European Ombudsman, adopted by the European Parliament on 14 July 1995<sup>2</sup>,
  - having regard to its resolution of 15 July 1997 on the Annual Report for 1996 of the European Ombudsman<sup>3</sup>,
  - having regard to its previous resolutions on petitions, particularly that adopted on 16 July 1998 on the basis of the Annual Report on the deliberations of the Committee on Petitions during the parliamentary year 1997-1998<sup>4</sup>,
  - having regard to the report of the Committee on Petitions (A5-0181/2000),
- A. whereas, pursuant to the Treaty establishing the European Community, the duties of the European Ombudsman are to conduct enquiries for which he finds grounds concerning instances of maladministration in the activities of the Community Institutions or bodies, on the basis of complaints submitted by him or on his own initiative, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role,

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<sup>1</sup> OJ L113, 4.5.1994, p. 15.

<sup>2</sup> OJ C249, 25.9.1995, p. 200.

<sup>3</sup> OJ C 222, 21.7.1997, p. 3.

<sup>4</sup> OJ C 292, 21.9.1998, p. 167

- B. whereas citizens will only see European integration as justified if they are given rights enabling them to take an active part in the European Union's civil and political dialogue, such empowerment must include the right to information and access to documents, and that opinions expressed by the citizens are seriously taken into account and registered,
  - C. whereas the increase in the number of complaints to the European Ombudsman shows the public's concern for more effective and transparent administration,
  - D. whereas the independence of the European Ombudsman is an extremely important principle,
  - E. whereas the European Ombudsman's independence implies the right to publish his views on the manner in which the European Union is administered and in which its policies are developed, as his main duty is to promote citizens' rights; Whereas close cooperation is needed between the European Parliament, the Commission and the European Ombudsman with regard to the rights of European citizens, as guaranteed by the Treaties,
  - F. whereas the European Parliament, while respecting the European Ombudsman's independence, is of the opinion that the amicable settlements, remarks and draft recommendations put forward by the Ombudsman have been extremely useful in developing the principles of good administration in the European Union,
  - G. whereas the drafting of a European Union Charter of Fundamental Rights should provide rules giving citizens the right to good administration,
  - H. whereas the European Ombudsman should play an important role in applying any future charter of fundamental rights in the institutions, bodies and decentralised agencies,
1. Congratulates the European Ombudsman on his clear, systematic and detailed Annual Report for 1999;
  2. Acknowledges that although his office has been in existence for a relatively short period of time, the European Ombudsman's work has proved extremely useful and effective, especially for citizens and organisations;
  3. Endorses the European Ombudsman's efforts to achieve greater transparency and openness;
  4. Stresses the importance of providing the European Ombudsman's service with the necessary resources to deal with the steadily growing number of complaints;
  5. Reiterates its determination, already expressed in its previous report, to introduce amendments to Article 3(2) of the European Ombudsman's Statute so as to enable the latter to have access to all the relevant documents which may need to be consulted in the course of inquiries;

6. Stresses that the interpretation of Community law, as applied by the institutions forms part of the European Ombudsman's mandate and that the European Ombudsman has a duty to conduct inquiries into cases of maladministration, within the accepted meaning of the term, which is that 'maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it';
7. Calls on the Commission to follow and apply the definition of maladministration, as accepted by Mrs Gradin, on behalf of the Commission, on 14 July 1998, and as confirmed by the Secretary-General of the Commission in his letter of 15 July 1999;
8. Stresses the urgent need to draw up a code of good administrative behavior applicable to relations between European Union officials and the general public;
9. Endorses the principle formulated by the European Ombudsman that good administration requires European institutions to explain the reasons for any decision affecting a particular citizen;
10. Supports the efforts of the European Ombudsman to persuade all Community institutions and bodies always to provide complainants with all the documents required for examination of the cases to be investigated;
11. Calls on the Commission to include in its annual report on community law a section considering those petitions and complaints, submitted to the Commission, the Parliament and the Ombudsman that have led to the infringement procedure against Member States;
12. Calls on the Commission, the Council and the Ombudsman to cooperate with the Parliament on a new inter-institutional agreement leading to a more efficient and rapid treatment of petitions and complaints submitted by European citizens;
13. Stresses the need to amend the Statute of the European Ombudsman so as to make public access to documents relating to complaints received by the European Ombudsman the general rule and ensure that confidentiality only applies to cases where the protection of complainants so requires; Article 13 of the European Ombudsman's Statute needs, as a result, to be amended;
14. Congratulates the Ombudsman for having developed a good and fruitful cooperation with Ombudsmen and similar bodies as well in the Member states as with those bodies in the applicant countries.
15. Instructs its President to forward this resolution and the report of the Committee on Petitions to the European Ombudsman and to all the institutions and bodies of the European Union, the governments and parliaments of the Member States, the national Ombudsmen or analogous bodies and the national parliamentary committees responsible for petitions or analogous bodies in the Member States.

