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GERMAN BUNDESTAG - PETITIONS COMMITTEE

THE WORK IN THE YEAR 1994

(SUMMARY)

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Report on the work of the Petitions Committee of the German Bundestag in the year 1994

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Summary

I. Number and focus of submissions

In 1994 the Petitions Committee received 19,526 submissions, 572 fewer than in 1993, when 20,098 were received. Following the much sharper drop of 3,862 in 1993 as against 1992, the number of submissions has thus fallen below the 20,000 mark again for the first time since 1990.

If the submissions are classified according to the federal ministries concerned, it becomes apparent that there was mostly a slight decrease in the number of submissions compared with 1993 and in the case of a few ministries a slight increase. However, the number of submissions concerning the areas of competence of the Federal Ministry of Finance and the Federal Ministry of Justice decreased substantially (minus 660 and minus 326 submissions respectively), whereas there was a considerable increase in submissions which concerned the Federal Ministry of the Interior (plus 390) or which the Petitions Committee of the German Bundestag cannot examine for constitutional reasons (plus 498).

The increase in the latter category to 4,597 - almost a quarter of the total number of submissions received in 1994 - shows that many citizens continue to lack clear and correct information on the right of petition and its scope. However, 2,829 of these submissions which could not be examined by the Petitions Committee of the German Bundestag for constitutional reasons were forwarded to the Land parliaments responsible so that these cases could be examined as petitions.

The number of submissions concerning the public service regulations rose significantly, which is one very important reason for the large increase in the number which fell within the area of competence of the Federal Ministry of the Interior.

The drop in the number of submissions concerning the area of competence of the Federal Ministry of Finance and the Federal Ministry of Justice is due above all to the fact that matters closely connected with reunification have now been regulated by legislation. For example, the drop in the number of submissions on the subject of the equalization of burdens (minus 667 submissions) is due to the entry into force of the Act on Compensation and Equalization Payments of 27 September 1994. In the area of competence of the Federal Ministry of Justice three laws of importance to citizens of the new federal states were adopted: the Act on the Abrogation of Property Law and the Act on the Adjustment of Law of Obligations (both of 21 September 1994) and the Second Act to Redress SED Injustice (of 23 June 1994).

This connection is confirmed by the drop in the number of submissions received from the new federal states from 5,760 in 1993 to 5,020 in 1994. Whereas, as in the previous year, 213 submissions were received per million inhabitants in the old federal states (which for statistical purposes include all the inhabitants of Berlin), the figure for the new federal states fell from 367 in 1993 to 321 in 1994.

It may be concluded from this that the legislation regulating some areas related to unification has settled various matters and thus also resulted in a fall in the number of submissions received from the new federal states. However, it cannot be inferred from this numerical trend whether citizens are satisfied with the unification process as a whole.

One important focus of the Committee's work in the year under review was the number of complaints from citizens about their unusually high telephone bills. In the year under review about twice as many submissions (over 600) were received on this subject as in 1993. As early as September 1994 the Committee came to the

conclusion that the suspicion was being confirmed that the TELEKOM network could be manipulated and that manipulation could have occurred, which was borne out by subsequent reports in the media on fraud involving public recorded information services (cf. II.1). The Committee will continue to be concerned with excessively high telephone bills.

Submissions concerning the Act extending the Pension Scheme to the New Federal States were again another focus of the Committee's work. They concerned both the provisions of this Act and the working methods of the pension insurance funds and the computation of pensions in individual cases. In addition, the discussion on the nursing care insurance and financing it, the effects of the First Act to Implement the Austerity, Consolidation and Growth Programme, which entered into force on 1 January 1994 - in the field of labour administration, inter alia -, the discussion on constitutional reform and the problems of disabled persons were important areas of the Committee's work.

Over a million citizens signed a collective petition calling for dual citizenship to be permitted in general. Several collective petitions called for specific asylum-seekers whose applications had been rejected to be allowed to remain in the federal territory.

