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VARIA 2 (E)

DRAFT LAW RELATING TO THE COMMISSIONER FOR CITIZENS' AFFAIRS OF THE GERMAN BUNDESTAG (CITIZENS' COMMISSIONER ACT)

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Deutscher Bundestag
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Bill
introduced by Christa Nickels, Amke Dietert-Scheuer, Gerald Häfner, Cem Özdemir, members of the German Bundestag, and the ALLIANCE 90/THE GREENS parliamentary group

Draft Law Relating to the Commissioner for Citizens' Affairs of the German Bundestag (Citizens' Commissioner Act)

A. The Problem

More than 50 states have taken up the idea of the ombudsman as an instrument for monitoring administrative action, mostly at national level. 1995 saw the election of the first commissioner for citizens' affairs reporting to the European Parliament. In view of its wide use internationally, such a monitoring instrument can now be regarded as a necessary building block, or even as an essential feature in a democratic system. Nevertheless, the Federal Republic of Germany is the only major European state without this form of personalized control of the administration on behalf of parliament - with the exception of the citizens' commissioners appointed in the federal states (*Länder*) of Rhineland-Palatinate and Mecklenburg-Vorpommern.

Citizens make use in gratifyingly large numbers of the basic right set forth in Art. 17 of Germany's constitution, the Basic Law (GG), to apply to parliament - as the body representing the people - with requests and complaints. The number of submissions to the German Bundestag has risen from 10,000 to 20,000 a year since 1970. Unfortunately, the conventional procedure and the instruments now available to the German Bundestag for dealing with citizens' concerns are no longer able to cope with the growing quantitative and qualitative requirements of an open civil society to be met by a modern right of petition.

B. The Solution

With a view to strengthening and fashioning the petition right so as to make it better attuned to public concerns, the German Bundestag is creating the post of a commissioner for citizens' affairs as an auxiliary arm of parliament assigned to the Petitions Committee.

The creation of the post of citizens' commissioner, as envisaged in this bill, will give the parliament and the Petitions Committee a set of instruments that will enable them to respond flexibly, unconventionally and quickly to specific obstructions and obstacles encountered in the implementation of laws and administrative acts. The commissioner's remit is to strengthen the citizen's position in his/her dealings with public authorities, acting within the scope of parliament's powers of control. In those countries where Petitions Committee and citizens' commissioner - who is attached structurally and organizationally to the Committee - work together, the post of commissioner has stood the test as a direct source of assistance for citizens and as a support for both parliament and the Petitions Committee. This does not affect the powers of the Petitions Committee itself.

The institution of the citizens' commissioner helps overcome certain structural obstacles to the work of the Petitions Committee that could not be removed even with a comprehensive reform of the organization and powers of the Committee in its conventional form.

C. Alternatives

None

D. Costs

As head of the Committee Service, the citizens' commissioner has access to the existing staff and organizational capacities and instruments of the Petitions Committee. Hence, the appointment of a commissioner would add only insignificantly to the existing staff plan and the physical resources of the Committee Service.

Draft Law Relating to the Commissioner for Citizens' Affairs of the German Bundestag (Citizens' Commissioner Act)

The Bundestag, with the consent of the Bundesrat, has passed the following bill:

Section 1
Concept and Duties

(1) Citizens' commissioner within the meaning of this law is a male or female office holder.

(2) The remit of the citizens' commissioner is to safeguard the rights of the citizen in his/her relations with public authorities, acting within the scope of the parliamentary powers of control exercised by the German Bundestag, and, hence, to strengthen the citizen's position.

(3) The citizens' commissioner shall act whenever he/she receives sufficient evidence, by way of submissions to the German Bundestag or the Petitions Committee or in some other way, indicating that agencies and authorities subject to the parliamentary control of the German Bundestag are handling or have handled citizens' affairs unlawfully or inexpediently.

(4) Submissions to the German Bundestag or the Petitions Committee shall be passed on to the citizens' commissioner.

(5) This shall not affect the powers of the Petitions Committee.

Section 2
Right of Submission

(1) Each person shall have the right to apply directly in writing to the citizens' commissioner.

