

## 'Jacob Söderman: the European Ombudsman' from Context, European Education Magazine (2001)

**Caption:** Instances of maladministration for which no amicable solution can be found and for which the European Ombudsman addresses draft recommendations to the institutions concerned.

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## Jacob Söderman: the European Ombudsman

### Who is he?

The institution of the European Ombudsman was created by the Maastricht Treaty in 1992. The European Parliament elected the first European Ombudsman, Mr Jacob Söderman, former Ombudsman and Minister of Justice in Finland, in 1995. The European Parliament re-elected Mr Söderman in October 1999 for a new five-year term.

### What does he do?

The European Ombudsman investigates and reports on maladministration in the institutions and bodies of the European Community, such as the European Commission, the Council of the European Union and the European Parliament. Only the Court of Justice and the Court of First Instance acting in their judicial role do not fall within his jurisdiction. The Ombudsman usually conducts inquiries on the basis of complaints but can also launch inquiries on his own initiative.

### Who can complain and how?

Any citizen of the Union or any natural or legal person residing or having its registered office in a Member State can lodge a complaint with the Ombudsman by mail, fax or E-mail. A complaint form is available from the Ombudsman's office and can also be downloaded from the Ombudsman's Website.

### What are his powers?

The Ombudsman has wide powers of investigation. The Community institutions and bodies must supply him with the information he requests and give him access to the files concerned. The Member States must also provide him with information that may help to clarify instances of maladministration by the Community institutions and bodies. If the case is not resolved satisfactorily during the course of the inquiries, the Ombudsman will try to find a friendly solution which puts right the case of maladministration and satisfies the complainant. If the attempt at conciliation fails, the Ombudsman can make recommendations to solve the case. If the institution does not accept his recommendations, the Ombudsman can make a special report on the matter to the European Parliament.

### Types of admissible complaints

Many of the complaints lodged with the European Ombudsman concern administrative delay, lack of transparency or refusal of access to information. Some concern work relations between the institutions and their agents, recruitment of staff and the running of competitions. Others are related to contractual relations between the institutions and private firms, for example in case of abrupt termination of a contract.

### Public information

A brochure entitled "The European Ombudsman – Could he help you?" containing a complaint form is available from the Ombudsman's office. Every year, the Ombudsman presents his Annual Report to the European Parliament. The Annual Report is translated into all the official languages of the Union. The Ombudsman also has a Website on the Internet which provides detailed and updated information on his activities. Finally, the Ombudsman makes official visits to all the Member States, which enables him to present his work directly to the citizens.

### Examples of cases solved following the Ombudsman's intervention

– 440/98/IJH

A company was awarded a grant from the Commission for work on a tourism project. Its complaint alleged unnecessary delay by the Commission as regards both the interim and final payments of the grant.

The Ombudsman's inquiry established that the principles of good administration require that payments should be made within a reasonable time and that clear and understandable information should be provided, on request, about the causes of any delay. In response to repeated inquiries from the complainant, the Commission did not adequately explain why it needed a further three and a half months to issue payment, following a period of five and a half months during which it had sought further information on various aspects of the complainant's final report. The Ombudsman therefore addressed a critical remark to the Commission concerning its procedures in this case.

– 713/98/IJH: draft recommendation

The complainant asked the Commission to tell him the names of people who submitted observations to the Commission on a notice of proposed exemption. He also asked for the names of the representatives of a trade organisation who attended a meeting which the Commission organised as part of its investigation into the citizen's complaint against the UK. The Commission insisted that, under the EU Data Protection Directive, it must keep the names secret unless the persons concerned agree to their identities being revealed.

In rejecting this argument, the Ombudsman says that the Commission has misunderstood the Directive, which is drafted in a way that takes account of the principle that the European institutions should make decisions as openly as possible and that making information public is a normal part of the job of administration. The Ombudsman also points out that the purpose of the Directive is to protect fundamental rights and that there is no fundamental right to supply views and information to an administrative body in secret.

The Commission is due to provide a detailed opinion on the draft recommendation by 30 June 2000.

