

REPORT

Some reasons why the European Parliamentary Petitions Committee should be scrapped

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Introduction and Executive Summary

1. Petitions sent to parliamentary committees, especially those parliaments dominated by party and factional interests, are seldom treated in an objective and independent manner. This is a well known historic fact appreciated in most countries. Therefore the rationale and utility of the European Parliament's Committee on Petitions made up of MEPs with allegiance to different party groups, has always been in serious doubt.

2. A report by the European Parliamentary Committee on Petitions (EPPC) issued in March 2001, sets out what that Committee sees its role to be. This report greatly exaggerates the role of the EPPC because it notably fails to recognize the fundamental difficulty of sustaining independence of investigation on the part of a Committee made up of party-linked politicians who are under party whips.

3. A recent and unfortunate decision by the EPPC has served as an example, highlighting the practical difficulty of such an institution being able to deliver an independent and unbiased judgement on anything brought before it by citizens of Europe.

4. The case referred to is the failure of the EPPC to investigate, and its decision not to consider any further, a petition which draws attention to the plight of over 150,000 European citizens, Roma children of school age in the Czech Republic, Hungary and the Slovak Republic who are segregated and denied any useful education. As a result, the responsibility for the European Union having done nothing to terminate this ongoing state-sponsored human rights abuse, in contravention of European law, can be laid at the doors of the European Commission and the EPPC.

5. The motivation for this denial of the fundamental rights of these children appears to be related to a political corruption of the system caused by the fact that the majority of the primary EPPC, and the MEPs from the countries enforcing such dsgregated educational denial, are, in their majority, members of a single political group or party, the Group of European People's Party (Christian Democrats) and European Democrats. Their reluctance to "embarrass" their colleagues who remain complicit and seek to hide the upholding of discrimination through the denial of right to education and ignoring an imposition of segregation, shows that such motivations are greater than the respect these MEPs have for upholding European law.

6. This inexcusable behaviour by the EPPC provides a clear example of a failure to sustain a proactive and independent level of enquiry within the shell of the Petitions Committee procedures. The failure of the Committee to check vital information in this petition illustrates a fundamental lack of appropriate standards of evidence and an ability not to pursue lines of enquiry when they did not suit party political interests.

7. The Committee has failed in an important instance to stand between government institutions and the citizen but have rather sided with the government institutions largely along common party political lines. No Committee, acting in this way, can seriously claim to be able to protect the European citizen from arbitrary decisions and from institutional law breaking and discrimination.

8. In 1649 English constitutionalists cautioned against parliamentary petitions for this very same reason, that is the conflict of interests of political parties and the need to maintain transparent and fair treatment of petitioners is virtually impossible because of the corruption of the process by party political interests. These early constitutionalists called for the scrapping of parliamentary petitions and their replacement by timely judicial procedures.

9. This single but significant case, is sufficient to illustrate the degree to which party political interests can drive the ethical and moral standards of the EPPC, to unacceptable levels. The EPPC, sensing that European law is being contravened and human rights abused, resolved to look the other way and do nothing.

10. The degree of bias in the EPPC behaviour and the outcome of this petition throws serious doubt on its future in Europe; indeed, these are strong arguments for the scrapping of the EPPC.

12. References to the petition and relevant reports and paper trails on this ongoing contravention of European laws and human rights abuse are to be found in the annex to this document.

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Party machines and an independent judiciary

1. There has never been a successful means whereby politicians or the judiciary, alone, exercise independence of judgement on matters of interest to individual citizens.

2. In May, 1649, John Lilburne, William Walwyn, Thomas Prince and Richard Overton, wrote a declaration called "An Agreement of the Free People of England". This document is in essence a proposal for a written Constitution for England. It contains many important solutions to then current problems. They held a healthy cynicism concerning the ability of those who form and adhere to political parties and factions to safeguard the individual from abuse resulting from arbitrary decisions by government dominated by the same parties. They were also doubtful of the degree of independence of the judiciary. Indeed their writing was largely concerned with defending the individual against abuse of such institutions resulting from arbitrary decisions.