Section 3
Limits of the Right to an Examination of the Petition

(1) The citizens' commissioner shall dispense with an examination of the contents of the submission if

a) the federal government, federal authorities, federal corporate bodies, institutions and foundations under public law or other bodies performing the duties of the federation have no jurisdiction or cannot take legal action;

b) dealing with the submission would involve interfering in a case pending before the courts or entail reviewing a judicial decision; however, this shall not affect the right of the citizens' commissioner to examine the conduct of agencies and authorities set forth in sec. 3, subsec. 1 (a) as parties involved in a case pending before the courts or after a matter has become res judicata;

c) the matter concerned is res judicata, and the aim of the submission is to obtain a resumption of proceedings or a change in a judicial ruling;

d) the submission concerns a matter that is the subject of investigation by prosecuting authorities; however, an examination of the contents is admissible, wherever the submission claims dilatory handling of investigatory proceedings.

(2) The citizens' commissioner may dispense with an examination of the contents of the submission if

a) it does not bear the name or full address of the petitioner or is illegible;

b) it does not contain a specific concern or recognizable context;

c) in its form or content, it constitutes a punishable offence;

d) compared with a submission already dealt with, it does not contain a statement of new facts.

(3) In the event that the citizens' commissioner dispenses with an examination of the contents of the submission, he/she shall communicate his/her decision to the citizen stating reasons and shall inform the Petitions Commit-

tee accordingly; in the case of subsec. 1, letter a, he/she may pass on the submission to the agency or authority in charge.

Section 4
Powers

(1) The citizens' commissioner, being a permanent agent of the Petitions Committee, may demand from the federal government, all federal authorities, federal corporate bodies, institutions and foundations under public law

a) oral and written information;

b) inspection of files and records;

c) access to the public facilities that they administer.

(2) The citizens' commissioner shall be entitled to hear experts or request expert reports.

Section 5
Performance of Duties

(1) The citizens' commissioner shall give the agency or authority having subject-matter jurisdiction an opportunity to come to an amicable settlement in the matter concerned. The commissioner shall make efforts to obtain an amicable settlement. For this purpose, he/she may submit a recommendation with reasons, which shall be forwarded to the ministry in charge. The commissioner shall inform the Petitions Committee of the amicable settlement of the matter as contemplated by the submission.

(2) The agency or authority in charge must report to the citizens' commissioner within a reasonable period or in response to an inquiry as to the measures initiated, stating any progress made or the result of the procedure.

(3) Where no amicable settlement as envisaged in subsec. 1, sent. 3, comes about, the citizens' commissioner shall submit the matter to the Petitions Committee along with a proposal for a solution. Prior to reaching a final decision, the Petitions Committee may also instruct the commissioner to seek further clarification of the facts of the case.

(4) The citizens' commissioner may dispense with taking action under subsec. 1 if the factual or legal situation points to the need for a judicial decision; sec. 3, subsec. 3 shall apply mutatis mutandis.

(5) The citizens' commissioner shall inform the citizen in writing of what action has been taken in response to the submission.

Section 6
Administrative Assistance

Courts and administrative authorities at federal, state and local government level are obliged to give the citizens' commissioner administrative assistance in conducting any requisite inquiries.

Section 7
General Guidelines; Freedom from Instructions

(1) The German Bundestag and the Petitions Committee may issue general guidelines relating to the work of the citizens' commissioner.

(2) The citizens' commissioner is not bound by instructions.

Section 8
Attendance and Duty to Report

(1) The German Bundestag and the Petitions Committee may at any time require the presence of the citizens' commissioner.

(2) The citizens' commissioner shall be entitled to attend any meetings of the Petitions Committee. On the demand of the citizens' commissioner, he/she must be heard.

(3) The citizens' commissioner may, at the request of the Petitions Committee, attend the meetings of other committees of the German Bundestag wherever the Petitions Committee receives submissions that are transferred to the specific committee in charge under § 109 of the Rules of Procedure of the German Bun-

destag (GO-BT). On the demand of the Petitions Committee, the citizens' commissioner must be heard in the course of committee debates. If, in the course of a debate on draft legislation in the responsible committee, the commissioner has expressed an opinion on any submission concerning such draft legislation, the basic points of his/her statements shall be included in the report to be drawn up by the committee.

(4) For each calendar year, the citizens' commissioner shall present to the German Bundestag a written general report (annual report), which shall be debated in the Bundestag.