Most petitions concerned the areas of competence of the Federal Ministry of Labour and Social Affairs (27.14 per cent), the Federal Ministry of the Interior (17.76 per cent), the Federal Ministry of Finance (11.90 per cent) and the Federal Ministry of Justice (8.23 per cent). For years most letters received have concerned the areas of competence of these four ministries.

On 14 December 1994 the Petitions Committee of the 13th electoral term held its constituent meeting. The number of committee members has been reduced from 33 to 32. Christa Nickels from ALLIANCE 90/THE GREENS was elected chairwoman. Her predecessor, Dr. Gero Pfennig from the CDU/CSU, held this office in the 11th and 12th electoral terms (since April 1987).

The work of the Committee remains unchanged in the 13th electoral term as regards its objectives and structures. The chief aim of the Petitions Committee continues to be to serve as a "citizen's advocate". However, it can perform this task only within the framework of its competence.

II. A selection of individual cases

1. Complaints about telephone bills

In 1994 the Committee received over 600 petitions in which citizens complained about what they considered to be excessive telephone bills. They mostly concerned sums of between DM 500 and DM 5,000 but in individual cases up to DM 20,000 was involved. In addition, many petitioners called for improved consumer protection.

As in the previous year, the Petitions Committee considered this problem at length. On 26 October 1993 the Committee had heard the Federal Minister of Posts and Telecommunications, Dr. Bötsch, and the member of the board of management of Deutsche Bundespost TELEKOM responsible for such matters; the Committee discussed the entire issue on 7 September 1994. In line with the recommendation of the Committee, the German Bundestag decided at its sitting on 21 September 1994 to refer the petition to a group of persons representing common interests and 128 similar petitions to the Federal Government, requesting that remedial action be taken, where improved consumer protection and a more balanced distribution of the burden of proof were called for.

To its regret, the Committee was unable to meet the expectations of individual petitioners who called for TELEKOM to waive charges. In individual cases the petitions proceedings were concluded, since the number of staff at the Committee's disposal did not permit it to examine whether each call for a waiver of charges was justified. In the Committee's view, this is ultimately possible only on the basis of a final judgment handed down by a civil court. Only in a few atypical cases which were not dealt with within the framework of these 129 petitions (the number

subsequently went up to 130) did the Committee support the petitioner in individual cases too.

On account of the many petitions on this subject the Petitions Committee came to the conclusion, in the reasons it gave for its decision of 21 September 1994 to refer the petitions to the Federal Government requesting that it take remedial action, that the TELEKOM network could be manipulated and that manipulation had occurred. This conclusion was confirmed by subsequent reports in the media that TELEKOM staff were implicated in fraud involving public recorded information services.

The Committee considered the individual telephone customer's lack of possibilities of providing proof vis-à-vis TELEKOM to be the chief problem. It therefore called for itemized bills free of charge informing telephone customers of what calls have been made when from their telephone and their cost in each individual case. Moreover, TELEKOM should attach greater value to the customers' notes as evidence than to the estimated result of its own technical checks.

Following media reports about TELEKOM staff being implicated in fraud and about other criminal practices in connection with excessive telephone bills, the Committee asked the Federal Ministry of Posts and Telecommunications in December 1994 to include these accusations in its reply to the decision of the German Bundestag to refer the petitions to the Federal Government requesting it to take remedial action.

The Federal Ministry of Posts and Telecommunications included these accusations when subsequently commenting several times in writing on the decision to refer the petitions to the Federal Government and request it to take remedial action. Moreover, the Federal Minister of Posts and Telecommunications, Dr. Bötsch, reported on the matter to the Committee. He stated that, in response to the above-mentioned accusations, TELEKOM was examining its transmission networks nationwide for errors, illegal interception and other manipulations. To improve consumer protection, customers would now be offered itemized bills, for

which a single payment of DM 19 is required. In this connection, the digitalization programme had been speeded up considerably and was now to be completed by the end of 1997. Moreover, measures were being taken to increase the security of the network. As regards calls for a more balanced distribution of the burden of proof, Dr. Bötsch said that he had ordered the provisions of the Telecommunications Ordinance to be reviewed as to risk distribution in the case of inexplicably high telephone bills.

