



Conference Report: Petitions and Recommendations

YUCOM – Lawyer's Committee for Human Rights and the Heinrich Böll Foundation, supported by the Delegation of the European Union in Serbia, held on December 8th 2010 in the Belgrade Media Center, a conference “Petitions and Recommendations”.

The conference was held after the completion of research on legal regulation of the constitutionally guaranteed right to petition and recommendation in Serbia, 5 workshops and 5 panel discussions in Belgrade, Nis, Presevo, Kragujevac and Novi Sad with representatives of non-governmental organizations, unions and the public, and establishing the web portal www.uticaj.rs. We collected all of the information, opinions and recommendations received during workshops and panel discussions, as well as the results of the research conducted, and published it as “Petitions and Recommendations – Law and Practice”. This publication, available in three languages, was presented at the conference

Our intention with this project was to contribute to creating a constructive dialogue between representatives of public authorities on one side and citizens on the other regarding possible ways of how this constitutional right to petition and recommendation can be realized, in the goal of alleviating some of the confusion which might surround these issues (do the public authorities have special departments and procedures which regulate how petitions and other recommendations are replied to; what are the main obstacles for replying to petitions and recommendations) and to thoroughly investigate the facts so as to be able to make precise recommendations for further handling of the matter.



Nakon sprovedenog The conference was held after the completion of research on legal regulation of the constitutionally guaranteed right to petition and recommendation in Serbia, 5 workshops and 5 panel discussions in Belgrade, Nis, Presevo, Kragujevac and Novi Sad with representatives of non-governmental organizations, unions and the public, and establishing the web portal www.uticaj.rs. We collected all of the information, opinions and recommendations received during workshops and panel discussions, as well as the results of the research conducted, and published it as “Petitions and Recommendations – Law and Practice”. This publication, available in three languages, was presented at the conference.



At the final conference the speakers were: Katarina Golubovic (YUCOM), Dejan Milenkovic (Faculty of Political Sciences), Sasa Dujovic (President of the Parliamentary Committee for Petitions and Proposals), Milan Dukic (President of the Vojvodina Committee for Petitions and Proposals), Dobrila Zdravkovic (Nis Ombudsman), Vesna Pesic (Member of Parliament), Ivan Grujic (NGO People's Parliament) and Hana Copic (Heinrich Böll Foundation).

Representatives of the following NGOs were present at the conference: Friends of Children from Zemun (*Prijatelji dece Zemuna*), Association of Free and Independent Unions (*Asocijacija slobodnih i nezavisnih sindikata*), Belgrade Center for Security Policy (*Beogradski centar za bezbednosnu politiku*), Regional Center for Minorities (*Regionalni centar za manjine*), Independent Union of Postal Workers (*Samostalni sindikat poštanskih radnika*), Center for Development of Serbia (*Centar za razvoj Srbije*), Friends of Children from the Vozdovac Municipality (*Prijatelji dece opštine Voždovac*), Humanitarian Law Center (*Fond za humanitarno pravo*), Policy Center, Hartefakt Fund (*Hartefakt Fond*), Praxis, Association of Independent Unions of Serbia (*Savez samostalnih sindikata Srbije*), Tribuna, Belgrade Open School (*Beogradska otvorena škola*), Civic Initiatives (*Građanske inicijative*), Belgrade Center for Human Rights (*Beogradski centar za ljudska prava*), The People's Parliament (*Narodni parlament*) and The Democratic Roma Association (*Demokratsko udruženje Roma*).

The conference was also attended by representatives from the Ministry of Internal Affairs (Bureau for Complaints and Proposals), Offices of the Nis Ombudsman, Autonomous Province of Vojvodina Assembly, National Bank of Serbia, Commissioner for Information of Public Importance and Personal Data Protection, European Delegation in Serbia and a representative of the Belgrade Ombudsman.



Katarina Golubovic
YUCOM - Lawyer's
Committee for Human
Rights

The moderator of this conference, Katarina Golubovic, started out by describing the project and project activities accomplished during 2010. The project itself started with workshops which were attended by many

NGO and union representatives who talked about the obstacles faced by citizens when attempting to enjoy their right to petition.