Parliamentary petitions committees cannot be independent

3. An important failure in the ability of parliament to deliver the "rights of citizen", at that time, was the general abuse by politicians of the right of Englishmen to petition parliament. Sometimes procedures were followed but no serious attention given to the content of a petition when it raised issues which were embarrassing. Often, the delays involved with petitions only added to an abuse being suffered by a petitioner. Petitions were not a serious provision for the defence of the public from abuse. Therefore Lilburne and his colleagues declared that no one, either by status or rank of any sort is above the law but all are subject to the laws of the country. Parliament has no authority to pass judgement on anyone and that the issue of grievances should no longer be approached through petitions, which are ignored, but through the forces of law which parliament must obey.

4. It is worth noting the juxta position of the statements that Parliament has no authority to pass judgement on anyone and that the issue of grievances should no longer be approached through petitions. Clearly petitions being reviewed and assessed by members of parliament result, all too often, in a decision which can be prejudicial to the rights of those bringing the petition. It is just a simple step to transpose this logic to the case of the European Parliament and its Committee on Petitions (EPPC). The EPPC is made up of Members of the European Parliament, most of whom are associated with party groupings and some even come under their national party whips. It is therefore necessary to question the ability of such a committee to be genuinely independent and capable of acting in the defence of the individual rights of citizens.

5. Because national parliamentary petition processes have been so corrupt in not helping citizens in many cases, Lilburne and his fellow constitutionalists advocated that petitions to parliament to be replaced by a due process of law to which the parliament would be subject and for the law in general, for more serious offences, to involve the use of independent juries of citizens.

European parliamentary petitions committee no different

6. Currently we see the institution of the EPPC struggling to achieve a status well beyond its practical ability to uphold, in an independent fashion, the rights of the citizens of Europe. The EPPC has been demonstrated to be a corrupt and slow process operating outside the bounds of the law, generating the very same circumstances and reflecting the behaviour which caused the English constitutionalists to reject parliamentary petitions.

Is a petitions committee equivalent to a jury?

7. The EPPC published a report in March, sub-titled: "on the institution of the petition at the dawn of the 21st century" (Final A5-0088/22001) (see annex 2). This report describes the views of members of the EPPC of the role of the EPPC. Much of the description of the EPPC seems to assume role very similar to some of the components of a jury of citizens in ensuring a fair application of the law. But a jury of citizens is an independent institution whereas a parliamentary petitions committee is definitely not. A jury of citizens operates by right within the judicial process where the law is applied and determines the relevance of the law to a case in question. The jury flags where legislation is deficient but it does so in a way which protects citizens from abuse. The parliamentary petitions committee political make up cannot even dream of attaining such a level of independence.

The likely impact of party political influence upon potential complainants

8. The EPPC has members of parties of a government whose institutions could be criticized by a petition, as a result the EPPC misrepresents its capabilities in its report of March 2001. Under such circumstances, in several circumstances citizens fear exposure within the EPPC, therefore they will not come forward because of the political links to their "home territory" and the likelihood of reprisal. As a result the current make up of the EPPC is an active disincentive for a more transparent reporting of abuse. Indeed, as a direct result of the political interests present within the EPPC it is not an exaggeration to state that in these particularly important and usually human rights cases, the EPPC remains totally blind to reality.

9. On the other hand, in those cases of members of the EPPC being linked to political parties in government who are complicit in human rights abuse, this reality of people not raising embarrassing facts for fear of the EPPC is a very convenient reality enabling them to help sustain an image that nothing is amiss.

Need for proactive response by EPPC

10. In those cases where there may be doubts concerning the facts relating to a particularly serious allegation, or allegations, then it is the duty of the EPPC to be more proactive in seeking out accurate information by attempting to investigate the state of affairs. If such proactivity is lacking, then the EPPC will fail to achieve an objective view of the case and thereby be incapable of bringing about effective legal remedies.