(5) Upon the demand of the Petitions Committee or one quarter of its members, of one parliamentary group or one quarter of the members of the Bundestag, the citizens' commissioner shall report to the Petitions Committee on specific cases at any time.

Section 9
Duty of Secrecy

(1) The citizens' commissioner shall be obliged, even after termination of his/her term of office, to maintain secrecy with regard to any matters that have come to his/her official notice. This duty shall not apply to communications received through official channels or to facts that are common knowledge or, in view of their importance, require no secrecy.

(2) Even after his/her term of office, the citizens' commissioner shall refrain from making judicial or extrajudicial statements or from giving an account without permission of any matters that are subject to a duty of secrecy. Such permission shall be given by the Speaker of the German Bundestag following a hearing of the citizen concerned and of the member of the federal government in charge of the matter.

(3) Permission to testify as witness may only be refused if the testimony would prejudice the position of the federation or of a German state (Land) or would seriously jeopardize or considerably impede the performance of public functions.

(4) However, this shall not affect the statutory duty to report criminal acts and to take steps to ensure the integrity of the free democratic basic order if that basic order is in danger.

Section 10
Election and Term of Office

(1) The German Bundestag shall elect the citizens' commissioner by a majority of two thirds of its members in a secret ballot.

(2) Any candidate must be eligible for election to the German Bundestag and have completed his/her 35th year of life.

(3) The term of office of the citizens' commissioner shall be eight years. Re-election is permitted.

(4) When assuming office, the citizens' commissioner shall take the oath set forth in Art. 56 of the Basic Law before the German Bundestag.

Section 11
Official Employment Relationship

(1) Under the terms of the Act, the citizens' commissioner shall have an official employment relationship under public law with the Federal Republic of Germany. The elected commissioner shall be appointed by the Speaker of the Bundestag.

(2) The official employment relationship shall commence with the handover of the document confirming the appointment or, where an oath has previously been administered, with the swearing-in ceremony.

(3) Apart from expiration of the term of office as set forth in sec. 9, subsec. 3, the official employment relationship shall be terminated upon the commissioner's

1. decease,
2. recall,
3. release on demand.

(4) The citizens' commissioner may not hold any other salaried office, carry on business or practise any other profession, and may not be a member of the management or supervisory board of any undertaking carrying on business, or of a federal association, or of a government or legislative body of the federation or a federal state (*Land*).

Section 12
Recall

(1) Upon the application of a parliamentary group or of 5 % of the members of the German Bundestag, the Bundestag may recall the citizens' commissioner subject to a two-third majority of its members.

(2) The citizens' commissioner may at any time demand to be released from his/her obligations. The Speaker of the Bundestag shall pronounce such release.

Section 13
Official Residence

(1) The citizens' commissioner shall have his/her official residence at the Bundestag.

(2) The citizens' commissioner shall head the German Bundestag's directorate for petitions and submissions. The citizens' commissioner is the superior of the employees attached to him/her.

Section 14
Inability to Perform Duties

1) In the event of the citizens' commissioner being unable to perform his/her duties, and during the period following termination of the official employment relationship, pending commencement of the official employment relationship of a successor, the powers of the commissioner shall be exercised by the chief administrator of the petitions directorate of the German Bundestag.

(2) In the event that the citizens' commissioner is unable to perform his/her duties for a period in excess of six months, the German Bundestag may elect a new commissioner if the official employment relationship has been terminated by recall.

Section 15
Emoluments

Starting with the calendar month in which the official employment relationship commences and until conclusion of the calendar month in which the official employment relationship is terminated, the citizens' commissioner shall receive official emoluments at a level equivalent to the salary paid to a federal civil servant in salary group B 9. The Federal Travelling Expenses Act and the Federal Removal Expenses Act shall apply mutatis mutandis. For the rest, secs. 13 to 20 of the Federal Ministers Act as published on 27 July 1971 (Federal Law Gazette, BGBl. I, p. 1166), most recently amended by the Law Relating to Reductions in the Official Salary of Members of the Federal Government and Parliamentary State Secretaries dated 22 December 1982 (BGBl. I, p. 2007), shall apply, subject to the condition that the two-year term of office stated in sec. 15, subsec. 1, of the Federal Ministers Act is replaced by a term of office of eight years. Notwithstanding sent. 3, in conjunction with secs. 15 to 17 of the Federal Ministers Act, the retirement pension of the citizens' commissioner shall be calculated on a basis that includes the term of office as an official period counting toward the retirement pension, by application mutatis mutandis of the Civil Service Act, wherever this is more favourable and wherever a commissioner who had been employed as civil servant or judge immediately prior to his/her election to the office of citizens' commissioner had at least a post placing him/her in the salary segment just below salary group B 9.

