

COOPERATION of the PETITIONS COMMITTEE
of the GERMAN BUNDESTAG WITH OTHER
PETITIONS COMMITTEES and OMBUDSMEN

by

Petitions Committee of the German Bundestag

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Under Article 17 of the Basic Law of the Federal Republic of Germany, everyone has the right individually or jointly with others to address written requests or complaints to the competent agencies and to parliaments. Under Article 45c, paragraph (1) of the Basic Law, the Petitions Committee set up by the German Bundestag is charged with dealing with the requests and complaints addressed to it. This does not mean, however, that the Petitions Committee of the German Bundestag is empowered to examine the merits of every petition addressed to it in every respect.

As a result of the federal structure of the Federal Republic of Germany, account has to be taken of the constitutional delimitation of competencies between the Federation and the Laender, or federal states. Requests and complaints are dealt with by the Petitions Committee of the German Bundestag or the petitions committee of the Land whose administration or legislation have been criticized. This calls for close cooperation with the petitions committees of the Land parliaments, which are responsible in the federal states for ensuring that the citizen can exercise his right of petition vis-a-vis Parliament pursuant to Article 17 of the Basic Law.

In many cases the petitions addressed to the Petitions Committee of the German Bundestag concern fields of activity of the European Community (EC). In these cases, the Petitions Committee of the German Bundestag cooperates with the Committee on Petitions of the European Parliament in order to deal with the citizen's submission in an appropriate manner. Under the Maastricht Treaty, an Ombudsman empowered to receive complaints from any citizen of the Union has to be appointed; in future, therefore, cooperation with the European Ombudsman is likely to increase in importance.

Last but not least, in all cases in which foreign countries are involved, the Petitions Committee needs to cooperate effectively with the petitions committees and ombudsmen of the countries concerned.

1. Cooperation With the Petitions Committees of the Laender

As already mentioned, the parliamentary treatment of petitions in the Federal Republic of Germany is, in the vast majority of cases, incumbent upon the petitions committees of the German Bundestag and of Land parliaments set up for this purpose. In

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the Parliament of the Rhineland-Palatinate, an Ombudsman, acting as the agent of the Petitions Committee, deals in particular with complaints concerning the executive. Neither the petitions committees nor the Ombudsman may take up matters on their own initiative. They may only deal with matters raised in petitions submitted to them.

The basic right of petition enshrined in Article 17 of the Basic Law applies in equal measure at federal and Land level. Any abolition or restriction of the basic right of petition by a Land would be null and void under Article 31 of the Basic Law, pursuant to which federal law overrides Land Law. Thus, Article 17 of the Basic Law provides the legal basis for the treatment of petitions by the German Bundestag and by the Land parliaments.

In line with the constitutional division of competence between the Federation and the Laender, the German Bundestag is competent to deal with requests regarding legislation insofar as the power to legislate rests with the Federation. Where the power to legislate lies with the Laender, the Land parliament concerned is competent to examine requests regarding legislation (e.g. in respect of police law, law relating to public order, and education).

As regards all other petitions, complaints in particular, the decisive issue is whether the area of competence of the Federal Government, federal agencies or any other institutions discharging public functions of the Federation is affected. Accordingly, the Petitions Committee of the German Bundestag is, for example, competent to deal with complaints about the Foreign Service, the Federal Postal Administration, the Administration of the Federal Armed Forces and the Federal Institute for Employment. As a rule, however, within the federal structure of the Federal Republic of Germany, the Laender execute federal laws as matters of their own concern or as agents of the Federation. In these cases, the Land parliament concerned is competent to deal with complaints. The Federation has only limited supervisory rights in this respect. As far as these rights apply, the German Bundestag, or rather its Petitions Committee, is competent to deal with the relevant complaints.

The citizen need not be familiar in greater detail with this complex distribution of competence. Where the Petitions Committee of the German Bundestag receives a submission which falls within the competence of a Land parliament, as a rule the submission is referred to that body. In the Principles of the Petitions Committee Governing the Treatment of Requests and Complaints (Procedural Rules), the Petitions Committee has authorized the Committee Secretariat to proceed in this manner, which means that the Petitions Committee need not take a decision on referral in each individual instance. In a ruling handed down by the 1st Panel on 13 July 1981, the Federal Constitutional Court confirmed this practice.