11. A lack of proactivity can be a device employed by the EPPC to waste time and attempt to lower the drive of petitioners as well as corrupt the petitions process with a view to deciding that “there is no evidence” to support the petitioner’s statements.

Party political interests

12. The EPPC report (annex 2) states that it can enforce legal actions against governments for failure to act in upholding human rights under European law. This indeed is a powerful means whereby the European Parliament might act to bring about change in favour of those abused by the system. Unfortunately, the report does not mention the real challenge of the how such a Committee, populated by party politicians, can achieve the necessary levels of independence to undertake useful investigations, reviews and decisions, as described in the EPPC report. The EPPC report is highly defective for nowhere within it is the actual or potential bias of political representation within the Committee ever addressed.

13. The emergence of obvious party political alliances between member state government political parties, of European Parliamentary groupings and even members of the European Commission, makes a completely independent Committee of Petitions a virtual impossibility. The very slow process of the European Parliament, for example, in forcing the European Commission to resolve the ongoing financial corruption within the Commission, has been held up as an example of the corrupting influence of common party political interests.

14. In the context of the current EPPC, there are various groups or levels of membership with a primary group of nine members and various groups of substitutes. The primary group is made up of 9 MEPs of which 5 associated through their common membership of the so-called Group of European People’s Party (Christian Democrats) and European Democrats. This party holds some 75% of the primary EPPC membership and yet this political group only holds around 38% of the total representation in the European Parliament. There is clearly an excessive party political bias in favour of the so-called Christian Democrats, in the make up of the primary committee of the EPPC.

Primary EPPC members

The political party group affiliation of the primary EPPC can be seen in the following membership list showing the 5 Christian Democrats in 8 members:

Christian Democrats

Vitaliano Gemelli, Chairman - Italy
Roy Perry, Vice-Chairman - UK
Richard A. Balfe - UK
István Balsai - Hungary
Christian Ulrik von Boetticher - Germany

European Socialists

Mr Proinsias de Rossa – Ireland
Herbert Bosch - Auustria

European Liberal

Astrid Thors, Vice-Chairwoman – Finland

European Left/Nordic Green Left

Maria Luisa Bergaz Conesa - Spain

Recent example of party political bias

15. Recently the Petitions Committee was reported to have acted in a bizarre fashion in relation to a petition submitted to the Petitions Committee in February 2003. This called attention to state sponsored segregated educational denial in the Czech republic, Hungary and the Slovak republic. This petition was sent to the EPPC by the European Committee on Romani Emancipation (ECRE) one of the leading advocates on behalf of the Roma community. ECRE had, at the time of the submission of the petition, just completed a field study in Central Europe and a detailed report providing evidence of the main points was issued to the EPPC. The salient points of the petition were:

- Since 1989 these governments mentioned above have provided a financial incentive of roughly Euro 1,800 each year for every child segregated from mainstream children (contravention of European law) in rural local authorities
- These governments have spent in excess of Euro 2 billion in the last decade on this incentive process
- these funds are not spent to provide compensatory education but are spent on unrelated activities representing an illicit use of funds
- this funding provision has been used as an excuse to segregate Roma children of normal intelligence and to deny them useful compensatory education (denial of education, contravention of European law)
- the financial incentive for segregation is supplied by government, the system is managed by civil servants and government employees and children are housed in governmental installations – the whole system is state-sponsored and run
- since 1989 the number of children forced into this status has increased by over 400%. The current number of children abused in this way is in excess of 150,000.
- this failure of state institutions and structure to uphold European law contravenes the Madrid pre-accession conditions

- The European Commission failed to report the full facts on the scale and mode of operation of this system
- The European Commission studiously avoided stating, in its reports, that the central governments provided generous financial incentives to sustain this process in contravention of the law
- The European Commission failed to terminate this system of segregated act to terminate this practice as required under its mandate covering enlargement
- The majority of children in this status are Roma and of normal intelligence (in some villages 100% of the children segregated in this way are Roma)
- The segregation is effected through fraudulent "selection procedures" coordinated by government paid advisers

16. The date of the petition submission was over a year before the accession of these countries on May 1st 2004.

17. On two occasions the EPPC promised a public hearing before any final decision would be taken. One was when the petition was received and then 9 months later when the petition was judged to be admissible.