Section 16
Effective Date

This Act shall come into effect on the day following its promulgation.

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Explanatory Memorandum

A. General

One indispensable element in an open civil society is the citizen's ability to comprehend and replicate legislative and administrative acts. Today, however, relations between citizens and public authorities are marked by people's growing dependence on government regulations and on the public administration, and by a state of unmanageable complexity and depersonalization. The growing density of the regulations in force is creating an increasing lack of transparency in the law. In the thickets of red tape, with their pitfalls of formalized schematic provisions and their paragraphs that often deny the individuality of particular cases, the citizen is becoming a mere subject. Structural defects in the administration also lead to a falsification of the will of lawmakers and undermine the legitimacy of a political system. The rhetoric practised by government and parliament and the actual reality of civil rights experienced by citizens in the implementation of administrative acts often diverge to a dangerous extent. This is particularly striking where citizens, as in Germany's new federal states (*Länder*), believe they have just been liberated from a fate as subjects. The growing detail of the legal scaffolding now cladding all spheres of life and politics is leading to a situation in which the steadily expanding substantive competence of the administrative bodies applying norms, ordinances, decrees and the implementing provisions of statute, on the one hand, must be juxtaposed with an unchanged level of inadequate substantive competence among often helpless citizens, on the other. In addition to this quantitative penetration of citizens' lives by the law, there is, at the same time, a growing demand among citizens for administrative action to be taken under the rule of law and a will to share in the shaping of the democratic state.

The dramatic rise in the number of citizens' submissions to the Petitions Committee of the German Bundestag is both a sign of a partially troubled relationship between politics, the public service and citizens, and a call for political control of administrative action by parliament. In processing the requests and complaints addressed to the German Bundestag, the Petitions Committee does good and indispensable work. However, in view of the increase in the quantity and the nature of the demands to be met, the Petitions Committee is coming up against structural and legal limits to its work. The growing number of submissions and the changing requirements to be met by a modern public administration call for an intelligent and future-geared right of petition.

Within the scope of a comprehensive governmental and administrative reform, therefore, both the rights and powers of the Petitions Committee are to be extended and offices set up to which citizens can turn in search of advice and assistance and which can offer them direct access to parliament for their own innovative proposals and initiatives.

At local government level, citizens' commissioners covering specific interests and groups, e.g. women, the handicapped, children, foreigners, etc., are part of everyday life. At *Länder* level, Rhineland-Palatinate was the first state to introduce the office of a citizens' commissioner in 1974. Initially, the coexistence of Petitions Committee and citizens' commissioners was a highly controversial experiment; today, any criticism has died down, and the citizens' commissioner solution enjoys wide approval among citizens and across party lines. It was on the basis of this successful model that the State of Mecklenburg-Vorpommern, in 1995, set up the office of citizens' commissioner with close links to the Petitions Committee.

The advantages of the way complaints are processed by the Petitions Committee are supplemented in the present bill, too, by the benefit of having personalized monitoring of the administration by the commissioner.

The advantages of the Petitions Committee are, specifically, its function as a parliamentary early warning system for problems arising in the execution of laws, the fact the parliament can deal with matters in the interest of the common good, and its outstanding role in implementing parliamentary control of government and public administration. However, the disadvantages are equally obvious and can be