Katarina Golubovic stated that there are numerous obstacles, one of them being the confusion regarding what a petition must contain, data which non-governmental organizations may collect without it interfering with protection of personal information, followed by to whom a petition should be addressed and what state authorities may do regarding petitions and recommendations. She also noted that talks were held with representatives of public authorities and an overview was made regarding the problems they face when processing petitions and recommendations. YUCOM and hbs have found examples of good and bad practice in the region and countries in the European Union and have presented them as part of the "Petitions and Recommendations – Law and Practice" publication to public authority departments and to the citizens of Serbia.



Dejan Milenkovic
Faculty of Political Sciences

Professor Milenkovic gave an overview of the legislative-legal framework for petitions and recommendations. He stated that the right to petitions and recommendations is guaranteed by the Serbian Constitution, but that in trying to put that right into practice one comes across many

problems. The reason for this being in the fact that this right has not been affirmed enough since there is no one single unifying legal framework for this law, i.e. basically an umbrella law which would regulate what actions must be taken regarding petitions. Also, there is a general confusion regarding the terms which are used – since in Serbian law the terms of petition, recommendation and proposal are not clearly defined.

The right to petition is very old and it is mentioned in the First Amendment of the US Constitution from 1791 as a means of citizens addressing a Parliamentary body.

Milenkovic stated that petitions, recommendations and proposals should be differentiated from certain types of procedures, especially an administrative procedure. Through the procedure an individual citizen's right is served, such as the right to pension or some other right. Petitioning is about human rights and in essence it affirms citizen's participation in social processes.

In an overview of our legal system we may find many laws and sub-laws which deal with petitions in one place,



recommendations in another and proposals separately in another.

A clear procedure on how to respond to petitions and recommendations is not clearly defined in our legislature and we are lacking one unifying law which would regulate this question. Professor Milenkovic stressed that when procedure is lacking there is high probability that the state body or the local self-government body will not respond to a petition or answer it ever, and in this regard if we want to regulate the right to petitions and recommendations we must determine the proper procedure and set up a "relaxed" mechanism for petitions or recommendations which would not demand too much information to be filled in.

One more difference that should be kept in mind is the difference between petitions and recommendations on one side and civic or legal initiative on the other, since civic initiatives are a means for citizens to directly participate in social processes in a context where citizens are the party suggesting changes of law, Milenkovic stated. The Serbian Constitution allows for citizens to suggest changes in law in the event that more than 30 000 signatures are collected within seven days, which demands major activity coordination from citizens' associations of the non-governmental sector – so the required signatures can be collected. He also said that the civic initiatives proposed thus far have not been largely successful, among other reasons, because it never made it to the Parliament's agenda – as was the case with the Law on Secret Information and the Law on Amending and Supplementing the Law on Free Access to Information, for which more than 76 000 signatures were collected.

Petitions are not and must not be understood as such a means of direct democracy where citizens give a great amount of private data - for instance, personal citizen's number, id number, address and signature - since this issue is directly connected to the issue of protecting personal information. The opportunity must be given to citizens to sign petitions or recommendations, give their name, last name and maybe address, and as individuals or groups address the relevant state body and in this way try to further their own interest. In that sense this YUCOM and Heinrich Böll Foundation project gives light to good practices and the ways and means of getting citizens to be active and participate in different aspects of social life.

This publication further raises awareness about the right to petition and recommendation, about citizens being the fourth pillar of public authority, while on the other hand it shows that even though there is a lack of legal regulation

there are certain ways and means for citizens to change things on a local or state level by criticizing the work of government bodies.

By further raising awareness about the right to petition and recommendation we support citizens to start their own effective and adequate actions when needed. It is also important to find funding for non-governmental organizations so they could make one unifying law regarding petitions and recommendations since every human right must have a means of being enjoyed. Unfortunately, the right to petition does not have this legal framework yet since only a couple regulations deal with petitions, recommendations and complaints, stated Dejan Milenkovic.