Provided that the petition does not contain a statement to the contrary, it is assumed that the petitioner agrees to the referral of his submission to a Land parliament. The petitioner is informed accordingly. In the view of the Petitions Committee of the German Bundestag, this practice serves to ensure that citizens can effectively exercise their right of petition enshrined in Article 17 of the Basic Law. If the express consent of the petitioner had to be obtained in advance, this would on the one hand cause additional administrative work and on the other delay parliamentary examination of the submission, which would be to the citizen's disadvantage.

The petitions committees of the Land parliaments proceed in a similar way when they receive a submission which falls within the competence of the Petitions Committee of the German Bundestag or the petitions committee of another Land parliament.

The Petitions Committee of the German Bundestag attaches great importance to conducting a lively exchange of views with the Land parliaments on all matters concerning practical cooperation. There are discussions with individual petitions committees as well as meetings of the Chairman and Deputy Chairman of the Petitions Committee of the German Bundestag with their counterparts in the Laender. The invitations to these meetings are issued by the Chairman of the Petitions Committee of the German Bundestag whenever the petitions committees of the Land parliaments feel that specific subjects need to be discussed. In this connection, attempts are made to reach a consensus on matters of practical cooperation. No formal decisions are taken. The last meeting of this kind took place on 20 and 21 June 1993 in Friedrichroda (Thuringia).

One important subject dealt with in Friedrichroda was the treatment of petitions which, in the view of the petitions committee of a Land parliament, could give rise to consideration of an amendment to federal law. The petitions committees of the Land parliaments have the possibility of calling upon their respective Land governments to bring their influence to bear in the Bundesrat, the representation of the Laender, so that a bill to this effect is tabled in the Bundestag. There was a consensus among the participants in the meeting that, in cases of this kind, it would be helpful for the petitions committee of the Land parliament concerned and the Petitions Committee of the German Bundestag to engage in direct cooperation. It was therefore agreed to proceed in future as follows:

- As regards complaints which have been examined and subsequently referred to it by the petitions committee of a Land parliament, the Petitions Committee of the German Bundestag will apply a generous yardstick as regards requests concerning federal legislation.
- Where the petitions committee of a Land parliament expressly requests that the petitions be forwarded to the parliamentary groups represented in the German Bundestag for their information, this request will as a rule be complied with if the petition can (also) be considered a request concerning federal legislation.

This example in particular shows that in a federal state such as Germany the basic right of petition can be effectively guaranteed only through continuous close cooperation between the petitions committees of the Federation and the Laender.

2. Cooperation With the Committee on Petitions of the European Parliament

The Petitions Committee of the German Bundestag attaches great importance to conducting a regular exchange of views on the treatment of petitions which relate to EC legislation. For this reason, it has always been represented at the meetings of the Committee on Petitions of the European Parliament with ombudsmen from the Member States and the

chairmen of the petitions committees of the national parliaments. The last meetings of this kind took place in Brussels in April 1989 and March 1991.

Following the 1989 meeting, the Chairman of the Petitions Committee of the German Bundestag and the Chairman of the Committee on Petitions of the European Parliament agreed to continue the cooperation between their committees as practised since 1981. Accordingly, a petition is referred to the other committee if it falls within that committee's sole competence; where a petition also affects the jurisdiction of the other committee, it is also referred to that committee as regards that particular aspect.

This procedure has been incorporated in the Principles of the Petitions Committee governing the Treatment of Requests and Complaints. Under 7.14.6, the Petitions Committee may recommend to the plenary of the German Bundestag that a petition be forwarded to the European Parliament because its jurisdiction is affected.