*How to contact the Ombudsman:*

*By mail:*

*The European Ombudsman*

*1, av. du Président Robert Schuman*

*B.P. 403*

*F-67001 Strasbourg Cedex*

*By telephone:*

*+33 (0)3 88 17 23 13*

*By fax:*

*+33 (0)3 88 17 90 62*

*By E-mail:*

*Euro-ombudsman@europarl.eu.int*

*Website:*

*<http://www.euro-ombudsman.eu.int>*

### **Recommendations addressed to Community Institutions and Bodies by the European Ombudsman Jacob Söderman**

From the beginning of his mandate in 1995 to 31 October 2000, the European Ombudsman has begun 966 inquiries. In 25 cases (of which 4 were own-initiative inquiries) the Ombudsman has found ongoing instances of maladministration for which no friendly solution could be reached. He therefore addressed draft recommendations to the institutions concerned. In cases in which these recommendations did not receive a satisfactorily reply the Ombudsman prepared three special reports.

### **Cases closed further to the acceptance of the Ombudsman's draft recommendation**

46/27.7.95/FVK/B-DE

After having unsuccessfully applied for a post within the **European Environment Agency**, the complainant was not given any information regarding the reasons for her failing in the selection procedure. Given that no friendly solution could be reached, the European Ombudsman made a draft recommendation which was accepted by the European Environment Agency. It disclosed the requested information and apologised for the delay attributed to several misunderstandings.

1055/96/IJH

After conducting an inquiry into a complaint by a British journalist, the European Ombudsman made a recommendation to the **Council of the European Union**. The Council accepted the recommendation to make publicly available an up-to-date list of all measures it has approved in the field of Justice and Home Affairs. This list is now available on the Council's Website. The complainant welcomed the outcome and expressed his satisfaction at finally having access to information he had been requesting for seven years.

633/97/(PD)IJH

In the framework of a complaint lodged against the European Commission, the European Ombudsman addressed a draft recommendation according to which, "The Commission should keep a public register of documents it holds." The complainant considered that the failure to establish such a register would severely restrict the citizen's ability to make use of the rules on access to documents laid down in Commission Decision 94/40. The Commission accepted the Ombudsman's recommendation but put forward that for practical reasons it would need time to follow it.

489/98/OV

In the framework of a complaint against the European Commission lodged by a Commission official who was not offered a new post after a period of unpaid leave, the Ombudsman found an instance of maladministration for which no friendly solution could be found. During the reinstatement procedure, the Commission's services failed to undertake a detailed examination of the complainant's qualifications for a new post. Therefore, the Ombudsman recommended that the institution compensate the material damage suffered by the complainant. The Commission accepted the Ombudsman's recommendation and decided to award a compensation equivalent to two months' salary for the damage suffered.

507/98/OV – 515/98/OV – 576/98/OV – 818/98/OV

Four candidates in a design competition organised by the European Parliament had not been notified of the results over fifteen months after the closing date. Given that the Parliament provided no explanation for this delay, the Ombudsman recommended that the institution, as a matter of good administrative behaviour, should apologise. On 16 February 2000, the Parliament followed the Ombudsman's recommendation. It acknowledged that the delay in the procedure was unacceptable and that the failure to provide the complainants with written answers to their requests made in writing amounted to unprofessional conduct on the part of the European Parliament.

398/97/(VK)GG

The Ombudsman found that the employment situation of a complainant, hired by a private company which

concluded a contract with the **European Commission**, did not meet the requirements of the Commission's own Code of Conduct. The complainant alleged that he was in fact directly working for the Commission. The Ombudsman therefore recommended that the Commission should remedy the illegality of this situation and should issue the complainant with a reference for the period of time during which he worked for the Commission. On 4 April 2000 the Commission informed the Ombudsman that a letter of reference had been issued to the complainant.

109/98/ME

The three Swedish complainants successfully participated in a competition organised by the **European Commission** to recruit temporary fishery inspectors. After their recruitment they found out that other fishery inspectors who were equally or less qualified, recruited before and after the complainants, had been placed in higher grades. Following the European Ombudsman's investigation it appeared that the complainants' posts had been advertised at lower grades by mistake. Since this is not an objective ground which could justify different treatment, there is a breach of the principle of equality of treatment and therefore an instance of maladministration. The Ombudsman recommended that the Commission remedy this situation. On 12 May 2000, the Commission accepted the Ombudsman's recommendation and declared that it would reconsider the complainants' gradings as if they had passed a competition for higher grades.