overcome by appointing a citizens' commissioner. Whereas the Petitions Committee faces the citizens largely as an anonymous institution, as a kind of "counter-bureaucracy", the commissioner is known to citizens as a person. This creates confidence and reduces the distance between people and their representatives in parliament. Moreover, in view of the commissioner's office and person, the right of petition and the possibility of submitting petitions is moved more prominently into public awareness and, in this way, enhances the petition right in general. A further basic advantage of the citizens' commissioner is his/her neutrality and party-political independence. For all the efforts made by members of parliament in the Petitions Committee to be unbiased and factual in examining submissions, it is unfortunately not always possible to avoid decisions based on party-political considerations. In the nature of things, it is difficult to convince members of the government parliamentary parties that the laws they draft contain gaps or are in need of improvement. It is much easier for a citizens' commissioner, acting as a neutral mediator in advance of a decision, to obtain an amicable solution of the problem with the authorities and agencies concerned. Experience in Rhineland-Palatinate has shown that the commissioner can act and respond much more quickly and flexibly than a committee. Proceedings in the Petitions Committee always involve lengthy checkbacks with representatives of all parliamentary groups if a specific response to the action of a public authority is required, whereas the citizens' commissioner can intervene quickly and directly. By comparison, the Petitions Committee is rarely able to provide a remedy in a specific particular case. A serious disadvantage of the Petitions Committee is the heavy workload of members of parliament, which means that members are unable to devote themselves entirely to their duties in the Petitions Committee, since this work must be done in addition to their membership of a "main committee" in the parliamentary group, in the constituency, etc. Only rarely does a member of the German Bundestag regard the Petitions Committee as his/her primary area of operation. As a rule, the Committee is composed of newcomers to parliament performing this task "on the side". Among members of parliament, this leads in practice to a focus on other tasks, which cannot fail to impair their concentration on petition work. As a "professionalized and impassioned petition processor", the citizens' commissioner, by contrast, is exclusively concerned with citizens' problems. With a view to improving the processing of petitions, it is useful to subordinate the Committee Service to a continuously operating institution that is not exposed to the burdens placed on members of parliament.

At the interface between res privata and res publica, the commissioner can have an impact that extends from providing assistance in specific cases all the way to promoting further developments in the body politic.

In addition to remedying or correcting irregular or unjust administrative action, the institution of the citizens' commissioner also aims at dismantling any patterns of authoritarian behaviour inside the administrative services. The office of commissioner has a preventive effect by providing for continuous public monitoring of the administration and by working toward a citizen-friendly public service. The office has a corrective effect wherever it helps deal with specific abuses or draws public attention to problems arising in the execution of laws. It also has an objectifying function by protecting the administrative services against baseless accusations.

The institution of citizens' commissioner extends the options available to citizens seeking to protect their constitutional rights from executive action, but does not affect the powers of the Petitions Committee under Art. 45 c GG in processing requests and complaints addressed to the German Bundestag under Art. 17. There is no delegation of the Petitions Committee's powers. Committee and commissioner work together for the welfare of the people. At any rate, the Petitions Committee retains the right, also in its relations with the commissioner, to process and decide all submissions addressed to it under its own responsibility.

B. Specific Explanatory Memorandum

Ad Section 1 (Concept and Duties)

The German Bundestag's citizens' commissioner follows the "classic" form of the parliamentary commissioner (legislative ombudsman), whose legitimation is based on the resolutions of parliament and who is responsible to that parliament. As an auxiliary arm of the German Bundestag, the citizens' commissioner is subject to its parliamentary powers of control. The transfer of jurisdiction to the commissioner constitutes a delegation under public law, although the delegating bodies, viz. the plenary assembly and the Petitions Committee, do not surrender their powers. The concepts of the citizens' commissioner as an auxiliary arm of parliament and of a voluntary transfer of control duties does not amount to any self-deprivation of power by the parliament, as has been alleged. In fact, it strengthens the parliamentary control exercised by the German Bundestag.

The citizens' commissioner helps citizens in their dealings with the administrative services and seeks to ensure the legality and correctness of administrative action. In doing so, he/she performs both a monitoring and a mediating function between citizens and the public administration. As the citizens' champion, the commissioner explores avenues leading to citizen-friendly administrative decisions and, in specific cases, identifies options for exploiting any leeway offered by statute law. In addition, however, the inquiries made by the citizens' commissioner will protect the public service from baseless accusations and, in this way, help strengthen the legality of the established order.