The Committee noted these measures with satisfaction and observed that TELEKOM's new approach was being confirmed by the fact that remedial action was now being taken far more frequently in the case of complaints about excessive telephone bills. However, since in its view a few individual points were still open, further deliberations were required on the reaction of the Federal Ministry of Posts and Telecommunications and TELEKOM to the decision of the German Bundestag to refer the petitions to the Federal Government, requesting it to take remedial action.

As regards the further deliberations of the Committee, importance also attaches to questions connected with the privatization of the three companies of the Deutsche Bundespost on 1 January 1995 (now called: Deutsche Telekom AG, Deutsche Post AG and Deutsche Postbank AG) concerning Parliament's possibilities of exercising influence and scrutiny with regard to these private companies.

2. Assessment of substitute periods in pension insurance in the case of insured persons from the last generation of war veterans

The Petitions Committee supported submissions in which several war veterans, particularly late returnees from prisoner-of-war camps, complained about the revised assessment of so-called substitute periods under the 1992 pension reform.

Under the 1992 Pension Reform Act, which entered into force on 1 January 1992, greater emphasis was to be placed again on pension benefits resulting from contributions paid, whereas within the framework of the overall payments valuation less importance was to

be attached to periods in which no contributions were paid, such as the so-called substitute periods and credited periods (previously excused periods).

The petitioners belonged to the last generation of war veterans, who were recruited at the end of the Second World War at the age of between 14 and 18. They subsequently spent many years as prisoners of war and were then unable to work for quite a long time on health grounds. Under the 1992 Pension Reform Act, the pension granted is governed by the provisions in force at the time the pension begins to be drawn. In the case of the petitioners, this was after 31 December 1991. The size of their pensions was therefore governed by the provisions in force since introduction of the 1992 Pension Reform Act, which are less favourable for them.

The petitioners stated that, since the period of their captivity and subsequent illness were counted as substitute periods, the overall payments valuation led to results which were no longer objectively justified in their cases and severely restricted them in their plans for their lives. In particular, they drew considerably smaller pensions than those whose pensions were calculated under the old law. "If I had retired in 1991 and not in April 1992, I would receive DM 953,95 more per month," one of the pensioners explained.

In the petitioners' view, this discrimination is unjust given the disadvantages they suffered as a result of the war. One petitioner described these disadvantages as follows: "I spent my substitute periods as a prisoner of war in the USSR. The Soviets sentenced me to death four times. When I returned home after eleven years I was an invalid and cripple!"

The Federal Ministry of Labour and Social Affairs pointed out in its comments that the introduction of the overall payments valuation had had the backing of all the parliamentary groups in the discussion on the 1992 pension reform. The hardship caused to the petitioners was due to the fact that the provisions applied from an appointed day, which had been expressly recognized as

permissible by the Federal Constitutional Court and the Federal Social Court in the field of pension law in particular.

By contrast, the Federal Insurance Office stated that, in introducing the overall payments valuation, Parliament had evidently proceeded on the assumption that almost all the war veterans would already be drawing pensions when the pension reform entered into force. It had been presumed that, in the case of the remaining war veterans who had not reached the age of 65 by this time, the substitute periods would be short and the reduction in pensions rights would therefore be insignificant.

The Committee pointed out that Parliament's objective could not justify the drastic reduction in pension rights in some cases. The changes introduced by the 1992 Pension Reform Act were intended to provide forward-looking pension security; however, in the case of the petitioners, some of whom were seriously disadvantaged on account of war-related illnesses and disabilities, only an assessment based on the past was appropriate compared with the treatment of all other war veterans under pension law. The Committee failed to understand why a very small number of those affected should be treated differently from almost 99 per cent of war veterans, who began to draw a pension before 1 January 1992, i.e. under the old legislation.

