

ONE CLICK DEMOCRACY

ONE YEAR OF E-PETITIONS IN UKRAINE¹

EXECUTIVE SUMMARY

E-petitioning is the electronic delivery of a proposal, request or complaint to a democratic institution.² Being complementary to traditional citizens' requests, e-petitions widen the instruments available to the public for taking part in political process. This instrument has been in practice in Ukraine for one year already: since July 2015, the Ukrainian law provides for e-petitions as a special form of collective petition to the president, parliament (Verkhovna Rada), cabinet of ministers, or self-government bodies. The presidential administration was the first in Ukraine to launch an e-petition service, on 28 August 2015. A few months later it was followed by Ukraine's parliament and the Kyiv city council; Ukraine's government joined the practice only on 29 August 2016. Ukrainian citizens actively used the service to address the state actors with their concerns. So far, Ukraine's president received the most requests or recommendations: 26,562 petitions to the president were published online, 40 of them gained 25,000 signatures, 38 petitions were answered by the president. The Verkhovna Rada received and considered only one petition; and due to the very recent launching of the Government's e-petition service, no petitions were submitted so far to the cabinet of ministers.

The Ukrainian law is rather liberal allowing e-petitions on almost any subject as long as they do not call for the overthrow of the constitutional order, or for any other crimes to be committed. The range of e-petitions varies from questions of constitutional importance (e.g. petitions on armed self-defence, parliamentary immunity), through concrete legislation proposals (e.g. petition to reload the judiciary through open competition similar to the police reform) to insignificant requests of not related to public interests that occasionally can be qualified as spam (e.g. petition to appoint Darth Vader, a protagonist in "Star Wars" movies, as Ukraine's prime minister). The law obliges the president, parliament, or cabinet of ministers to consider petitions that gained at least 25,000 signatures within 3 months after appearing online and to give a reasoned public answer to such petitions within a rather tight time-frame, 10 days after informing the public the petition has been taken into consideration. Successful public support for an e-petition does not necessary result in its satisfaction, but it should guarantee proper consideration of the request and participation of the petitioner in the decision-making process.

Overall, e-petitions in Ukraine have proven to be capable of quickly and transparently mobilising the public around one particular topic and facilitating the transparency of political decisions. The tool has certainly the potential to contribute to accountability, transparency and responsiveness of decision-making in the country. It can be improved by three main measures:

- create a petitions committee(s) dealing solely with (e)-petitions and approve clear rules and procedures for the committee(s) to study and reply to petitions;
- ensure that citizens can exchange arguments on e-petitions (for example through comments and posts online) and enter into dialogue with state officials;

¹ This paper was written by Bohdan Bernatskyj and Ruslana Vovk, Democracy Reporting International. The quotations cited in the paper are from the public discussion "One Click Democracy: One Year of E-Petitions in Ukraine", organised by DRI on 15 September, in Kyiv, at "Ukrinform".

² See Recommendation CM/Rec(2009)1 of the Committee of Ministers to member states on electronic democracy (e-democracy), p. 8 <http://www.coe.int/t/dgap/democracy/Activities/GGIS/CAHDE/2009/RecCM2009_1_and_Accomp_Docs/Recommendation%20CM_Rec_2009_1E_FINAL_PDF.pdf> (21 September 2016).

- make all documents related to studying of e-petitions publicly available, including outcomes of the considerations of e-petitions.

1. THE LEGAL FRAMEWORK

Article 40 of the Ukrainian Constitution provides for the right of the Ukrainian citizens to send in writing or present personally individual or collective petitions to state bodies, self-government bodies or their state officials, or personally appeal to the mentioned authorities. The petitions aim for a concrete action by the addressee and may contain suggestions (remarks), requests or complaints related to the sphere of the activities or competences of the addressees, or notification about violation of human rights. The constitutional right to petition guarantees that there are no negative repercussions for the petitioner and obliges the addressee to give a reasoned response within 30 days, in exceptional cases within 45 days, upon the receipt of the petition.³

On 2 July 2015, the parliament changed the Law of Ukraine “On citizens’ petitions”, introducing e-petitions as a special form of a collective petition to the president, parliament, cabinet of ministers, or self-government bodies which can be submitted through the official webpage of the respective recipients or the webpage of a civil society organisation that collects signatures for a petition (Article 23¹ of the Law).⁴ Similar to the traditional written or oral petitions, e-petitions can address any questions within the scope of public relationships and either express recommendations regarding the activities of state bodies or legal regulations in general, or include requests to facilitate implementation of human rights or eliminate human rights violations. The only restrictions refer to (e)-petitions that call for the overthrow of the country’s constitutional order, violation of the territorial integrity of Ukraine, terrorist attacks, infringement of human rights and freedoms, or (e)-petitions that contain propaganda of war, torture, violence or incitement to racial, ethnic, or religious enmity. Such appeals constitute a criminal offence and lead to criminal liability in Ukraine.⁵ Along with these material non-admissibility criteria, e-petitions have to fulfil a few formal requirements in order to be published: they should indicate the full name and e-mail address of the petitioners.⁶