Like the Petitions Committee until now, the citizens' commissioner will also take action in response to requests from specific citizens affected, but will also have a right to take up matters by him/herself with a view to strengthening parliament's powers of control. This right of personal initiative is one he/she shares with the defence committee, the defence commissioner and the Berlin Petitions Committee. The Petitions Committee of the German Bundestag had no such right in the past. The citizens' commissioner can act ex officio regardless of a petition if he/she obtains sufficient evidence from discussions with members of parliament, from press announcements, remarks, etc., that offices subject to parliamentary control are not performing their duties in a proper fashion or are acting in violation of the provisions of prevailing law. The possibility of active control mainly has a preventive effect and strengthens the commissioner's authority. However, it also strengthens the position, powers and control function of the individual member of parliament and the Petitions Committee. While the Petitions Committee only acts on the basis of a submission to deal with an obvious abuse or a problem, the present bill allows a member of parliament to instruct the citizens' commissioner to investigate an issue directly.

In the first place, the citizens' commissioner is the central port of call for submitting petitions to the German Bundestag or the Petitions Committee. All submissions addressed to the German Bundestag or to the Petitions Committee are assigned first of all to the commissioner, who then conducts inquiries, attempts to find an amicable solution with the authorities, and keeps the Committee informed at regular intervals. Any petitions that cannot be settled amicably are submitted for decision to the Petitions Committee along with a resolution recommended by the citizens' commissioner. Should an amicable solution prove impossible, the Petitions Committee alone shall have the final right to decide.

So-called legislative petitions, which aim directly at a change in a law, are not included in the commissioner's decision-making remit and, after initial processing by the Committee Service, are submitted directly to the Petitions Committee for a decision.

Double-track procedures are ruled out by the specific division of function.

Ad Section 2 (Right of Submission)

In the person of the citizens' commissioner, the citizen is dealing with a personality as his/her contact and not with an anonymous body. According to Federal Chancellor Hel-

mut Kohl, the crucial advantage of the commissioner solution, compared with the function of the Petitions Committee is "that the task and the office are personified. If the anonymity of the administrative apparatus is to be counteracted, the best way is to have a personality who enjoys the confidence of citizens, someone to whom the citizen can turn personally and who is able to help the citizen by directly contacting the administrative agencies and authorities concerned." Access to the citizens' commissioner is largely informal and uncomplicated for the citizen. The object is to provide access to a state authority that can supplement the conventional system of legal redress by adding the merits of a more flexible parliamentary control of the administration.

Ad Section 3 (Limits of the Right to an Examination of the Petition)

The citizens' commissioner can perform his/her task only within the limits set to the German Bundestag's parliamentary powers of control. The limits to the right to examine are to be found wherever no substantive (subject-matter) jurisdiction exists or where there is no possibility of exerting legal influences, and where the federal government has no remedial jurisdiction.

In addition, under the principle of separation of powers and the independence of the judiciary, the citizens' commissioner has no authority to examine matters that are sub judice and would involve reviewing a judicial decision. However, the commissioner does have authority to deal with submissions that concern the conduct of authorities during a trial.

Ad Section 4 (Powers)

Parliament's control function also involves rights of investigation and information exercised by its subordinate and auxiliary bodies. In the year 1975, the German Bundestag, following in-depth discussions, resolved a wide-ranging extension to the jurisdiction of the Petitions Committee under Art 45 c Basic Law (GG) and the Law on the Powers of the Petitions Committee of the German Bundestag (Law Enacted Pursuant to Art. 45 c GG) with a view to ensuring effective performance of its duties. The Committee was given powers, e.g., to hear witnesses and experts, as well as rights of access to institutions, to order discovery of files, and to organize local inspections, which strengthened both the right to information concerning petitions as an individual right and the parliament's powers of control of government and the public service. Defects impairing petition rights, like lengthy processing or inadequate and sluggish provision of information by public authorities were reduced.

As a preparatory right, the right to information concerning petitions is indivisibly linked with the basic petition right. Obviously, therefore, the citizens' commissioner, too, must have a wide range of investigatory powers if he/she is to properly perform his/her functions. Hence, the commissioner is given the necessary control options that enable him/her best to perform his/her duty to inquire into facts, to submit the facts to a legal appraisal, and possibly to indicate a need for amending legislation. Experience in the Petitions Committee and with citizens' commissioners in the state of Rhineland-Palatinate shows that, in most cases, the mere possibility of the available powers being exercised is enough by itself to induce the authorities concerned to adopt an information-friendly approach to the Committee and the commissioner.