18. However, without any advice being sent out by the EPPC, as to the timing of such public meetings, and by limiting its "investigation" to a "reply" by the European Commission, to the petition, the EPPC informed ECRE in a letter that "...there is no state-sponsored abuse" and stating no further consideration would be given to the petition. This statement flies in the face of the considerable published evidence on this issue as well as the detailed field survey undertaken and reported by ECRE to the EPPC.

19 It is to be noted that the EPPC only relied upon the reply provided by the European Commission. Indeed, it was the Commission's inadequate reporting and failure to act which is responsible for the continuation of this abuse today. The EPPC simply accepted the contents of the reply from an implicated party with a direct interest in continuing to misrepresent the facts.

The specific political dimension

20. This deficient process and outcome can be better understood when one views political grouping membership of MEPs from the Czech republic, Hungary and the Slovak republic. Just over 50% of them are members of the Group of European People's Party (Christian Democrats) and European Democrats. Given that the majority of the primary EPPC are also of the same political group who, it would seem, did not want to "embarrass" their colleagues, it is not surprising that the outcome of the petitions process, in this case, turned out to be a corrupt and shameful affair.

Failure to act on behalf of citizens interests

21. Currently the conflict between party political interests and the interests of citizens can be seen, within the EPPC, to be one which will be won by party political interests and especially if these are the interests of Christian Democrats. The EPPC seems to have responded to its immediate party political interests, in this case, and accordingly failed to uphold the rights of citizens. There was a particularly slow response of the EPPC to the situation when it is realized that the ECRE report describes the regime of fear, on the part of the children's parents. The EPPC demonstrated no practical initiative in setting priorities as to which petitions deserved a more immediate attention.

22. There was a complete failure on the part of the EPPC to be more proactive in seeking out and checking the facts. This would have been justified given the significance of this case. This inaction resulted in the EPPC becoming part of the system of abuse. The EPPC and its failure to act was in itself a cause of a prejudicial prevarication which helped impose yet a prolongation of the time these children are expected to suffer this inexcusable abuse.

23. This example of inaction, bordering on a failure to act, makes the impressive citations in EPPC report (annex 2) as to their role and function, to be clear misrepresentations of the intent, practice and effect of the petitions process.

Failure to seek independent input

24. One of the most shocking revelations concerning the EPPC process in this case is that no one from the EPPC approached the leading NGOs involved with Roma issues and schooling in Central Europe to ask for feedback. Indeed, ECRE, a leading NGO in this field was never asked to qualify anything stated nor provided with any opportunity to cross examine the European Commission's reply.

Avoidance of public hearing

25. The promised public hearing was never announced by the EPPC in an apparent attempt to avoid press coverage and/or cross examination of the Commission staff by ECRE.

Non-transparency

26. The whole EPPC process can be characterized by a complete obscurity with all details being hidden from the petitioner. At no point, other than sending the reply from the European Commission, did the EPPC state what feedback they had received and from whom. There was no provision of written statements nor was there any record of verbal and other communications made concerning the case. Indeed there was no information provided on who has contributed to the EPPC information input.

27. This EPPC non-transparency is a typical characteristic of party "cabinet" style proceedings where obscurity and secrecy is highly valued.