Sasa Dujovic
President of the
Parliamentary
Committee for Petitions
and Proposals

At the beginning of his speech Sasa Dujovic passed on greetings from the Committee members and the Parliament President. The Committee had not existed and had not had members until May of this year. At the very start of its work the Committee was confronted by many problems, most of all regarding citizens' misconception about the Committee's powers. A special process of informing citizens about the Committee's framework of powers was begun soon afterward. This Committee is the only one out of 31 committees that is in daily contact with citizens. Its work consists of regular meetings where all major items are discussed – these being petitions, recommendations and complaints regarding the judiciary, institutions and local self-government. It is within the Committee's powers to analyze the problems brought forth in the proposals, complaints and petitions and forward them to the relevant government body that is in charge of resolving them. The Committee has had problems with the branches of executive powers which do not wish to accept the fact that citizens have problems and therefore it happens that the Committee's demands are ignored. They have begun cooperation with all independent regulatory bodies. A greater part of them have accepted to cooperate with the Committee while a small percentage has turned it down. With the non-governmental sector certain steps have been made toward raising citizens' awareness about how petitions



and recommendations should be written, what form a petition should have and what is the most effective way of enjoying these rights.

Dujovic commented how the Committee held one meeting session in Nis, and that this is a general strategy – to hold meetings outside of Belgrade and the Parliament. From May of this year to today the Committee received and processed a thousand proposals, petitions and recommendations; the innovation brought in by the Committee is that each petition and such is followed through the end which requires great effort. The Committee informs citizens about what institutional body their petitions have reached and what is being done about them. The Committee will organize visits to other EU countries so that the its members would have the opportunity to see examples of good practice. In closing Dujovic noted that the key to success can be found with the executive branches of government, and it is therefore the Committee's job to insist that all complaints and citizens' petitions be resolved.



Vesna Pesic
Member of Parliament

Member of Parliament Vesna Pesic deems the mechanisms of direct democracy in Serbia to be of very poor quality. She stated that during the eighties petitions had far stronger effects on the state than they do today, even though a non-democratic regime was in

power then. Petitions weren't a cause for citizens to be arrested even though information was collected on these individuals and added to their files, which MP Pesic shared from personal experience. Today in Serbia there is a general disinterest regarding what citizens have to say by means of political petitions, even though there are several channels through which such demands can be voiced – from those established on local levels of government to the Ombudsman, or even maybe political parties, stated Vesna Pesic.

MP Pesic also stated that she is against the right to petition and recommendation being regulated by law and that if it is a Constitutional right then it should also be applied as such – meaning directly.

Professor Milenkovic added to Vesna Pesic's comments by saying that regulating the right to petition and recommendation by law is necessary due to the need to set up deadlines within which the relevant body of government must react in relation to a petition, as well as setting up a means of punishment when the said body of government does not react as required.

MP Pesic said that it is absurd how out of 250 members of Parliament 60 are from the city center of Belgrade while some regions in Serbia are not represented at all. She added that the Rules and Regulations of the Serbian Parliament curtails the rights of MPs since it forbids MPs from asking parliamentary questions and taking part in discussions without first obtaining permission from the Head of their Parliamentary Group.

Vesna Pesic stressed that not one draft law suggested by NGOs was scheduled as part of the daily agenda of the Serbian Parliament.

With assistance from the US National Democratic Institute, certain MPs had opened offices in some cities in Serbia which they visit once or twice a month. In these offices citizens may communicate directly with their MP, there is however a problem in making the work of these MPs visible in cases where the local authorities are not from the same political party as the said MP.



Milan Djukic
Member of the
Autonomous Province of
Vojvodina Committee for
Proposals and
Recommendations

Milan Djukic presented the work done by the Committee for Proposals and Recommendations of the Autonomous Province of Vojvodina Assembly. The Committee has thus

far held 11 sessions and has done work aside from holding sessions, and as Djukic states they have excellent cooperation with the Offices of the Province's Ombudsman – half a year ago, for instance, he visited with representatives of the Ombudsman's Office prisons in Vojvodina. He criticized 14 local municipalities in Vojvodina which still don't have Committees for Proposals and Recommendations. He added that the Committee for Proposals and Recommendations of the Vojvodina Assembly has so far this year received 40 proposals, most of them dealing with issues such as



withheld wages, practical problems in realizing pension rights, pensions to be received from former Yugoslav republics.