The Committee also had serious misgivings about the argument put forward by the Federal Ministry of Labour and Social Affairs that in the cases described by the petitioners the reduction in pensions was an unavoidable consequence of the fact that the new regulations applied from an appointed day onwards. It pointed out that it was not the appointed day as such, but the choice of 1 January 1992 as the appointed day which had led to hardship in individual cases which Parliament had not foreseen. If introduction of the new provisions were deferred until 31 December 1996, the last war veterans would without exception be unaffected.

Finally, the Committee pointed out that the fact that substitute periods were taken into account when computing the size of pensions led to benefits being funded by means other than pension

insurance and that in the entire post-war period up to the 1992 pension reform benefits had been financed to a considerable extent from federal funds, and thus from taxes. Given this fact, the pensions of the last war generation should not be strictly based on the actual contributions paid.

Upon the recommendation of the Committee, the petitions were referred to the Federal Government, which was requested to take remedial action and called upon to remedy the situation by extending the transitional arrangements contained in the 1992 Pension Reform Act. Moreover, the petitions were forwarded to the parliamentary groups in the German Bundestag for their information, since they appeared to be appropriate material for a parliamentary initiative.

Subsequently the matter was largely settled as requested by the petitioners: Under a law adopted on 26 July 1994, retroactively as from 1 January 1992, which amended Section 263 of the Sixth Book of the Social code, substitute periods are assessed as they were under the law in force until 31 December 1991, if the substitute periods of the person concerned amount to at least 48 calendar months.

3. **Exemption from the Working Time Act for children's villages**

A submission from an association which runs several children's villages in the Federal Republic of Germany was completely successful. The association suggested that the employees of children's villages who live together with the children committed to their care in one household (so-called children's village parents) be exempted from the scope of a future Working Time Act. It expressed the fear that unrestricted application of the Act to these persons too could place in jeopardy the successful educational concept of the children's villages, since the staff live with the children, adolescents and young adults in their care.

The Petitions Committee referred the petition to the Committee on Labour and Social Affairs of the German Bundestag, asking it for

its comments. This specialized committee was at that time deliberating, as the committee responsible, on draft laws on working time submitted by the Federal Government and by the parliamentary group of the SPD. Upon the recommendation of the specialized committee, Article 1, Section 18, paragraph 1, No. 3 of the Working Time Act, which was adopted by the German Bundestag on 10 March 1994 and entered into force on 1 July 1994, was formulated as follows: (This Act shall not apply to ...) employees who live in the same household as the persons committed to their care and are responsible for rearing, nursing or looking after them."

Thus the matter could be settled entirely as the petitioner had requested, and to a large extent the wording proposed by the petitioner was used.

4. Wheel-chair users on ICE trains of German Railways plc

A severely disabled man who is dependent on using a wheel chair asked that when new ICE trains are ordered it be ensured that they can be used by persons in wheel chairs too. To this end, influence should in his view be exerted on the Federal Ministry of Defence and German Railways plc.

He explained that, although all larger stations had special lifting devices which helped wheel-chair users to board trains, only the station staff, who are not always available, can operate them. In his view, the aim must be to provide train-integrated boarding aids which enable disabled persons to board trains unaided.

In its comments the Federal Ministry of Transport stated that, after consulting the railway companies in neighbouring countries, German Railways plc had decided to equip about 400 stations with mobile boarding aids in the form of lifting devices and collapsible ramps. Even train-integrated boarding aids would not enable wheel-chair users to board trains completely unaided.