Other conflicts of interest

28. Besides obvious party interests, under normal circumstances, in juries, legal processes and administrative processes, any member of an investigative committee with a direct interest in a matter under consideration would have to recuse themselves and withdraw from the proceedings. This fact would be recorded and normally communicated to the complainant.

29. In this particular case it is not clear as to the role of the Hungarian member of the EPPC, István Balsai, was or has been in this process. The Hungarian government is one of those cited in the petition. It is well known that the Hungarian political parties, across the board, have been particularly effective in covering up the state-sponsored segregated educational denial which occurs in that country. There is no reason nor evidence to suppose that this member would not act in the same way. Indeed, it is likely that he was active in bringing such denial to the EPPC proceedings and perhaps arranging "lobbies" from the other countries concerned (Czech republic and Slovakia) so as to bolster the position of Hungary. This again would be a typical party approach.

30. However, Mr. Balai should have been excluded from the proceedings or voluntarily recused himself but there is no information available, because of EPPC secrecy, to know what happened in this case.

What this process demonstrated

31. There are several serious outcomes of the EPPC's failure to act including:

- A completely non-transparent and largely secret or hidden process.
- The basing of decisions upon poor apparent standards of evidence exemplified by a lack of use of independent sources of information
- Corruption of the process through failure to check information
- A willingness to deny a public meeting or at least failure to announce any occurrence of such a meeting and therefore prevent a necessary level of transparency
- A willingness to accord more weight to the very organizations wishing to hide their guilt in sustaining such abuse, such as the governments and authorities concerned, including the European Commission.
- A failure to ask the leading and well known NGOs in this field about this matter.
- A complete failure to cross examine.
- A willingness to discount, without justification, all of the evidence provided by ECRE one of the leading international and independent NGOs in this field.

- A complete lack of definition as to the role of an EPPC member with a direct interest in the case on grounds of nationality

Replacing the EPPC

30. There are two important considerations arising from this particular petition.

- An independent group needs to be drawn up to investigate what ECRE has stated in its petition with a view of forcing the state-sponsored abuse of children to be terminated.
- The EPPC needs to be closed down and replaced by a judicial system supported by an independent jury of peers selected from European citizens and which could provide a stronger position of Ombudsman with an independent assessment of complaints. In this case the Ombudsman would take up the role of a procurator fiscal

Annex 1

References

The full documentation of the ECRE report and petition can be obtained from the web site of the European Committee on Romani Emancipation at:

<http://www.eu-romani.org>

the report can be accessed under the reports section and the petition can be accessed under the correspondence section.

The correspondence between the EPPC and ECRE is also available in the correspondence section.

Annex 2

EPPC Report 2001

The EPPC March 2001 Report

Procedural Note taken from Procedural Page of the Report “on the institution of the petition at the dawn of the 21st century (2000/2026(INI) Final A5-0088/2001 19 March 22001.:

At the sitting of 17 March 2000 the President of Parliament announced that the Committee on Petitions had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the institution of the petition at the dawn of the 21st century. The committee had appointed Roy Perry (CD) and Margot Keßler rapporteurs at its meeting of 24 January 2000. It considered the draft report at its meetings of 29-30 January 2001 and 5-6 March 2001. At the latter meeting it adopted the motion for a resolution unanimously. The following were present for the vote: Vitaliano Gemelli, (CD) chairman; Roy Perry, (CD) vice-chairman and rapporteur; Margot Keßler, rapporteur; Mary Elizabeth Banotti (CD) (for Hans-Peter Mayer), Herbert Bösch, Felipe Camisón Asensio (CD), Jonathan Evans (CD), Janelly Fourtou (CD), Laura González Álvarez, Jean Lambert (CD), Ioannis Marinos, Véronique Mathieu and Eurig Wyn. The report was tabled on 19 March 2001.

***NOTE: 7 of the MEPs present to vote in this assembly of 13 MEPs were Christian Democrats , indicated by (CD) (i.e. over 50%).**

The Committee’s view of its own role and significance

1. To appreciate the shortcomings of the EPPC it is important to review what the members of the EPPC consider to be their function with respect to defending the rights of European citizens.

