

# Investigating 'Telekom Affair' in the Parliament - unrealistic expectations and realistic limitations -

November 2012

## Introduction

Through the adoption of the *Decision on opening of the parliamentary inquiry and establishing an Inquiry Committee for gathering information and facts about corruption in the privatisation of Telekom Crne Gore*, after a decade-long pause, an inquiry committee was formed which faced numerous challenges in achieving its goals. The Inquiry Committee's mandate was limited to the period from the opening of the parliamentary inquiry - 28 February 2012 - until 1 October 2012, during which twelve persons were invited to provide statements, with a view to gathering the necessary information.

The goal of this analysis, which represents the continuation of research conducted by Institute Alternative in this area<sup>1</sup>, is to answer the following question - which obstacles did the Inquiry Committee face in carrying out the parliamentary inquiry. The subject of this analysis were the circumstances in which the parliamentary inquiry was launched, the role of other actors involved in shedding light on the relevant issues, problems in the implementation of control mechanisms, as well as the political context in which the parliamentary inquiry was conducted. Based on the analysis of identified problems, and good solutions found in comparative practice, recommendations for enhancing this important control mechanism were formulated. Our intention is to contribute to the strengthening of the parliamentary inquiry as an instrument for overseeing the work of government, state bodies and institutions, and as a control mechanism which will be used more frequently in the most functional way, thus yielding concrete results.

1 Toward the end of 2011, Institute Alternative conducted a research entitled '*Parliamentary Inquiry in Montenegro - control mechanism without political support*' whose goal was to provide an answer to the question of why there was no application of this control mechanism in the Parliament of Montenegro for an entire decade and what are the possible problems which could hamper the work of the Inquiry Committee. The analysis is available at: <http://institut-alternativa.org/parlamentarnje-istrage-u-crnoj-gori-kontrolni-mehanizam-bez-politicke-podrske/>

## Background of the subject matter - 'Telekom Affair'

In 2006, the U.S. Department of Justice and the Securities and Exchange Commission launched an investigation against Magyar Telekom and Deutsche Telekom on suspicion that the senior executives of the aforementioned companies breached the *Foreign Corrupt Practices Act* (FCPA). During the investigation, the U.S. authorities discovered that the indicted executives bribed government officials in Montenegro and Macedonia with a total of EUR 12.2 million<sup>2</sup>. On 29 December 2011, the U.S. Department of Justice signed a Deferred Prosecution Agreement with the defendants in the amount of USD 95 million, thereby suspending the criminal procedure.<sup>3</sup> According to the signed Agreement, following the privatisation of Telekom Crne Gore, Magyar Telekom made four sham consultancy contracts with New York and London based companies through which corruption was carried out. The settlement did not encompass suspension of the proceedings against former senior executives of Magyar Telekom<sup>4</sup>, against whom the proceeding has continued before the District Court in New York. The legal representative of the

2 Of which EUR 7.32 million is related to alleged corruption in Montenegro.

3 Daily newspaper 'Dan', Thursday, 17 January 2012, page 7.

4 Elek Straub, Andras Balogh and Tamas Morvai.

Author: Dina Bajramspahić

Securities and Exchange Commission in this case stated that they ‘...possess documents and evidence based on which it has been concluded that Magyar Telekom bribed several government officials in the process of purchasing Telekom Crne Gore.’<sup>5</sup> This proceeding is expected to be over by the end of 2012.

By signing the settlement agreement, the signatory parties, Magyar Telekom and Deutsche Telekom ‘neither admitted nor denied’ the allegations from the Agreement, which is why these allegations cannot be treated as an explicit evidence of corruption. They are, however, more than a strong indicator and a warning alarm for Hungary, Macedonia and Montenegro, especially having in mind the high amount of the settlement, to conduct an urgent and serious investigation about the potential corruption in the processes of privatisation of national telecommunication companies.<sup>6</sup>

## ***Heading toward the parliamentary inquiry***

Information about the extrajudicial settlement echoed violently, which is why numerous interested parties got involved in shedding light on the affair in Montenegro: the Supreme State Prosecutor’s Office in cooperation with the Police Directorate and the Administration for the prevention of money laundering and terrorism financing; as well as the working bodies of the Parliament: Commission for monitoring and control of the privatisation procedure and the Committee for Security and Defence; followed by an increasingly outspoken initiative in the media to launch a parliamentary inquiry about corruption in the privatisation of Telekom. The proponents of the initiative were the opposition political parties New Serbian Democracy and the Movement for Changes which started negotiations in the opposition about submitting a joint initiative. In order to include the initiative on the agenda of the Parliament, 27 MP signatures are required, which the opposition succeeded in obtaining only once in the past 10 years.

