

Oversight Tool Lacking Political Support

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Summary

The constitutional provision for proposing and implementing parliamentary inquiries in Montenegro is scarcely ever applied. In the last ten years, this oversight tool has not been used, while the proposal for opening parliamentary inquiry was submitted only in two occasions from the adoption of the current Rules of Procedure of the Parliament, regulating the parliamentary inquires issue.

In Montenegro, the opening of parliamentary inquiries suffers from the lack of both the political will of parliamentary majority and the opposition's confidence in its effectiveness. Furthermore, the opposition is not unanimous in using this tool. Normative gaps in the current regulation of parliamentary inquiries in Montenegro are additionally overburdening the overall situation. In implementing parliamentary inquires, the Inquiry Committee might be confronted with difficulties in reference to the data collection, due to: imprecisely defined investigative competences; inability to access classified information; absence of legal obligation of government officials, civil servants and other persons to be heard before the Committee, under the threat of imposing sanctions for the failure to respond and perjury.

Unlike Montenegro, opting for regulating the parliamentary inquiry issue by the Parliament's Rules of Procedure, a vast majority of the EU countries have adopted an umbrella law, commonly the special Law on Parliamentary Inquiries. The establishment of a special legal framework governing this oversight tool aims at its strengthening, as well as guaranteeing the absolute obligation of adhering to the legal provisions regulating this issue. The adoption of a special Law in Montenegro would result in regulating specific issues related to the scope of work and actions of the Inquiry Committee, as well as the penalty provisions, enabling adequate implementation of this tool in practice.

The opinions expressed here are the authors' own and do not necessarily coincide with those of the Friedrich Ebert Foundation.

Introduction

The parliamentary oversight represents the cornerstone of political control over government's work in democratic countries. In fulfilling constitutionally defined oversight role in reference to the activities of the Government, the Parliament of Montenegro, at its disposal, has a number of different oversight tools - MPs questions, consultative and control hearings, Prime Minister's Hour, interpellations and parliamentary inquiries.

With the objective of fulfilling the EC recommendations¹ in the course of 2011, the Parliament has initiated a number of activities aimed at strengthening the oversight function. The most significant changes should entail the amendments to the Rules of Procedure of the Parliament aimed at oversight tools strengthening. However, the working group established for the purpose of developing the amendments to the Rules of Procedure, in the course of its six-month work, has neither provided for the concrete changes, nor the suggestions/recommendations for the parliamentary inquiry enhancement were the subject of its work, although this tool requires to be legally strengthened enabling the follow - up of the EU best practice, ultimately enabling its corresponding application in practice. Namely, in a vast majority of the EU countries, including the neighboring ones, the parliamentary inquiry represents an efficient method in pursuing in-depth investigation into a certain activity of the executive power authorities, as well as to hold the government to account, generating political consequences of its bad actions. This is not the case in Montenegro, since the Montenegrin delegates are rarely using this tool.

¹ *In its opinion on the application of Montenegro for the EU membership, the EC has identified seven key priorities requiring a high compliance degree with the EU regulations and practice. The first priority, in addition to the improvement of electoral legislation, envisages the strengthening of the Parliament's oversight and legislative function. Comparison: EC Opinion on the membership of Montenegro into the EU, SEC (2010) 1334, unofficial translation, Brussels, 9 November 2010, p. 11;*

The objective of this analysis is to highlight the reasons for not implementing parliamentary inquiries in Montenegro. Furthermore, the objective behind presenting both the constitutional and the procedural regulation of parliamentary inquiries is to identify limitations that might arise during its implementation. Highlighting the current shortfalls in regulation of this oversight tool in Montenegro, aims at providing an overview of possible solutions for the parliamentary inquiry improvement, primarily from the normative - legal stance.

Legal Framework for Regulating Parliamentary Inquiries in Montenegro

The Constitution of Montenegro² defines the parliamentary inquiry as the oversight tool, specifying that the “Parliament may, at the proposal of minimum 27 Members of the Parliament, establish an Inquiry Committee in order to collect information and facts about the events related to the work of the state authorities.”

The Rules of Procedure of the Parliament³ regulate the procedure for implementing this oversight tool. The parliamentary inquiry may be opened with the view of considering the situation in a specific area or, collecting facts on work of competent authorities, which could represent a ground for decisions to be made by the Parliament on political responsibility of public officials or undertaking other procedures under its competence⁴.

The Parliament may establish an Inquiry Committee, chaired by the opposition MP, to perform parliamentary inquiry. The Inquiry Committee is entitled to request data and notifications from state authorities, individuals and individual organizations, and after completing the

² Article 109 of the Constitution of MNE, “Official Gazette of MNE”, No. 01/07, of 25 October 2007 - defined constitutional provision is for the first time guaranteeing the oversight tool of parliamentary inquiry - Constitution of MNE adopted in 2007.