Djukic claims that the advantage of the Vojvodina Committee is that it is one of the daughter committees of the Ombudsman's Office and that together with other committees they discuss their reports and review all the cases forwarded to the Ombudsman, while not interfering with the autonomy of others. For years now the Committee has been keeping count of all reports filed by local committees for proposals and recommendations from Vojvodina's local self-government divisions, asking for reports and sending letters, publicly reminding those committees which have not sent in their reports, and then all of them publicly explain their reports on Committee meetings, stated Djukic. A good part of their activities is field work, so to say. For instance, members of the Committee had established through field work that in prisons and psychiatric institutions in Vojvodina the human rights of prisoners and patients are being infringed. Prisons in Vojvodina are "overcrowded", while the psychiatric institutions are frequently housed in completely inadequate and old buildings.



**Dobrila Zdravkovic
Ombudsman – Nis**

Dobrila Zdravkovic reminded everyone at the onset of her speech about what ombudsmen are authorized to do in their local community, namely the following: protecting the rights of citizens, associations, legal entities and non-governmental

organizations from irregular and illegal actions by management departments of public companies and institutions which are founded by the city or municipality, also protecting and advancing human and minority rights and freedoms, and maybe one of the most important authorizations being the right to propose changes and supplementations of decisions made by the city or municipal assemblies.

The Ombudsman reacts to proposals from citizens, or on her own initiative in cases where she receives information and establishes that a managing board of some company is acting in an illegal manner and establishes that it is necessary to recommend and initiate a change, supplementation or for a new decision to be

made which better fits the interests of citizens and protects their interests on a local level.

The Ombudsman noted that in 2010 she was addressed by citizens in person 1830 times. In only 30% of those cases the Ombudsman was within her framework of powers, which says a lot about the fact that citizens are not well informed on what the Ombudsman is authorized to do and what types of proposals may be given to the Ombudsman, noted the Zdravkovic. She also spoke about the stance of public authorities in regard to the Ombudsman's recommendations: last year in Nis there were 136 written proposals which were given individually or by groups of Nis citizens. Proposals which had merit made up half of all proposals filed. From those which had merit, the Ombudsman gave a recommendation to a managing board, public company or institution, citing what needs to be done and how the obstruction is to be removed, and in what time, the Ombudsman's recommendation was followed through and the obstruction removed in 30% of the cases. These are mostly omissions which once removed work toward improving the interests of people and legal entities who do not have great political or economic influence on the city institutions, while in 70% of those proposals that had merit where the Ombudsman made recommendations for the removal of obstructions, the managing boards of public companies or institutions did not react in accordance to the recommendations since by following through on the recommendation would mean endangering the interests of persons close to certain political parties, or it could be that the person in question is a locally influential business man.

Dobrila Zdravkovic added that the stance the city authorities have regarding initiatives and proposals is such that in most cases they do not act in accordance to the recommendations given. The only option at the Ombudsman's disposal at those instances is to inform the city Assembly, the City Chamber and to bring the matter to the public's attention. In the preceding year the Ombudsman had used this option at her disposal several times. However, when the public is informed in this manner she has no feedback whether anything was done in regards to the information she publicized and what was done. She also does not get informed whether the publicized information was on the daily agenda of the City Chamber, whether any warning notices were sent out or recommendations made regarding how this matter should be dealt with.

The same rules apply in regards to the Ombudsman's initiative to change old decisions, harmonize or reach



new one, all of which would better the status of some citizens or groups of citizens.