Activities of the competent investigative bodies and those in charge of overseeing state bodies, which preceded the opening of the parliamentary inquiry:

- a) the Supreme State Prosecutor’s Office of Montenegro formed a ‘case Ktr.br 339/06 in connection to the verification of actions and facts during the signature of consultancy contracts’<sup>7</sup> already in 2006, while in 2010, the case was transferred to the Department for the fight against organised crime, corruption, terrorism and war crimes. At the moment when the initiatives for opening a parliamentary inquiry emerged, the case has already been in the pre-criminal phase for 6 years, i.e. in the process of prosecutor’s inquest, without any concrete results.
- b) In parallel with the negotiations on the initiative, the chairman of the parliamentary Commission for monitoring and control of the privatisation process, Andrija Mandić (New Serbian Democracy), attempted to conduct a control hearing in the Commission. However, determining which government representative<sup>8</sup> was competent for the issue of Telekom privatisation, turned out to be a disputable matter, which is why the control hearing, foreseen for 20 January 2012, was postponed. The attempt to hold this control hearing is a transparent demonstration of the need for a

5 Daily newspaper ‘Dan’, Thursday, 12 January 2012.

6 The goal of the alleged corruption in Montenegro’s case, according to the allegations of the American Securities and Exchange Commission, was the assistance of the government of Montenegro to Magyar Telekom in taking over the minority shares of Telekom Crne Gore, thanks to which the Hungarian company gained full control of the company and its valuable infrastructure.

7 *Information about the Proposal of a decision on opening of the parliamentary inquiry and on establishing an Inquiry Committee for gathering information and facts about corruption in the privatisation of Telekom Crne Gore* from the Vice-President for political system, internal and foreign affairs and Minister of Justice, Note no. 03-271/12-2

8 On behalf of the Commission, MP Mandić first sent an invitation for a control hearing to the Minister of Economy, Vladimir Kavarić (Note No: 00-64-12/12-3/2, Podgorica, 11 January 2012), who responded that the ‘*Ministry of Economy is not competent for the area of communication*’ (Note No. 01-SI, Podgorica, 12 January 2012). Following MP Mandić’s note sent to the president of the government, requesting appointment ‘*of a representative of the government responsible for the area of telecommunication*’ (No: 00-64-12/12-3/5, Podgorica, 13 January 2012), the Prime Minister responded: ‘*that Vujica Lazović has been appointed as the government representative (...) if the intention is to discuss the effects of privatisation.*’ and reiterated that the privatisation archives are located in the Ministry of Economy (Note no. 01-109/4, Podgorica, 17 January 2012). Although Vujica Lazović, the Vice-President of the government, was invited to a control hearing, the president of the Commission, Mandić, cancelled the session.

better quality regulation of the relationship between the government and the Parliament, and for a more serious appreciation for the constitutionally prescribed control function of the Parliament.

- c) Reaction of the junior coalition partner, Social-Democratic Party, to the affair, was the initiative to hold a control hearing of Ranka Čarapić, the Supreme State Prosecutor; and of Predrag Mitrović, director of the Administration for the prevention of money laundering and terrorism financing (APMLTF) in the Security and Defence Committee<sup>9</sup>. The goal of the control hearing was to *'deliberate on the hitherto activities which the state bodies carried out in relation to examining the allegations of potential corruption during and after the process of privatisation of Telekom.'*<sup>10</sup>. The conclusion of the Committee is that *'it is necessary for the state bodies to accelerate the procedure of data and evidence gathering'* and that the Committee *'be informed about the results of further activities in this case by May 2012.'*<sup>11</sup>. The requested information was delivered and discussed at a closed session only on 31 July. Among the conclusions of the Committee, it is stated that *'numerous activities have been undertaken (...) which resulted in gathering new significant data.'*<sup>12</sup>. However, although a turning point and discovery of important information were announced<sup>13</sup>, before and after the session, until mid-November 2012, the Supreme State Prosecutor has not processed, i.e. has not indicted anyone in the Telekom case.

## Opening of the parliamentary inquiry

Twenty-nine MPs of New Serbian Democracy, Movement for Changes and Socialist People's Party, submitted a Proposal of a decision on opening of the parliamentary inquiry and establishing an Inquiry Committee about the Telekom affair on 20 January 2012. This proposal was discussed by the plenary on 28 February 2012. For the adoption of the Decision, 41 votes 'in favour' are needed, which is unreachable without the support of a part of the ruling majority, which is why that is one of the most important reasons for a rare application of this control mechanism in practice. Comments of the ruling majority published in the media went in the direction of not supporting the initiative, which had been qualified as an attempt of exercising pressure on the prosecution and as a means of the opposition to gain political points against the ruling majority and the family of the former Prime Minister Đukanović<sup>14</sup>. Nevertheless, on the day of the extraordinary seating in the Parliament when the initiative was discussed, reacting to the absence of support of DPS for the adoption of the Proposal of the Law on Internal Affairs - SDP retaliated by supporting the idea of the parliamentary inquiry<sup>15</sup> and the inquiry was, unexpectedly, opened.