Despite these comments, the Petitions Committee proposed that the petition be referred to the Federal Government - the Federal Ministry of Transport - for it to examine the matter again and consider ways of remedying the situation. As early as 1987 and 1988 the Committee had expressly advocated greater consideration being given to the needs of the severely disabled on the trains of the then German Federal Railway (cf. 1987 Annual Report, Printed Paper 11/2346, p. 29, No. 2.9.6 and 1988 Annual Report, Printed Paper 11/4570, p. 29, No. 2.9.2 b). At its insistence, ICE saloon coaches were then equipped with special facilities for the disabled. Moreover, in the Committee's view, technical aids need to be provided to enable wheel-chair users to board trains unaided. A severely disabled person who needs a wheelchair must be able to travel as independently as possible just like other passengers. Special lifts and ramps at stations are to be welcomed as initial measures, but the individual IC and ICE coaches must ultimately be made accessible in such a way that wheel-chair users too can board the train unaided. Moreover, as long as this is not the case, assistance for disabled persons must be available at all stations and at any time of day.

As a result of the decision of the German Bundestag, the Federal Government - the Federal Ministry of Transport - was requested to examine the matter raised by the petitioner again and seek ways of remedying the situation.

In two replies to the decision of the Bundestag, the Federal Ministry of Transport stated that German Railways plc had decided against the installation of train-integrated boarding aids because the cost involved was not justified and because so far no inexpensive aid the construction of which was satisfactory existed which was accepted by the majority of European railways at border crossings. Developments and tests in this area were being followed with great interest and German Railways plc would endeavour to adopt workable solutions at an appropriate time. The Committee has not completed its deliberations on whether it will take further steps to support the matter raised by the petitioner and, if so, what steps are envisaged.

5. Use of pyrethroids inside buildings detrimental to health

In April 1993 a couple from Lower Saxony who had been suffering from various symptoms since the use of pesticide in their flat in October 1986, wrote to the Petitions Committee calling for the use of so-called pyrethroids inside buildings to be banned, for pest control experts to receive better training, and for the victims of non-biodegradable insecticides to receive compensation from the state.

In 1986 the insecticide deltamethrin was used in the petitioners' home to remove cat fleas. The wife in particular subsequently suffered for years from various symptoms probably caused by the use of this insecticide, which belongs to the pyrethroid group. The Federal Health Office has been informed of many incidents after the use of pyrethroids. Between December 1990 and October 1993 a total of 62 such cases were reported to it. Pyrethroids have, in particular, a strong stimulating effect on the nervous system.

The Federal Health Office arranged for the petitioners' house to be examined. The examination furnished evidence that the level of residual deltamethrin in dust was still extraordinarily high approx. five years after the use of the pesticide; a connection could thus be established between the pesticide and some of the symptoms described by the petitioners, in particular irritation of the skin and mucous membrane (e.g. cold-like rhinitis). The petitioners stated that they were still suffering from the consequences of pest control. In addition to the symptoms, the petitioners were living "in provisional conditions", since it was necessary to remove residual toxic substances from the house which had been built in 1984.

In principle the Committee welcomed the initiatives of the Federal Ministry of Health to protect people from reactions to pyrethroids but, in its opinion, health risks could only be ruled out if the use of pyrethroids inside buildings were completely banned. The draft ordinance which the Federal Ministry of Health drew up, taking into consideration the proposals of the Federal Health

Office, according to which insecticides which contain pyrethroids and are distributed by means of electric vaporizers must contain a clear warning about improper use, is not sufficient in the view of the Committee. The Committee therefore recommended that the petition be referred to the Federal Government - the Federal Ministry of Health - for it to examine the matter again and consider ways of remedying the situation, where a ban on the use of pyrethroids inside buildings was called for.

As regards the improved training of pest control experts, for which the petitioners called, the Committee recommended that the petition be forwarded to the Land parliaments, since such matters fall within their area of competence.

Finally, the Committee was not in favour of state compensation, for which the petitioners also called. In this connection the petitioners were informed that they would have to have recourse to the courts. As far as this matter was concerned, the Committee recommended that the petitions proceedings be concluded.