A valuable basis for these rights to information is the right to request expert opinions. In complicated and technical matters in particular, e.g. when examining an administrative decision in the pension and social security field based on a medical report, recourse to expertise is indispensable.

Ad Section 5 (Performance of Duties)

The possibility of giving the agency or authority concerned an opportunity to deal with a matter helps cut corners and speeds up the processing of petitions. Unlike the Petitions Committee, which is bound by its own procedural rules to start by requesting information from the ministry in charge, the citizens' commissioner is not obliged to go through official channels and can address his/her request for information directly to the agency or

authority concerned. In this way, the citizens' problem is indeed dealt with quickly and unbureaucratically. Swift processing by the authorities is also ensured by the fact that they are required to report to the commissioner within a reasonable period of time on the progress they have made.

The requirement that an attempt be made to obtain an amicable settlement of a petition underscores the commissioner's role as citizen's champion and as mediator between citizen and public administration. The focus of the commissioner's activities is on the citizen's concerns. However, since the commissioner has no decision-making powers, he/she requires good contacts with agencies and authorities if he/she is to perform his/her tasks. The mediator function implies a duty to enter into a substantive dialogue with the authority involved and possibly to convince it of the need for a decision that is more favourable to the citizen. The option of directly contacting the authority or staffer concerned helps exploit margins of discretion in particular cases. A sustained general preventive effect is achieved when the citizens' commissioner is at liberty to bring up an identified case of abuse for discussion with the superior agency. However, wherever the commissioner becomes convinced in the course of his/her inquiries that the authority has acted properly and equitably, he/she will explain the correctness of the official decision to the citizen. In this way, mediation by the commissioner also leads to an early legal settlement and strengthens the citizen's position. Experience in Rhineland-Palatinate shows that the citizens' commissioner has been able to score a much higher success rate using this method of settling issues than the Petitions Committee of German Bundestag. Where approx. 7 % of submissions (without provision of information) are generally settled wholly or partly in line with the petitioner's request, the rate in Rhineland-Palatinate is astonishingly high, viz. approx. 25 %.

Although the right to settle a matter following completion of the examination by the citizens' commissioner is confined to submitting a reasoned recommendation to the agency or authority in charge for remedying the established defect, experience in the Scandinavian countries that originated the ombudsman idea has shown that this suffices for a settlement in the petitioner's favour in many cases. Experience with the citizens' commissioner in Rhineland-Palatinate, too, confirms that this settlement mode can be regarded as being functionally appropriate. Here again, it is an advantage when the agencies or authorities actually concerned can be addressed directly. Thanks to their specific knowledge of the situation and the options available on the spot, the agencies and authorities directly involved are often willing to cooperate creatively with the commissioner. By contrast, experience in the German Bundestag shows that the intervention of ministerial bureaucracy at federal level often nips creative approaches to individual solutions in the bud. The opinions submitted by federal ministries at the request of the Petitions Committee are mostly confined to a dogmatic statement of the legal situation and do not deal with the merits of specific cases. The way federal ministries provide information and settle matters in their relations with the Petitions Committee is often marked by a less than institution-friendly approach. Information is often furnished sluggishly and is increasingly unsatisfactory. For years now, the federal government's record in implementing and performing the resolutions submitted by the Petitions Committee has been poor. In the Committee's most recent annual report on its work in the year 1994, we read: "Regarding the federal government's compliance with resolutions on matters requiring remedial action and re-examination, no general improvement was noted in the year under review compared with the year 1993. This result is all the more satisfactory in view of the statement contained in the 1993 annual report to the effect that, in the Petitions Committee's opinion, the number of resolutions submitted for remedial action and re-examination and not complied with was still excessively high ... Altogether, there is a trend noticeable in the federal government to stress formal criteria in its responses to resolutions for remedial action and re-examination, whereas the political will to advance those parliamentary resolutions in cases requiring remedial action and re-examination that are mostly backed by a large majority in the Committee or by the Committee as a whole tends to be less pronounced."

The Petitions Committee's constitutional powers are in no way impaired by the new arrangements. The final addressee of each petition is and remains the Petitions Committee, which must ultimately come to a decision on all petitions. If an amicable solution has been found, the citizens' commissioner communicates this to the Petitions Committee which, as practice in Rhineland-Palatinate shows, regularly "notes this with approval". On the other hand, the Petitions Committee can also depart from the submitted proposal or adopt additional resolutions.