³ Articles 78 - 82, Rules of Procedure of the Parliament of MNE, “Official Gazette of MNE”, No. 51/06 of 4 August 2006, No. 66/06 of 3 November 2006, “Official Gazette of MNE”, No. 88/09 of 31 December 2009, 80/10 of 31 December 2010, No. 39/11 of 4 August 2011.

⁴ The proposal is submitted in writing and includes the name of the committee, subject, purpose and goal of the parliamentary inquiry, task and composition of the Inquiry Committee and deadline for completion of the task.

parliamentary inquiry, the Committee submits a Report to the Parliament. The Report may include also a proposal of corresponding measures and actions within the competences of the Parliament.

With the objective of avoiding the violation of constitutional principle of separation of powers, the Rules of Procedure envisage that, if in reference to the issue subject to the proposal for opening the parliamentary inquiry a court proceeding is pending, the decision shall not be subject to the Agenda of the Parliament, and it shall be postponed until final and binding resolution of the court proceeding.⁵

When the proposal is included in the Agenda of the Parliament’s Session, for a decision on opening of a parliamentary investigation is required the support 41 delegates.

The Law on Parliamentary Oversight of Security and Defense Sector adopted in 2010 envisages the parliamentary inquiry as a type of the oversight tool in conducting the parliamentary oversight in this area⁶. The Law is referring to the Rules of Procedure of the Parliament in reference to regulating the parliamentary inquiry procedure itself.

Parliamentary Inquiries in Comparative Practice

Parliamentary inquiries are “suitable” for testing problems with the strong political background, since the consequences “generated” by this oversight tool are primarily of political nature.⁷

⁵ Article 80 - Rules of Procedure of the Parliament.

⁶ Article 10 paragraph 1 items 1-3 of the Law on Parliamentary Oversight of Security and Defense Sector, “Official Gazette of MNE”, No. 80/10 of 31 December 2010.

⁷ Common examples of parliamentary inquiry cases include: analysis of social problems in order to prepare a proposal for its resolution; assessment of the fiscal responsibility of government’s branches in case of detection of fraud, corruption, embezzlement, conflict of interest, etc; legal framework analysis in order to entail necessary amendments, as well as the implementation of laws and regulations, etc. - Review of the parliamentary inquiry cases was made on the basis of comparative experience of the European countries.

Concrete parliamentary inquiry examples within the Belgian House of Representatives conducting parliamentary inquiries since 1880, the year in which the Law on Parliamentary Inquiry was adopted (as of 3 May 1880) include the analysis of methods for combating organized crime and terrorism. (1988), Military Procurement (1993), Guidelines for adapting to the organization and operations of police and judicial system (1995), etc.

Reasons behind the absence of parliamentary inquiries in Montenegro

Therefore, a leading objective of parliamentary inquiries implementation is to determine the political responsibility of state authorities, simultaneously representing a tendency in provision of a systemic response to a social problem that triggered the opening of an inquiry. The aforementioned parliamentary inquiry objectives are obtained by empowering Inquiry Committees/Inquiry Commissions with a special, i.e., far greater competences than those of a “permanent” committees of the Parliament. For example, in Italy and Portugal, the Inquiry Committee has the same level of competences and limitations as judiciary authorities during the conduct of investigative actions⁸. These increased competences have, in fact, investigative features in reference to the data collection, interrogation of witnesses, and submission of a request for obtaining documentation that is relevant to investigation⁹. Regulations governing the conduct of criminal proceedings may be applied when collecting this material, as is the case in Germany¹⁰, while in Denmark, the Minister of Justice may appoint a special investigator who participates in obtaining the evidence during an investigation¹¹.

A significant number of the EU countries have a special law on parliamentary inquiries¹². Countries that don't have an umbrella Law on parliamentary inquiries, have regulated this oversight tool issue by other laws, with the objective of ensuring the compliance with requirements of the Inquiry Commission/Inquiry Committee. In Austria, for example, the parliamentary inquiries have been regulated by the Federal Law on Rules of Procedure of the National Council (1975).

8 Article 82 paragraph 2 of Constitution of the Italian Republic, Article 178 (181) paragraph 5 of Constitution of Portuguese Republic;

9 Or even all investigative competences being at the disposal of investigative judges pursuant to the CPC - in Belgian example, Article 4 of the Law on Parliamentary Inquiries of Belgium.

10 Article 44 paragraph 2 of the Constitution (Basic Law of the Federal Republic of Germany);

11 Law on Inquiries Commissions, No. 357 of 6 February 1999;

12 For example, Belgium, Denmark, Holland, Luxembourg, Italy, Portugal, Lithuania, Slovenia, Croatia, Poland, Russia, etc;

57 delegates voted against - and 23 in favor of inquiry. Five delegates who proposed the inquiry, failed to vote in favor of implementing it.