# EXPLANATORY STATEMENT

## **I. Substance of the report**

1. This is the fifth annual report submitted by the European Ombudsman, and the fourth to cover a calendar year, in this case 1999. It is the first by the European Ombudsman since his re-election for a second term of office by the European Parliament on 27 October 1999. Its structure is the same as that used in reports in previous years. This report is clear and systematic. It is detailed, written in simple language and easy to follow, thereby enabling any ordinary citizen, even without a legal background, to gain a clear understanding of the Ombudsman's duties.
2. The report comprises seven chapters. The first is a foreword, describing the efforts made by the European Ombudsman to further improve his office's work. It refers to the disputes with the Commission and highlights the ideas of openness, good administration and cooperation.

The second chapter, which concerns complaints submitted to the European Ombudsman and how they have been dealt with, considers the legal basis of his work, the mandate of the European Ombudsman (the concept of 'maladministration' and the steps he has taken to introduce a code of good administrative behaviour), the admissibility of complaints, grounds for inquiries, analysis of the complaints, the transfer of complaints to other agencies, powers of investigation (hearing of witnesses and inspection of documents) and decisions following an inquiry by the Ombudsman.

The third chapter, which concerns decisions following an inquiry, describes in great detail a few dozen cases, the procedures adopted to establish whether there was maladministration and the action taken. These complaints concern the European Parliament, the Commission, the Council of the European Union and the European Central Bank. The chapter ends with draft recommendations made by the European Ombudsman, queries from national ombudsmen and an own-initiative inquiry.

The fourth chapter deals with relations between the European Ombudsman and other institutions of the European Union.

The fifth chapter describes relations with national ombudsmen and similar bodies.

The sixth chapter outlines the activities of the European Ombudsman in the field of public relations.

The seventh and final chapter comprises annexes relating to statistics, the budget, personnel and the election of the European Ombudsman.

## **II. Comments on the annual report**



3. The report states that, between 1 January and 31 December 1999, the Ombudsman received 1577 complaints (as against 1372 in 1998). 1458 of these were sent directly by individual citizens (1237 in 1998), 90 came from associations (63 in 1998) and 23 from companies (60 in 1998). 11 complaints were forwarded by Members (9 in 1998) and 3 petitions were forwarded by the committee on petitions, to be dealt with as complaints (3 in 1998).

As regards the geographical origin of the complaints, 19% came from France, 16% from Germany, 14% from Spain and 11% from Italy. The number from Greece, Austria, Denmark, Ireland and Luxembourg was equal to 2% in each case. 64 complaints were received from non-EU countries.

During 1999, the Ombudsman dealt with 1860 cases. The process of examining the admissibility of complaints was completed in 93% of the cases. 414 (27%) of these were within the Ombudsman's mandate and 1140 were outside his mandate. Of these 414 cases, 243 were considered admissible. Of the 206 inquiries opened in 1999, 163 concerned the Commission (77%), 24 the European Parliament (12%), 7 the Council of the European Union (3%) and 17 (8%) other institutions, organs and decentralised agencies.

There were 205 more complaints in 1999 than in 1998, due to more extensive and more effective publicising of the European Ombudsman's work.

Of the 414 complaints which were within the European Ombudsman's mandate, 243 were admissible (212 in 1998 and 230 in 1997) and 171 were inadmissible (199 in 1998 and 138 in 1997). Of the 243 admissible complaints, 201 led to the opening of an inquiry (170 in 1998 and 196 in 1997). 5 own-initiative inquiries were initiated (1 in 1998 and 4 in 1997).

Some complaints contained allegations of two types of maladministration. The types of maladministration alleged were failure or refusal to provide information and lack of transparency - 66 cases (23%); avoidable delay - 45 (16%); discrimination - 31 (11%); unfairness or abuse of power - 32 (11%); unsatisfactory procedures or failure to respect rights of defence - 33 (11%); legal error - 29 (10%); negligence - 29 (10%); failures to ensure fulfilment of obligations (Article 169 - new Article 226) - 9 (3%); others - 14 (5%).

### **III. Interpretation of Community law**

4. The European Ombudsman has the right to interpret Community law wherever, in the course of an inquiry into a case of maladministration, such an interpretation is essential for determining whether a Community institution, including the Commission, has acted in accordance with the rules and principles binding upon it.

### **IV. Code of good administrative behaviour and openness**

5. One of the causes of maladministration is the absence of clear rules on the principles of good administrative behaviour to be respected by European Union institutions and officials in their relations with the general public. Such a code i.e. a body of European law on good administrative practice, is an essential prerequisite for establishing a relationship of trust and openness between citizens and the Community institutions.

**V. Access to documents**

6 (a) European Ombudsman

In accordance with Article 195(4) of the EC Treaty, the Committee on Constitutional Affairs is currently considering amendments to Article 3(2) of the Statute of the European Ombudsman. The Ombudsman's right to inspect all documents is absolutely essential to the exercise of his powers of investigation.

(b) Citizens

The rules on data protection are not inconsistent with administrative transparency. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup> is aimed at protecting fundamental rights. Where fundamental rights are not actually at stake the citizen should in any case have access to the information he requires.

**VI. Principles of good administration**

7. The European Parliament agrees with the principle of good administration established by the European Ombudsman and contained in the critical remarks in the conclusion to the decision on complaint 323/97/PD against the Commission, as quoted in his 1999 Annual Report: 'principles of good administration require the administration to give reasons for the decisions that it takes towards the citizens concerned. Such reasoning is essential for the citizens confidence in the administration and for the transparency of the administration decision-making'.

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.