In one important respect, the relationship of the Petitions Committee of the German Bundestag with the Committee on Petitions of the European Parliament differs from that with the petitions committees of the Land parliaments described in section 1. While the Petitions Committee of the German Bundestag is barred from examining the merits of a petition which, for constitutional reasons, falls within the competence of the Laender, it is generally obliged to examine the merits of all petitions which relate to EC legislation. This is necessary if only because the Federal Government is in a position to exert influence on EC legislation and can therefore be requested by the German Bundestag to adopt a specific course of action. Pursuant to 5.4 of the Procedural Rules, petitions concerning the execution of the EC legislation by the Laender must be dealt with by the Petitions Committee of the German Bundestag insofar as they are subject to federal supervision. Pursuant to the same rule, the Petitions Committee of the German Bundestag also has to deal with requests concerning EC legislation. Thus, in those cases in which the Petitions Committee recommends that a petition be forwarded to the European Parliament, it generally submits another recommendation for a resolution as well (e.g. that the petition be referred to the Federal Government as background material to ensure that it is included in the preparation of bills, ordinances or other initiatives or studies).

3. Cooperation at European Level Following the Entry Into Force of the Maastricht Treaty

Article 138e of the Treaty on European Union of 7 February 1992 (Maastricht Treaty) provides for the appointment of a European Ombudsman. Moreover, pursuant to Article 138d, which has also been introduced in the Maastricht Treaty, any citizen of the Union and any natural or legal person residing or having his registered office in a Member State has the right to address a petition to the European Parliament. Thus, the Maastricht Treaty obviously proceeds on the understanding that requests and complaints can also be addressed to the European Ombudsman to a certain extent and under certain conditions.

The question of the future distribution of responsibilities between the European Ombudsman and the Committee on Petitions of the European Parliament has not yet been settled. It will have to be clarified by the European Parliament.

Until this happens, the Petitions Committee of the German Bundestag will abide by the proven procedures described in section 2 above. This means that a petition will be forwarded to the European Parliament where its jurisdiction is affected. Should the European Parliament hold that the petition falls within the competence of the European Ombudsman, it may forward the petition to him.

Article 5 of a draft resolution adopted by the European Parliament on the regulations and conditions governing the performance of the European Ombudsman's duties regulates his cooperation with the "Ombudsmen" of the Member States. In order to increase the effectiveness of his inquiries and improve the protection of the rights and interests of persons lodging complaints, the European Ombudsman may cooperate with ombudsmen in Member States and ask them for the necessary assistance. He may also assist them in their inquiries. This cooperation will be established on a voluntary basis and may be the subject of agreements between ombudsmen. However, under no circumstances may such agreements affect Community or national provisions governing ombudsmen.

The German Bundestag proceeds on the assumption that the rules governing cooperation between the European Ombudsman and the national ombudsmen also apply to the petitions committees in Germany. The same is presumably true of Luxembourg. In both of these two member states of the European Union, the petitions committee is the so-called national ombudsman. The German Bundestag proceeds on the understanding that this issue will be clarified in the rules governing cooperation.

For the effective extrajudicial guarantee of the rights of citizens to be ensured, all institutions responsible for dealing with petitions need to cooperate in an appropriate manner. If the European Ombudsman, for example, considers that he needs the support of the Petitions Committee of the German Bundestag in a particular case, he can either turn to this committee directly or pass on his request through the Committee on Petitions of the European Parliament. Regardless of the way Article 5 of the above-mentioned draft is interpreted, the procedures for cooperation will, in due course, have to be defined by the relevant institutions.

4. Cooperation With Ombudsmen and Similar Institutions in Other States

Where the formal examination of a petition shows that it falls within the competence of the ombudsman of another state, the petitioner is in the majority of cases informed of this fact as well as of the address of the ombudsman concerned and advised that he could also submit the petition to him. Occasionally, the Petitions Committee of the German Bundestag contacts the ombudsman of the other state directly, particularly in those cases in which his jurisdiction only covers one particular aspect of the petition.

Further, in this field, the Petitions Committee attaches great importance not only to practical cooperation but also to an intensive exchange of views. Now that Europe is no longer divided, this also applies to the Eastern European and CIS states, where the relevant institutions are currently being established. Moreover, the International and European Ombudsman Conferences, as well as similar events, provide suitable fora for intensive discussions and contacts.