In the light of the above, the parliamentary inquiries represent the most powerful parliamentary oversight tool in the vast number of countries, but not in Montenegro. The Parliament does not follow the tradition of implementing parliamentary

inquires. The “latest” inquiry was conducted in 2002, with the objective of investigating the allegations of Zagreb’s “Nacional” about tobacco affair. On the one hand, the governing majority has neither persuaded nor supported the opposition’s proposal for opening the parliamentary inquiries. The opposition, on the other hand, regardless of having 29 deputies in 24th convocation¹³, a number sufficient for the parliamentary inquiry opening, was indifferent in launching this tool. From adoption of the current Rules of Procedure of the Parliament in August 2006 to 1st January 2012, the opposition has had only one formal proposal for a parliamentary inquiry opening.¹⁴ Specifically, the proposal of decision on parliamentary inquiry opening was submitted by twenty-eight opposition delegates on 3rd March 2010, aimed at discussing the situation in the electro-energy sector of Montenegro, with the special emphasis on electricity tariffs and prices area, to be used as a basis for “adoption and implementation of adequate legal and procedural decisions and actions.”¹⁵ In considering the proposal of decision, the competent Committee for Economy, Finance and Budget has

13 2009 - 2013;

14 Decision brought at the request of the Institute “Alternativa”: Parliament of MNE, No. 00-41/II-159/3, Podgorica, of 20 December 2011. In 2012, an additional proposal for parliamentary inquiry opening was submitted, being the second one from the adoption of the current Rules of Procedure of the Parliament. On 20 January 2012, twenty - nine delegates have submitted a proposal for the establishment of Inquiry Committee for collecting information and facts on corruption in privatization process of “Telekom” of MNE;

15 Parliament of MNE, of 2 March 2010, Su-Sk No.01-114, EPA: 240-XXIV;

assessed, inter alia, that the “issues covered by the proposal of decision have been, to a certain extent, addressed by a consultative hearing held on 4th March 2010, whereas some of the issues will be considered when discussing the Proposal of the Law on Energy, which is in parliamentary procedure.”¹⁶

Both the governing majority and the opposition delegates have different views in reference to the reasons for the failure in pursuing parliamentary inquiries. Aleksandar Damjanović, the delegate of opposition party SNP (Socialist People’s Party) believes that the key problem rests in the lack of political will of the governing majority that the Parliament conducts an adequate control of the executive power, and pursuant to this need, to amend the provisions of the Rules of Procedure governing the parliamentary inquiries issue.¹⁷ Contrary to this opinion, Obrad Stanisić, the delegate of the governing party DPS (Democratic Party of Socialist) believes that the parliamentary inquiries were not conducted “because they were not requested.”¹⁸

In Croatia, “Commission of Inquiry may be established at the request of the parliamentary working body or minimum of one - tenth of the total number of MPs in the Parliament”.

The absence of the proposal for parliamentary inquiries opening may be related to the lack of political will of governing majority to use this tool as an efficient oversight instrument against the activities of the Government. The parliamentary inquiry is usually “testing” certain illegal and “bad” conduct

of the Government, thus, the governing party delegates are reluctant in exposing their party’s colleagues to this process, and to hold them politically responsible. However, with this (mis)conduct, the governing coalition delegates are failing in contributing to the strengthening of overall role of the Parliament, or its oversight function. The image displayed to the public can not be used as a basis for strengthening the citizens’

¹⁶ Parliament of MNE, Committee for Economy, Finance and Budget, Su-Sk No. 06-114/Podgorica, of 18 March 2010;

¹⁷ Basis: <http://in4s.net/index.php/magazin/bronika/15283-parlamentarna-istraga-nije-lov-na-vjetice>, of 6 February 2012;

¹⁸ Statement made at the Round Table organized by the Institute “Alternativa” titled: “Assessment of legal framework and practice in applying certain oversight tools of the Parliament of MNE” - January 2010;

confidence in the Parliament. The opposition delegates, also, are not pursuing this tool, since usually they are not united in its opening. However, it is necessary to emphasize that the constitutional provision defining that one - third (27) of the total number of delegates must support the initiation of proposal for opening of parliamentary inquiry, is in a group of the strict criteria for its initiation. This requirement is not in compliance with the best international practice advocating that the number of delegates necessary for initiating the proposal ranges between one to one fifth of the total number of delegates.¹⁹

Although the failure to take actions of opposition in opening the parliamentary inquiries, and in accordance with the current “practice”, may be partly “justified” by the lack of confidence in its effectiveness, opposition delegates, though joint initiatives, should continuously enabling the access to the information on government’s work. Furthermore, it is necessary to assume careful approach in selection of issues/problems that would represent “suitable” parliamentary inquiry matter, enabling substantiated contribution that may be obtained by applying this instead of other oversight tools.