Golda Vynogradskya, initiator of the e-petition to the parliament: „I do not believe e-petitions can be successful. I was invited to present the petition at a hearing of a parliamentary committee. As result the MPs expressed their concern about the issue but were not ready to discuss the respective bill.”

Upon submission of an e-petition, its recipient has 2 days to verify if the requirements are fulfilled and either to publish the e-petition on its webpage or notify the petitioner why the request cannot appear online. The president, parliament or the cabinet of ministers are obliged to consider an e-petition if the latter has obtained 25,000 supporting signatures within a maximum of 3 months after it was made public; the respective threshold for e-petition to self-government bodies is to be defined by the statutes of territorial communities. At the latest, by the third day after an e-petition has gained the required number of supporters, its addressee should publicly confirm that it is to be considered. Afterwards, the addressee has 10 days to study the e-petition and should publish its response on the 11th day (or next working day). If an e-petition contains a request to be considered at parliamentary hearing or of the territorial community, the author of the e-petition should present the issue personally at the hearings, thus granting the petitioner an elevated role in the process.

Signatures for e-petition do not automatically result in a decision in favour of the petitioner. The addressee has the discretion to decide whether to satisfy an e-petition, for example, by means of a decision whether or not it falls within the scope of its competences. The president, cabinet of ministers or deputies can also initiate a legislation procedure by proposing the draft law to regulate the issues as presented in an e-petition.

2. HOW DID IT WORK IN PRACTICE?

During its first year of existence, the e-petition service was actively used by Ukrainian citizens. E-petitions to Ukraine’s president were the most popular. A few of them referred to important matters related to constitutional regulations. The very first petition to the president within 6 days after its launching on 29 August 2015 gained the required 25,000 signatures.

It demanded the constitutional right to armed self-defence.⁷ Other important questions included calls to cancel parliamentary immunity,⁸ to decrease the number of members in the Verkhovna Rada from 450 to 100 deputies,⁹ and

⁷ On 24 September, President Poroshenko called on the Head of Ukraine’s Constitutional Commission (CC) to consider the request of the petitioners within the CC’s Working Group on Human Rights to involve the respective stakeholders, for example the author of the petition, various political representatives, state authorities, CSOs and experts, in further discussion. As result he suggested that amendments to the Constitution be publicly discussed at a conference organised by the CC’s Working Group and attended by well-known experts and practitioners from both Ukraine and abroad. Following the conference, it was preliminary concluded that there is no need to amend the Constitution, whereas a specially created sub-working group should elaborate draft laws to improve the regulation of possession of firearms in Ukraine. See more on the issue in DRI “Briefing Paper 64: Ukraine’s Legal Debate on the Right to Armed Self-Defence,” Berlin, March 2016 < http://democracy-reporting.org/?dri_publications=briefing-paper-64-ukraines-legal-debate-on-the-right-to-armed-self-defence > (21 September 2016).

⁸ See the petition at < <https://petition.president.gov.ua/petition/35> > (21 September 2016).

⁹ See the petition at < <https://petition.president.gov.ua/petition/33> > (21 September 2016).

³ See Art. 40 of the Ukrainian Constitution < <http://zakon0.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> > and the Law of Ukraine “On citizens’ petitions” of 28 June 1996 < <http://zakon0.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/print1452764712101811> > (21 September 2016).

⁴ Ibid.

⁵ See Art. 109, 110, 258-2, 300 of the Criminal Code of Ukraine of 5 April 2001 < <http://zakon2.rada.gov.ua/laws/show/2341-14/print1449652614378814> > (21 September 2016).

⁶ A bank account number is an additional identification criteria for certain CSOs that gather signatures for e-petitions.

proposals about the mandate of deputies, such as early revocation of elected deputies, or their dismissal after missing at least three parliamentary sessions, or their resignation for non-fulfilling of campaign promises.¹⁰ In most cases Ukraine's president responded by forwarding the proposals for consideration to the Constitutional Commission, or Ukraine's parliament or government.