OI/1/99/IJH

In April 1999, the Ombudsman began an own-initiative inquiry into public access to documents held by four bodies which had become operational after the conclusion of his previous inquiry 616/96/(PD)IJH (see below). The European Central Bank, the Community Plant Variety Office and the European Agency for Safety and Health at Work adopted rules on public access to documents. The Ombudsman's recommendation therefore only concerned **Europol** and stipulated that rules on public access to documents, which are not already covered by existing legal provisions allowing access or requiring confidentiality, should be adopted within three months and made publicly available. Europol director, Jürgen Storbeck, informed the Ombudsman on 6 July 2000 that Europol would apply the same rules on public access to the documents it holds as the Council of Ministers.

521/98/(XD)ADB

Parents complained about the European Commission's failure to properly deal with a suspected case of child abuse within a crèche set up by the Commission in Brussels. The parents were first informed by the press, months after the Commission was made aware of the suspected case. The parents called on the Commission to adopt a procedure setting precise guidelines for informing the parents in such a situation. Almost three years after the events the Commission had still failed to adopt the guidelines. On 15 March 2000, the Ombudsman therefore issued a draft recommendation recommending the Commission to adopt the guidelines before 31 July 2000. The Commission accepted the Ombudsman's recommendation and adopted the guidelines on 30 June 2000.

### **Special reports addressed to the European parliament**

616/96/(PD)IJH

An own-initiative inquiry into public access to documents held by Community institutions or bodies led the Ombudsman to send a draft recommendation to all of them. On the basis of the detailed opinions received in that inquiry, the Ombudsman decided to make a special report to the European Parliament, stressing that some institutions still had to adopt detailed rules for access to documents. He further put forward that it is one of the Parliament's tasks to control whether those rules meet the citizens' expectations of transparency.

The Ombudsman stressed that it must be ensured that these rules are made public.

1004/97/(PD)GG

The Ombudsman began an own-initiative inquiry concerning the secrecy which forms part of the European Commission's recruitment procedures. He raised four major issues. Two of them were settled during the investigation – the Commission accepted to let candidates take the examination questions out of the examination room and to disclose the evaluation criteria on request. After a recommendation made by the Ombudsman, the institution also accepted to disclose the names of selection board members. Regarding the fourth issue, the candidates' access to their own marked examination scripts, the Ombudsman decided to make a special report to the European Parliament, recommending that access to their marked scripts be granted to candidates from 1 July 2000 onwards.

On 7 December 1999, the President of the European Commission, Mr Romano Prodi, welcomed the Ombudsman's recommendation and stated that the Commission would propose the necessary legal and organisational arrangements to give candidates access to their own marked examination papers, upon request, from 1 July 2000 onwards.

OI/1/98/OV

Following an own-initiative inquiry, the European Ombudsman recommended that all community institutions and bodies adopt a Code of Good Administrative Behaviour for EU officials in their relations with the public. He considers that many cases of maladministration would not have arisen if Community staff had knowledge of precise rules to be followed in their contacts with the citizens. By the beginning of April 2000, the Ombudsman had received several positive responses regarding the adoption of a Code. Seven out of ten agencies contacted have adopted the Code proposed by the Ombudsman. The European Parliament informed the Ombudsman that it had adopted a "*Guide to the obligations of officials and other servants of the European Parliament*" published on 5 April 2000, containing a section dedicated to "*Relations with the citizens*". In some other cases the elaboration of codes is in process.

On 12 April 2000, a Special Report concerning progress towards the adoption of a Code of Good Administrative Behaviour was presented by the European Ombudsman to the President of the European Parliament. The Special Report recommends that Parliament initiate the adoption of a European administrative law to ensure that officials of all the Community institutions and bodies observe the same principles of good administrative behaviour in their relations with the public.