

**ORGANIZATION, RESPONSIBILITIES  
and PROCEDURE of the PETITIONS COMMITTEE  
of the GERMAN BUNDESTAG**

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**Petitions Committee of the German Bundestag**

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## **Introduction**

In the Federal Republic, requests and complaints by citizens are primarily examined by the Petitions Committees of the Parliaments at federal and Land level. So far, little experience has been gained with the institution of the ombudsman. In the Federal Republic, the purpose of the Petitions Committees is to guarantee and improve the extra-judicial protection of the fundamental rights of citizens. Thus, seen in this light, the Petitions Committees and ombudsmen are not competing institutions. Rather, their work is based on the same concept. The way in which petitions are processed in practice will be explained here, using the example of the Petitions Committee of the German Bundestag.

## **1. Organization**

The Petitions Committee forms part of the organizational structure of Parliament. It is one of the twenty-four permanent committees set up currently by the German Bundestag. Pursuant to Article 45c, paragraph (1) of our Constitution, the Basic Law, the Bundestag is obliged to set up a Petitions Committee responsible for dealing with the requests and complaints addressed to the Bundestag. Thus, alongside the Foreign Affairs and Defence Committees, the Petitions Committee is one of the committees which have to be set up pursuant to the Constitution and which are endowed with special powers.

Currently, the Petitions Committee comprises thirty-three Members of Parliament, appointed in accordance with the relative strengths of the parliamentary groups or groupings in the plenary (CDU/CSU:15; SPD:12; FDP:4; Alliance 90/Greens:1; PDS/Left List:1). Dr. Gero Pfennig, Berlin (CDU), has been Chairman of the Committee since 1 April 1987. Bernd Reuter, Hanau (SPD), is Deputy Chairman. The members of the Petitions Committee generally serve on other Bundestag committees as well.

Like all the other permanent committees, the Petitions Committee is an organ of the German Bundestag which helps to prepare the resolutions of the plenary. It submits recommendations for resolutions to the plenary, to which it reports, in the form of lists, on the petitions it has dealt with. As a rule, these reports are prepared for the week of sittings following a meeting of the Petitions Committee. Most of the reports are adopted without debate. A debate takes place only if this is demanded by a parliamentary group or by five percent of the Members of the Bundestag present.

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If a parliamentary group on the Petitions Committee announces that it will move a motion for a plenary debate on the recommendation for a resolution in respect of a petition, or on an amendment to a recommendation for a resolution, this recommendation or amendment is circulated to all Members of the Bundestag as a printed paper.

The petitioner is advised of the outcome of his petition after the Bundestag has taken a decision on the recommendation submitted to it. In this connection, he or she is also informed of the reasons for the decision taken.

To facilitate its work, the Petitions Committee is supported by a committee service which currently comprises eighty staff members. The "Directorate for Petitions and Submissions" forms part of the Administration of the German Bundestag. The Directorate is subdivided into a Secretariat and five Divisions dealing with petitions.

The Divisions mirror the structure of the Federal Ministries, with each Division being responsible for the field of competence of specific Federal Ministries. A wide range of areas has to be covered by comparatively few staff members.

The Secretariat deals with the petitions which the German Bundestag may not examine for constitutional reasons (e.g. by referring them to the appropriate Land parliaments). It performs a wide range of functions. It carries out information and publicity work on behalf of the Committee (e.g. it prepares the Committee's annual reports to the plenary); it establishes and maintains working relations with similar institutions at home and abroad (e.g. with Petitions Committees of the federal states, or Laender, and Ombudsmen); and it cooperates in international bodies such as the International Ombudsman Institute and the European Ombudsman Institute. It also prepares committee meetings and performs other organizational tasks to ensure the efficient functioning of the Committee and the relevant Divisions.

## **2. Responsibilities**

Pursuant to Article 7 of the Basic Law, "Everyone shall have the right, individually or jointly with others, to address written requests or complaints to the appropriate agencies and to parliamentary bodies." The right to address petitions to the "appropriate agencies" will not be considered in greater detail here.

Under Article 45c, paragraph (1) of the Basic Law, within the German Bundestag only the Petitions Committee may deal with the requests and complaints addressed to it. However, this merely means that the Petitions Committee has formal competence to deal with the petitions addressed to it. The constitutional powers of the German Bundestag determine whether the Petitions Committee is entitled to examine the merits of a petition.