Finally, the current regulation of parliamentary inquiries in Montenegro has many shortcomings that would overburden its implementation, or the work of Inquiry Committee. Namely, investigative competences of the Inquiry Committee in reference to the procedure of data collection, witnesses interrogation, submission of the request for submitting documentation relevant to the inquiry - has not been regulated in details by the Rules of Procedure, therefore it may hamper the collection of information on the subject matter.

The Rules of Procedure of the Parliament may not prescribe the obligation of state officials and

¹⁹ Comparative study which encompassed the analysis of 88 national parliaments is stated that the majority of the total number of analyzed parliaments, the initiative may be launched by one MP, and that the majority in the House of Parliament may adopt the decision to open an inquiry. In seven countries out of the total number - the number of required signatures ranges from one-eight to one - fifth, and there are also examples in which a party’s club may open an inquiry, as well as a permanent parliamentary working body. Comparison: Hironary Yamamoto, Tools for parliamentary oversight - A comparative study of 88 national Parliament, the Inter-Parliamentary Union, 2007, p. 41;

civil servants, or the citizens to be heard before the Committee, thus it is not possible to impose sanctions for the failure to do so. Equally important is the compulsory submission of accurate information and truthful testimony at the request of the Inquiry Committee. This obligation may be prescribed only by a law - which would entail the penalty provisions, or which would make reference to the penalty provisions of the Criminal Code. To that end, for example, the Croatian Law on Commissions of Inquiry sets forth a pecuniary fine, as well as the imprisonment from 6 months to 5 years on a person who fails to submit required documentation requested by the Commission or rejects to respond to the call to testify before the Commission.²⁰

In accordance with the Rules of Procedure, the Inquiry Committee that would be established in the Montenegrin Parliament for the purpose of investigating an issue/problem, would not have the access to classified information, and thus, due to the unavailability of classified data, it would subsequently encounter obstacle in resolving the parliamentary inquiry matter. Unlike the members of Committee for Defense and Security, other delegates do not have the access to classified information.²¹

Conclusions and Recommendations

A more frequent implementation of parliamentary inquiries requires a change in treating this issue by the parliamentary majority, as well as more intense and uniform requirements of both the opposition and the public. Parliamentary majority has to understand that the parliamentary inquiry, as it is the case with other oversight tools of the government, represents a good opportunity for the government itself to reaffirm and provide arguments for its policy before the delegates and the public. The parliamentary majority, by rejecting the opposition's request for using oversight tools, contributes to creating an impression that it wants to

²⁰ Articles 25 and 26, of the Law on Commission of Inquiries, Class: 700-01/94-01/04, Zagreb, of 15 March 1996;

²¹ Members of the Committee for Defense and Security have a right to unauthorized access to classified data, pursuant to Article 26 paragraph 7 of the Law on Classified Information, "Official Gazette of MNE", No. 14/08 of 29 February 2008, 76/09 of 18 November 2009, 41/10 of 23 July 2010;

hide the fact that do not go in its favor. On the other hand, the parliamentary opposition should, prior to using the parliamentary inquiry tool, use the full scope of "mild" delegates' rights.

It is possible that some sort of a political agreement allowing for the opposition to open the parliamentary inquiry at minimum once during a year or during convocation, would result in having this parliamentary oversight tool as the ultimate reality.

It is most certain that the implementation of parliamentary inquiry will be confronted with many obstacles and constraints of the legal framework. It is necessary to legally regulate the parliamentary inquiries issue, by a special Law on parliamentary inquiries that would regulate the scope of Inquiry Committee, composition, organization and functioning, budget, inquires conduct, reporting to the Parliament. The definition of investigative competences modeled after the criminal proceedings, the Inquiry Committee would obtain more reliable methods for acquiring necessary information.

The Law must also entail the penalty provisions that will apply to the failure of information submission, failure to respond to the call to testify or perjury.

The approval of a special budget to the Inquiry Committee is required to ensure the autonomy and independence in its work.

The amendments to the Law on Classified Information should envisage the access of the Inquiry Committee to classified information, for the purpose of conducting the parliamentary inquiry.

The amendments to the Constitution should result in reducing required number of delegates for the submission of a proposal for opening parliamentary inquiry. The objective is to provide for the greater number of initiatives and more frequent public declarations on the initiatives of general significance, representing a good comparative practice.

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Institute Alternative

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- Think Tank - The role of independent research centers in the public policies development;
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- Evaluation of legal framework and practice in the application of certain oversight tools of the Montenegrin Parliament: consultative hearing, control hearing and parliamentary inquiry;
- Parliamentary oversight of the security and defense sector - What next?
- Case Lipci 2008 - Ways of routing it out.
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