The Ombudsman also said that the institution of Ombudsman, as a European institution, is still a young institution in our law and that it is becoming recognized on the republic and local level due to the powers invested in the Ombudsman. Ombudsmen however are confronted with resistance from management boards of public companies and institutions, but also from local authorities. It is a fact that citizens are not yet well informed about the powers invested in Ombudsmen; there is also a lack of information on the side of those working in management of public companies, institutions and representatives of local government. The attitude of those mentioned toward recommendations and proposals indicates that there is still inadequate management which is more concentrated on its own interests rather than public interests. Not reacting to recommendations and proposals which citizens bring forth sends the message is that those omissions which have been noticed will continue happening, and that the objectivity of a company's actions may be doubted; also, there are suspicions of corruption among those employed and mistrust of the legal system, functioning of local authorities and bodies of local self-government.



Ivan Grujic
NGO The People's
Parliament, Leskovac

As a good example of institutional regulation Ivan Grujic cites the Law on Free Access to Information adopted in 2004. Even though there are many problems regarding how it is applied, we see that things are developing in the right direction and that freedom to access information is taking

hold: he believes this will also be true regarding civic initiatives. There is no good law on this issue yet. The law from 1994 is still on the books, and it does more harm than good when it comes to supporting civic initiatives.

Ivan Grujic said that people's initiatives, or civic initiatives, are the right of citizens to directly suggest certain decisions be made in the Parliament, or provincial or local assemblies. Non-governmental organizations have bad experiences with two draft laws they recommended three years ago. They collected more than 72 000 signatures in an initiative aimed at changing or supplementing the Law on Free Access to Information

and the Law on Classification of Secret Information and those two draft laws are even to this day held up in parliamentary processes. It is clear that all deadlines as regulated by the law and Rules and Regulations of the Parliament have been breached and that these recommended changes are being ignored.

NGO the People's Parliament made a draft Law on Civic Initiatives. It passed public debate and they found out that the Ministry of State and Local Self-Government made a similar draft named the Law on Referendum and Civic Initiative; now they are in the phase of pressuring the Ministry to hold an open discussion regarding this law. Considering that it has been two months since Minister Markovic announced a public discussion will be held on this law, they have started a petition which was signed by 80 associations; it was then forwarded to the Ministry but so far there has been no reply. There is great possibility that this law might be adopted without there ever being a public discussion on it, and in some aspects this law is majorly lacking, which may lead to civic initiatives not being respected in practice even though there is a law regulating them on the books. One of the bigger faults with this law is that there is no judicial protection in the instances when the president of the Parliament or local Assembly just ignores a civic initiative. The other fault is that the law does not specify what is the maximum number of signatures needed for civic initiatives on a local level – which is a question regulated by the local self-government. There is also a problem regarding the deadline for collecting signatures, which is seven days, and even when all of these problems are overcome it may happen that the president of the municipality ignores these demands. It also makes no possibility to collect electronic signatures.



Hana Copic
Heinrich Böll Foundation

Hana Copic presented positive examples of how this right can be regulated – on a supranational level, EU level, and specific examples of national and provincial legislature. At the start of her speech she noted that since democracy is defined as a process in which citizens

themselves choose the politics, then direct democracy is its best paradigm. Also, that the democratic system produces the best results if there is a connection between representative and direct democracy.



The European Union, considered to be the bastion of democracy, has also been getting criticism for lacking democracy. Therefore, in the Lisbon Treaty a new instrument of democracy was offered – the European Citizens' Initiative, an instrument which makes it possible for one million citizens of the EU to directly call on the European Commission to consider an initiative which is in the citizens' interest and is at the same time within the scope of powers the EU has, noted Hana Copic.

She also stated that the texts selected for the comparative law and EU section of the publication represent an elaboration of the direct democracy instruments on various levels of government – EU (on the supranational level), New Zealand (national level), California (federal unit level), Bremen and Hamburg (on a provincial and city level). These laws at the same time represent good and bad examples and they stress the importance of direct and active involvement in creating (political) life and making political decisions – from issues such as forestation in the municipality to initiatives to change existing or adopt new laws. The examples of Bremen and New Zealand show thoroughly elaborated laws and precisely defined procedures, which should all make for more effective ways of reacting to petitions, while the examples of Hamburg and California show how even through direct democracy we may not always reach the most democratic goals – goals which benefit the majority – stated Copic.