In this connection, the division of competencies between the Federation and the Laender under the Constitution must be taken into account. As regards requests concerning legislation, the German Bundestag is competent provided that the power to legislate on the matter lies with the Federation. Where this power has been assigned to the Laender, the

respective Land parliament is responsible for examining requests concerning legislation (e.g. as regards law enforcement and schools).

As regards all other petitions, especially complaints, the issue of competence is determined by whether the matters raised in the petitions fall under the jurisdiction of the Federal Government, federal agencies or other agencies performing public tasks of the Federation. This applies irrespective of whether and to what extent the federal agencies and other institutions are subject to supervision by the Federal Government. The Petitions Committee of the Bundestag is responsible, for example, for complaints concerning the Foreign Service, the postal service, the administration of the Federal Armed Forces or the Federal Institute for Employment. Given Germany's federal structure, however, the Laender generally execute federal laws as matters of their own concern or act as agents of the Federation. In these cases, the appropriate Land parliament is responsible for dealing with complaints. The Federation has only limited rights of supervision in this respect. To the extent that such rights exist, the German Bundestag, or rather its Petitions Committee, is competent alongside the Land parliaments.

In accordance with the limits set by the Basic Law, the Petitions Committee also deals with petitions concerning the constitutional organs of the Federation. Alongside the Federal Government and the Bundestag, these are the Bundesrat, the Federal President and the Federal Constitutional Court.

Under Articles 20, 92 and 97 of the Basic Law, Parliament may not interfere with judicial independence. Where such interference with judicial independence is demanded, the petition will not be examined as to its merits. Petitions concerning legal proceedings may only be dealt with in the following three cases:

- the petitioner demands that the appropriate federal agency, as a party to a pending lawsuit, take a particular course of action;
- the appropriate federal agency is requested not to enforce a judgement delivered in its favour; and
- the petitioner demands a legal regulation which would in future bar the courts from handing down rulings such as the ones challenged in the petition.

### **3. Procedure**

Petitions are processed in accordance with the following rules:

- the right of petition enshrined in Article 17 of the Basic Law;
- Article 45c of the Basic Law. Pursuant to paragraph (1) of this article, a Petitions Committee must be set up by the Bundestag to handle the requests and complaints addressed to the Bundestag;

- Law on the Powers of the Petitions Committee of the German Bundestag, enacted by virtue of Article 45c of the Basic Law;
- Rules of Procedure of the German Bundestag, in particular sections 108 to 112; and
- Principles of the Petitions Committee Governing the Treatment of Requests and Complaints.

In a series of rulings, the Federal Constitutional Court has held that the treatment of petitions pursuant to Article 17 of the Basic Law must meet the following three requirements:

- the contents of petitions must be examined as to their merits;
- a decision must be taken on how the petition will be conclusively settled; and
- the petitioner must be informed of the decision taken. Where petitions cannot, for constitutional reasons, be examined by the German Bundestag as to their merits, the Petitions Committee is not required to take a final decision. Under the rules governing the petitions procedure, the committee service is entitled to take a decision on such cases. The Federal Constitutional Court has endorsed this practice, commenting on the issue as follows:

"Where... petitions are concerned which Parliament may not, for constitutional reasons, examine as to their merits or even take a decision on them in accordance with the wishes of the petitioner, and regarding which, on the basis of the applicable legal provisions, it can only be decided that there is no remedy to the issues raised in the petitions, it would be unnecessarily formalistic to insist on a constitutional duty of either the Petitions Committee or the plenary to examine each individual petition of this kind; under these special circumstances the requirements of Article 17 of the Basic Law are met if the Petitions Committee deals with the controversial types of petitions in general and in advance and if the Central Office (today called committee service) is given instructions on what decision to take in such cases, provided that these instructions are clear and can be applied without difficulty in each individual case and provided that the aforementioned Office is staffed with legally trained personnel." (Decision of the First Senate of the Federal Constitutional Court of 13 July 1982).

To ease the workload of its members, the Petitions Committee has included the following regulation in its procedural rules. Where the committee service holds that a petition will clearly be unsuccessful, it can inform the petitioner of the reasons therefor and advise him that the petitions procedure will be concluded if he does not lodge an objection within six weeks. If the petitioner does not object within this period, the committee service includes the petition in a list of petitions that have been conclusively settled. This list is subsequently submitted to the Petitions Committee so that it may examine the cases in question and take a decision on them. The Petitions Committee can give instructions that the

petition be pursued further. To help it settle the question of whether a petition really stands no chance of success, the agency concerned usually the appropriate Federal Ministry is requested to comment on the matter.