In the case of petitions that are not capable of amicable settlement, the citizens' commissioner presents the facts of the case, incorporating his/her own inquiries and opinions, and is able to submit proposals for dealing with the matter based on his/her own knowledge. Logically, these proposals are geared to the resolution rules of the Petitions Committee, such as are laid down in the Committee's procedural rules. The Petitions Committee can usefully concern itself specifically with those petitions that must be discussed with government offices or require a political solution.

Ad Section 8 (Attendance and Duty to Report)

The proposed arrangements stress the close links between Petitions Committee and citizens' commissioner and the reference to parliament. The duties to attend and to report reflect the Petitions Committee's supervisory and steering powers in its relations with the commissioner. Both the Petitions Committee and members of parliament are able to obtain reports on specific cases at any time. In addition, the citizens' commissioner has wide options for obtaining information by attending meetings of the Petitions Committee, by using his/her right to speak, and by presenting an annual report. This ensures continuous feedback between commissioner and parliament.

Hitherto, sec. 109, subsec. 1, sent. 2 of the Rules of Procedure of the German Bundestag has offered the only lever for obliging a specialized committee to state an opinion on a petition. So far, the Petitions Committee has had no options for influencing the actual zeal with which the specialized committee deals with a submission. As a rule, this means that petitions are only discussed on the side. Giving the citizens' commissioner a possibility of attending the meetings of specialized committees on behalf of the Petitions Committee and of being heard on request opens up an uncomplicated way of strengthening and speeding up the flow of information and communications between the Petitions Committee and specialized politicians and parliamentary groups. In addition, the members of parliament in the Petitions Committee, being able to instruct the citizens' commissioner to act, can highlight the importance or urgency of debating some concern expressed in a petition. This arrangement considerably strengthens the Petitions Committee's position in the structure of the parliamentary system.

The annual report, besides dealing with duties and activities, can be extended to include a public account of specific abuses.

Ad Section 10 (Election and Term of Office)

The citizens' commissioner is definitely no exponent of a state dominated by political parties, but a neutral mediator between citizen and administration. As an auxiliary arm of parliament, the commissioner needs the confidence of parliament as a whole. This, just like the party-political neutrality of the office, is stressed by having a legally stipulated two-thirds quorum. Such a high quorum also ensures that the commissioner's office is not misused by the current majority as a "pension post", but is occupied by a recognized and qualified person.

The fact that eligibility for office does not depend on having the qualifications for holding judicial office is viewed as an advantage by the literature. After all, non-lawyers may be expected to be better able to appreciate the problems involved in statutory texts and in implementing administrative decisions, and to have an eye for unconventional solutions proposed in favour of the complainant.

Since the citizens' commissioner is charged with processing petitions from people in all walks of life and involving citizens' everyday problems, some experience of life and the

world of work is essential. The ability to perform the difficult task of commissioner assumes personal authority in the office holder. Hence, putting the minimum age for eligibility at 35 is justified by the circumstances.

Providing for an eight-year term of office helps ensure the formal independence of the holder of the office, increasing his/her reliability for the citizen by removing him/her from the imponderables of day-to-day politics.

Ad Section 11 (Official Employment Relationship)

The position of the citizens' commissioner as an independent auxiliary arm of parliament and his/her formal neutrality are stressed by insisting on the incompatibility of his/her office with any political, economic or other interest-related office.

Ad Section 12 (Recall)

By analogy with sec. 9, the two-thirds quorum required for dismissing the citizens' commissioner also underpins his/her political independence and neutrality. A commissioner who may be inconvenient to the government cannot be recalled without the approval of the opposition.

Ad Section 13 (Official Residence)

By assigning the citizens' commissioner to the legislative arm of government, and in view of the required close cooperation with the Petitions Committee, it is indispensable that the commissioner have his/her official residence at the parliament. Experience in the Petitions Committee has shown that a large number of submissions come from the new federal states in Eastern Germany. Hence, it must be assured that, even before the final relocation of the parliament, the official residence of the citizens' commissioner is in Bonn and Berlin.