The petition to Ukraine's parliament which gained the required 25,000 signatures is the request of Ms Golda Vynogradska to pass a Law "On occupational education" that was once registered but later removed from the parliament's agenda.¹¹ The petitioner was invited to participate at the parliamentary hearings and present her petition. However, this participation has yet not resulted in the discussion of the respective bill at parliamentary hearings. The e-petition system was launched on the webpage of Ukraine's government only on 29 August 2016 and no petitions to the government have been filed so far.



The president and parliament have occasionally received the same e-petitions and President Poroshenko has forwarded more than 10 petitions for consideration to the government since they were not

Dmytro Shymkiv, Deputy Head of the presidential administration: "The presidential administration was the only one to implement the Law on time [...] Most petitions to the president address the questions that fall under the competences of other state bodies."

within his competence.¹² Such duplication may be confusing but at the same time

the wide choice of addressees can trigger a competition among state institutions in how to improve e-petition filing and consideration. Comparative international studies also show that state institutions with a proper functioning and influential petitions department are usually better and stronger positioned compared with state institutions without such departments.¹³

3. WHAT COULD BE IMPROVED?

For the time being, neither the presidential administration, nor the Ukrainian parliament have a department or state official(s) responsible solely for dealing with e-petitions. The secretariat of the presidential administration considers e-petitions addressed to the president, e-petitions to the

legislature are filed with the apparatus of the Verkhovna Rada which forwards it to the committee responsible for the questions raised in them. Moreover, the state actors do not follow clearly elaborated internal rules and procedures as to what happens after a petition is successfully supported and considered in a parliamentary hearing.

E-petitions certainly facilitate transparency of the political process in Ukraine with requests and reactions of state bodies being publicly visible. The instrument also promotes public consultations and mobilisation of the public via social media or media reporting. The petition topic is usually personalised by the author of an e-petition which makes the topic more media-friendly. However, taking into account international practice¹⁴ and feedback from e-petitioners in Ukraine¹⁵ one can suggest the following possible improvements:

Develop a mechanism of communication between petitioners and state authorities:

- Petitioners and supporters of the petitions should be offered the possibility of discussing the issue online and with officials and politicians; only then is communication effected. Without dialogue and an exchange of arguments, the petitions would tend to take on a populist character and state authorities will not really receive any input from the discussion. The present e-petition service does not technologically enable the signatories to contact each other, for example via a space for chatting and exchanging comments.

Improve transparency of the consideration and decision-making process:

- Transparency of the decision-making process can be promoted by making all documents related to a petition publicly available (see, for example, the Scottish model described in the "overview table" below).

Establish a special e-petition committee or coordination centre to deal with e-petitions:

- Both the petitioners and addressees can benefit from a special committee dealing with e-petitions and responsible for proper publication and consideration of petitions. It can be either an umbrella committee dealing with all petitions or separate committees for the president, parliament, and government. The advantage of an umbrella committee could be less disorientation of the citizens in terms of whom to address the request and less duplication of petitions. In this context, one should mention the recently introduced changes to the rules and procedures of the Kyiv city council, wherein a deputy mayor of Kyiv (who is at the same time the head of the

¹⁰ See the petition at <<https://petition.president.gov.ua/petition/39>> (21 September 2016).

¹¹ See the petition at <<https://itd.rada.gov.ua/services/Petition/Index/1227?aname=responses>> (21 September 2016).

¹² See President's answers to the petitions at <<https://petition.president.gov.ua/?status=processed>> (21 September 2016).

¹³ See the report by the committee of the German parliament on e-petitions "Öffentliche elektronische Petitionen und bürgeliche Teilhabe", 16/2009, p. 7. <<http://dip21.bundestag.de/dip21/btd/16/125/1612509.pdf>> (21 September 2016).

¹⁴ See the international practice overview in the table below.

¹⁵ The recommendations take into consideration the conclusions of the public discussion "One Click Democracy: One Year of E-Petitions in Ukraine", organised by DRI on 15 September, in Kyiv, at "Ukrinform".

secretariat of the Kyiv city council) is responsible for creating working groups to deal with e-petitions.¹⁶

Provide additional criteria for admissibility of petitions to be published:

- The Ukrainian law contains very minor requirements for material or formal admissibility of e-petitions. Thus, almost every request is published. As result, one can find a few non-serious requests, or so called petitions for fun. For example, an e-petition to appoint Yuliya Tymoshenko as ambassador to Honduras, or to appoint Darth Vader as Prime Minister of Ukraine.¹⁷ There is always a risk such requests can discredit e-petitions as a tool of e-democracy, or that they become used only for populist tendencies. It is worth considering tightening the admissibility requirements in accordance with international practices, and verifying before publication if the filed request is of common interest, can trigger objective debate, does not cause personal offences, and is not a spam.