As regards all other petitions which the Petitions Committee may deal with, the Federal Government and other agencies obliged to furnish information are, as a rule, requested to submit their comments. Following examination of these comments, the demand made by the petitioner is often fulfilled. In 1992, this was the case in about seven percent of the petitions examined on their merits. The petitions settled favourably in this manner are included in a list, as are those which are clearly unsuccessful. This list is also submitted to the Committee for endorsement.

In all other cases, the committee service proposes the appointment as rapporteurs of two committee members from two different parliamentary groups (one for the ruling coalition and one for the opposition). Moreover, any individual parliamentary group represented on the Committee can demand the additional appointment of a rapporteur of its own. The committee service then passes the file concerning a petition to these rapporteurs and suggests how it should be further dealt with. If the rapporteurs do not agree with the suggestions made by the committee service, they submit proposals of their own.

In the majority of cases, proposals on how the petition should be conclusively settled are made. The following options are available:

- referral of the petition to the Federal Government, because the request made by the petitioner is well-founded and remedial action must be taken;
- referral of the petition to the Federal Government since it appears justified, on the basis of the petition, to request the Federal Government to examine the matter again and to look for ways of remedying the situation;
- referral to the Federal Government as background material in order to ensure that the petition is included in the preparation of draft laws, ordinances or other initiatives or surveys;
- simple referral to the Federal Government in order to draw its attention to the reasons for the decision taken by the Bundestag, or to the matter raised by the petitioner;
- submission to the parliamentary groups for their information, because the petition appears to be a suitable matter for a parliamentary initiative, or in order to draw the Federal Government's attention to the issue raised by the petitioner;
- forwarding to the European Parliament because its competence is affected;
- conclusion of the procedure because: the matter has already been dealt with in the current electoral term or the request made by the petitioner has been met;

- there is no prospect of the relevant legal provisions being changed or supplemented;
- the request or complaint cannot be settled in accordance with the petitioner's wishes;
- the conduct of the administrative agency concerned gives no cause for criticism; or
- the petition may not be examined as to its merits.

However, it may also be proposed that the matter be investigated further. Thus, it is often suggested that additional comments be obtained or that a representative of the Federal Government be invited to attend a committee meeting. Where complaints are concerned, the Petitions Committee may make use of its powers under the Law on the Powers of the Petitions Committee. Pursuant to this law, the Committee:

- may request the Federal Government, the agencies subordinate to it, and the corporations, institutions and foundations under public law subject to its supervision to provide information, submit files or grant access to their premises;
- hear petitioners, witnesses and experts;
- in individual cases, assign the exercise of these powers to one of its members; and
- request administrative aid from courts and administrative agencies.

The rapporteurs present their proposals to the Petitions Committee in the form of motions which, as a rule, are voted upon collectively. In the Committee meetings those petitions are considered individually:

- in respect of which it is moved that they be referred to the Federal Government for it to take remedial or legislative action;
- in respect of which it is moved that they be passed on to the parliamentary groups in the German Bundestag for their information, or forwarded to the European Parliament;
- in respect of which the motions submitted by the rapporteurs and the proposals made by the committee service diverge;
- in respect of which individual consideration has been moved;
- in respect of which it is moved that a member of the Federal Government be invited to a Committee meeting; and
- in respect of which it is moved that use be made of the other powers of the Petitions Committee, such as on-site inspections (see Law on the Powers of the Petitions Committee).

Before the Committee takes a decision on these petitions, a debate takes place, which is occasionally very divisive. Since the Committee sees its role as representing the interests of citizens, a decision favourable to citizens' concerns is sought even if political opinions differ.

After each meeting, the Committee reports to the plenary of the Bundestag in the form of lists. Following the plenary's decision the petitioner is advised of the way his petition has been settled. This information is always accompanied by the Committee's recommendation for a resolution, together with the reasons therefor. The Committee's recommendations for resolutions go far beyond the minimum constitutional requirements described above, and the reasons given are often as detailed as those stated in a court ruling.

Pursuant to section 109 of the Rules of Procedure of the German Bundestag, the Petitions Committee invites the comments of the specialist committees where the petitions concern matters being considered by them. This is to ensure coordination between different parliamentary bodies and prevent divergent decisions being taken. This, too, shows that the Petitions procedure is an integral part of the conduct of parliamentary business.