

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 26 July 2002

CONV 221/02

CONTRIB 76

COVER NOTE

from Secretariat

to The Convention

Subject : **Contribution by Mr Jacob Söderman, European Ombudsman:**
 "Proposals for Treaty changes"

The Secretary-General of the Convention has received the contribution annexed hereto from
Mr Jacob Söderman, European Ombudsman, Observer of the Convention.

The European Ombudsman's proposals for Treaty changes

On 24 and 25 June 2002, the European Ombudsman made proposals to the European Convention concerning:

- Fundamental rights
- A chapter on remedies
- A European administrative law
- The network of ombudsmen and bodies dealing with petitions in the Member States

The Ombudsman's speeches are available on his website at the following address:

<http://www.euro-ombudsman.eu.int/speeches/en/default.htm>.

The present note contains drafts of new or amended Treaty provisions to implement the Ombudsman's proposals.

The Convention could propose changes to the architecture of the Treaties. For this reason, the location of the draft provisions cannot be definitively established and references to existing Articles of the EC Treaty are put in brackets [...]. In addition, some re-drafting would be required if the existing "pillar" structure of the Union were to be revised or abolished.

1 Fundamental and human rights

Proposed text:

Article ?

Fundamental and human rights

1 The provisions of the Charter of Fundamental Rights of the European Union shall be binding on the Community institutions and bodies and on the Member States when they are implementing Community law.

2 The Community may accede to international agreements for the protection and promotion of human rights, in accordance with the procedures of [Article 300 EC]. The obligations thus assumed shall be binding on the Community institutions and bodies and on the Member States when they are implementing Community law.

3 If the European Ombudsman considers, after carrying out an inquiry in accordance with [Article 195 EC], that a Member State or a Community institution or body is failing to respect a fundamental or human right binding in Community law, he may bring the matter before the Court of Justice.

Comments:

This provision is drafted on the basis of the existing pillar structure of the Union and could be included in Part 1 (Principles) of the EC Treaty. It therefore refers to Community law rather than Union law even in paragraph 1, which is based on Article 51 of the Charter.

If the pillar structure of the Union were to be abolished, this provision could be combined with the existing Article 6 of the TEU.

If the Convention proposes a Constitutional Treaty, it should include a re-drafted version of this provision.

A new provision corresponding to paragraph 3 would also need to be added to the section of the EC Treaty concerning the Court of Justice.

2 The chapter on remedies

Proposed text:

**CHAPTER ?
REMEDIES**

Article a

General principles

1 For the protection of his or her rights under Community law, including fundamental and human rights, everyone shall have access to the following remedies in accordance with the provisions of this Chapter:

- to bring proceedings in a court of competent jurisdiction**
- to petition the European Parliament and to complain to the European Ombudsman**
- to petition a legislative body or to complain to an ombudsman in each Member State.**

Article b

Judicial remedies

1 Natural and legal persons have the right to bring proceedings in the Court of Justice against the Community and its institutions and bodies, in accordance with [Articles 230, 232 and 235 of the EC Treaty].

2 Natural and legal persons have the right to effective judicial protection by national courts and tribunals of their rights under Community law. To protect such rights, they may bring proceedings in national courts or tribunals against public bodies in the Member States and other natural or legal persons.

The Court of Justice gives preliminary rulings on questions of Community law referred by national courts and tribunals in accordance with [Article 234 of the EC Treaty].

Article c

Right to petition the European Parliament

1 Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has the right to petition the European Parliament in accordance with [Article 194 of the EC Treaty].

2 At the request of the European Parliament, the European Commission shall co-operate in dealing with petitions concerning possible infringements of Community law by Member States, applying the procedures used for the purpose of [Article 226 of the EC Treaty].

Article d

Ombudsmen and bodies dealing with petitions

1 Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has the right to complain to the European Ombudsman concerning instances of maladministration in the activities of Community institutions and bodies, in accordance with [Article 195 of the EC Treaty].

2 Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to complain to an independent ombudsman or body dealing with petitions concerning instances of maladministration in the application of Community law by the public bodies of a Member State. If no ombudsman or body dealing with petitions in the Member State is competent to deal with the matter, the complaint may be addressed to the European Ombudsman.

The European Ombudsman may bring matters of fundamental or human rights before the Court of Justice in accordance with [Article on fundamental and human rights: see above section 1].

Comments:

If the Convention proposes a Constitutional Treaty, it should include this Chapter. If the Chapter were to be added to the existing EC Treaty, it would seem to belong in Part 1 (Principles).

If Articles c and d were adopted, it would be unnecessary to retain the reference to the right to petition and to the European Ombudsman in the existing Article 21 EC. Section 3 below suggests that these parts of Article 21 could be replaced by provisions relating to the right to good administration.

Paragraph 2 of Article d is a minimum provision: it would not prevent national law from conferring a wider mandate on an ombudsman or body dealing with petitions.

3 The European administrative law

Proposed text:

The Community institutions and bodies shall carry out their activities in accordance with the right to good administration. Principles of good administrative behaviour to be observed by the Community institutions and bodies and their staff shall be laid down by the Council, acting in accordance with the procedure referred to in Article 251 within one year of the entry into force of the Treaty of [...].

Comments:

This provision could be included in Part 2 of the EC Treaty (Citizenship), possibly as a replacement for the first two indents of the existing Article 21. Alternatively, it could be placed in Part 1 of the Treaty (Principles), or Part 5 (Institutions).

The proposed deadline of one year seems reasonable in view of the work already accomplished in relation to the European Code of Good Administrative Behaviour, which was approved by the European Parliament on 6 September 2001.

4 The network of ombudsmen and bodies dealing with petitions in the Member States

Proposed text:

Article 195

(...)

4 The European Ombudsman and the ombudsmen and bodies dealing with petitions established in the Member States shall cooperate in a spirit of trust while maintaining their independence.

5 An ombudsman or body dealing with petitions in a Member State may transfer a case involving fundamental rights under Community law to be dealt with by the European Ombudsman. Such complaints may be addressed directly to the European Ombudsman if no ombudsman or body dealing with petitions in a Member State is competent to deal with the matter.

(...)

Comments:

The existing paragraph 4 of Article 195 EC would be renumbered as paragraph 6.