Reconsider the effects of e-petitions that propose draft laws:

- E-petitions in Ukraine have very often proposed concrete changes to the legislation and even the constitution. Such e-petitions resemble “e-initiatives”, another tool of e-democracy allowing citizens to develop and put forward political proposals. It is worth considering, if such requests, after receiving a certain level of support should oblige the parliament to discuss the respective bills at the plenary hearings.

Explain possible outcomes of e-petitions to the public:

- It is very important that the non-binding outcome of e-petitions is properly communicated, otherwise there is a risk the society may get apathetic after widely supported expectations are not satisfied.

Conduct trainings for citizens and authorities:

- To ensure inclusiveness of the process, the state should provide for education and training measures on how to use the tool. For this, the state should also study the usage figures and usage patterns of e-petitions in Ukraine and evaluate the tool from legal, technological, political and social perspectives.

¹⁶ See § 5.18 of the rules and procedures of the Kyiv city council for dealing with e-petitions, as amended on 17 March 2016
<http://kmr.ligazakon.ua/SITE2/L_docki2.nsf/alldocWWW/9AB86CB48BF1E7FFC2257F8400687787?OpenDocument> (21 September 2016).

¹⁷ See the petitions at <<https://petition.president.gov.ua/petition/7786>>
<<https://petition.president.gov.ua/petition/4829>> (21 September 2016).

OVERVIEW OF INTERNATIONAL PRACTICE

| E-petitions to: | Procedure for filing and consideration of e-petitions |
|---|--|
| The Scottish Parliament | <ul style="list-style-type: none"> - Petitions committee deals with (e)-petitions. - Petitions should address the questions that fall under the competences of the legislator. - All petitions and related documents (e.g. opinions and statements by ministers, associations, requests by the committee on petitions) are made public and accessible via different channels. - There is no quorum for submitting petitions or to prioritise them. - Hearings about the petition are open to the public and broadcast online. - Petitions can be discussed in an online forum and the deputies regularly receive a two-pages summary of the on-line discussion. |
| The House of Commons and government of the Great Britain | <ul style="list-style-type: none"> - A petitions committee deals with e-petitions submitted to the House of Commons and government. - Petitions should address the questions the addressees are responsible for. - In order to be published online a petition has to be supported by at least six people and fulfil certain formalities. Inter alia the petition has to be clearly formulated, should not contain personal or confidential information or offences, should not be advertising or spam. - The published petition is open online for signatures for six months. During this time the committee may ask for more information from petitioners, the government, or other relevant people or organisations, ask another parliamentary committee to look into the topic raised by a petition, or put forward the petition for debate. - The petitions which gain 100,000 signatures usually are automatically forwarded for debate. - Apart from e-petitions, there are also paper petitions to the British parliament where one signature suffices for filing. Yet, a paper petition should first be taken up by a member of the parliament, being empowered to submit petitions to the parliament. |
| The German Parliament | <ul style="list-style-type: none"> - A Petitions committee deals with (e)-petitions. - E-petitions can be submitted via mail to the committee that examines if petitions meet the following requirements to be published online: address an issue of public interest, does not contain personal references, the issue is clearly and concisely explained, and objective discussion can be expected on the topic of the petition. Only 5% of the submitted petitions are made public. If the petition does not fulfil the criteria the committee considers the petition under the usual procedure without publication. - Published e-petitions can be signed and discussed online. - If the e-petition gains 50,000 signatures within 4 weeks after being published, the petitioner or several signatories are invited to the committee hearings about the petition which are also broadcasted online. - Generally, the number of signatures should not affect the consideration of the petition by the committee. - The committee's decisions on public petitions appear online, and all documents related to the petition are publicly available. |
| The European Parliament | <ul style="list-style-type: none"> - A petitions committee deals with (e)-petitions in conjunction with the EU-Commission. - Petitions should address issues that falls within the European Union's fields of activity and affects the petitioners directly. In 2014, the main subjects of petitions related to the areas of justice (8%), environment (7%), and internal market (7%). - The committee gathers all information (even through fact-finding visits) necessary for proper consideration of the petition and afterwards convenes a meeting with the participation of the petitioner, the Commission and the Member States' representatives. - The outcome of the consideration of e-petition varies. It is a political action by the Parliament or the Commission, or infringement proceedings in case the EU law was violated. In all cases, the petitioner will receive a response detailing the results of the action taken. |

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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