2. In March, 2001 the EPPC drafted a report sub-titled: “on the institution of the petition at the dawn of the 21st century” (Final A5-0088/22001). This report has a preamble section entitled “*The petition: a developing tool*”, within which it is stated that:

“... citizens take on dignity as individuals, and can claim their status as holders of rights, interests and expectations, which it is the duty of the Union to honour. The management – the guardianship – of these rights, often in the face of a State authority

or of local administrations, is perceived by the 'new citizens' as essential and of primary importance: their rights follow them wherever they choose to live in the Union; rights that are often of a new kind, and that are enshrined in that invisible, but palpable, European Constitution which is taking shape and texture with every passing day and with each individual event – each European Council meeting, each part-session of Parliament.”

3. To this is added.

“We are talking here about newly acquired fundamental rights and new freedoms or, to put it another way, a new way of experiencing in everyday life the rights that have been acquired, rights which the Union must allow citizens to exercise in their capacity as *voters, savers, employees or users of the judicial system* – as citizens, in fact, who demand ‘the right to know’ what is happening in the other countries in the name of the principle of non-discrimination.”

4. Of significance is the last section where it is stated:

“For, after all, what we are looking at here is not so much an ancient institution, under which suppliants throw themselves upon ‘the mercy of the Prince’, but a new way of conceiving of democracy and the role of its protagonists. The petition is situated at the interface between the Elector and the Elected, the Governor and the Governed, the Administrator and the Administered.”

5. So the Petition Committee’s report claims some consciousness of the need to uphold citizens rights and claims that this institution takes up a position between the parliament, government and administration on the one hand and the individual on the other.

And the law?

6. The report goes on to state that, “(The Petition) .. enables the petitioner to exert an influence over both the implementation and the repercussions of Community law, and to expose shortcomings and violations of this law, thus contributing to that deepening of the Union which should take place in cooperation with its citizens.”

And that...

“The petition ... is ... a powerful instrument of parliamentary control over the daily activities of the EU, as well as over the national governments ... it oversees the transparency of Community law and exercises *a posteriori* controls over its application to individual cases. It can thus call on the other specialised committees to provide it with information on which to base its decisions, as well as offering them ‘in return’ a more comprehensive and relevant overview of the application ‘on the ground’ of the laws in force and the problems encountered by individual citizens.”

Failure to act

7. The Petitions report does however include the description of a state of affairs within which it can be **proactive** with benefit where it states that:

”Dealing with petitions often brings to light serious failures on the part of the Member States to comply with Community law, ranging from delays in the transposition of Community directives into national law to violations of the letter or the spirit of Community law. The Committee on Petitions requests the Commission to acquire all the necessary information and, where appropriate, to initiate proceedings for failure to act before the Court of Justice.”

“The fact that the Nice Treaty gives the European Parliament a similar right of recourse to the Court of Justice opens up new possibilities of a strengthened, direct role for the Committee on Petitions in initiating this procedure. It is all the more important, therefore, that Commission should inform Parliament of petitions that relate directly or indirectly to the violation procedure, inter alia in the Annual Report on control of the implementation of Community law.”

Unrealistic claims

8. The Petition Committee’s report goes on to say:

”The Committee on Petitions is, after all, in a position to form an accurate picture and to offer the whole of Parliament an overview of the shortcomings of European and national administrations, the measures taken by them without particular concern for citizens, the existing bureaucratic obstacles, unsuitable, outdated discretionary measures and, finally, violations of Community law and failures to abide by this law.”

and:

“Petitions, by highlighting the shortcomings and inadequacies of existing regulations, enables citizens to play a part in the development and deepening of the Union, in such a way that a stimulus is given to continuing the search for new, sometimes bold, solutions to new problems.”