9 Initiative submitted on 23 January 2012

10 Dnevne novine, Tuesday, 24 January 2012, page 7.

11 Report on the control hearing of the Supreme State Prosecutor and of the Director of the Administration for the prevention of money laundering and terrorism financing about the hitherto activities of the competent state bodies carried out in relation to examining the allegations on potential corruption during and after the process of privatisation of 'Telekom', Security and Defence Committee, No. 00-64-03/12-6/2. EPA 796, Podgorica, 14 February 2012.

12 Report on deliberation of information from the Supreme State Prosecutor's Office and from the Administration for the prevention of money laundering and terrorism financing, Security and Defence Committee, No. 00-64-03/12-30/6, EPA 946 XXIV, Podgorica, 31 July 2012.

13 *'MPs will be informed about the new persons and circumstances we discovered by intensively gathering and processing information from domestic and international sources. All information is delivered to the Supreme State Prosecutor's Office, upon whose request the Administration also worked intensively.'* – Statement given by Predrag Mitrović to Antena M, reported by the daily newspaper 'Dan', Wednesday, 25 July 2012, page 6.

14 The Deferred Prosecution Agreement notes, inter alia, that the amount of EUR 558.000 from one of the four post-privatisation bogus contracts, was paid to 'the sister of a top Montenegrin government official who was a lawyer in Montenegro.' Former Prime Minister Đukanović and his sister Ana Kolarević, subsequently confirmed that lawyer Kolarević was hired to provide consultancy services in the restructuring programme of Telekom Crne Gore.

15 There was a disagreement in the ruling coalition (DPS-SDP) about bringing back the Police Directorate under the control of the Ministry of Internal Affairs, headed by a minister from SDP, which is why DPS MPs did not vote for the Proposal of law submitted by the government, which contained such a provision. After that vote, SDP supported the opening of the parliamentary inquiry. In that sense, the opening of the parliamentary inquiry in itself was not a consequence of greater awareness about the need to strengthen the control function of the Parliament, but rather a result of political revanchism.

## ***Lex specialis – a step forward for the control function***

Already at the constitutional session of the Inquiry Committee on 9 March, the problem of deficient legal framework, regulating the conduct of parliamentary inquiry and which left room for numerous obstructions in the work of the Inquiry Committee, became evident.<sup>16</sup> Bearing that in mind, the Chairman of the Inquiry Committee, Andrija Mandić, initiated consultations on the adoption of a special Law on Parliamentary Inquiry and prepared the Proposal of law. Harmonisation of the proposal of law was carried out in closed sessions<sup>17</sup>, so the public had no insight into the negotiation process nor was there any room for interested expert parties to contribute to the process. Reaching a consensus on the adoption of this law was done *at the expense of adopting penal provisions*<sup>18</sup>. The value of adopting penal provisions is reflected in strengthening the competences of the Inquiry Committee by sanctioning: failure to appear before the Inquiry Committee, failure to deliver information to the Inquiry Committee, and false testimony before the Inquiry Committee. The agreement on the adoption of the law also meant the exclusion of the provision according to which *'other persons'* - i.e. citizens who possess knowledge or documents which are useful for casting light on the issues relevant for the work of the Inquiry Committee - would be obliged to appear before the Committee.

However, unanimous adoption of this act, whereby state officials are legally bound to be held accountable to the Parliament, is a very significant step for strengthening the control function of the Parliament. Amendments to the Law on Data Secrecy were also adopted, thereby enabling members of the Inquiry Committee to have insight into classified data without seeking permission for insight into secret data.<sup>19</sup>

## ***Data gathering from international actors - dependency of the Parliament vis-à-vis the Supreme State Prosecutor and the government?***

The Supreme State Prosecutor's Office needed more than 50 days to request information on the inquiry from the competent institutions in the USA and Hungary, even though the U.S. Embassy in Podgorica delivered translated forms and a manual for filling them in, already on 27 February 2012.<sup>20</sup> Such idleness was perceived by the opposition as an obstruction of the work of the Inquiry Committee and an *'intention to freeze the parliamentary inquiry while waiting for a response from the American administration'*.<sup>21</sup>

One month after the mandate of the Inquiry Committee expired, the Supreme State Prosecutor stated that the Hungarian prosecution responded to the request submitted by the state prosecution of Montenegro.<sup>22</sup>

An alternative to the dependency vis-à-vis the state bodies in gathering data from abroad lies in the inquiry committees of the Parliament developing their own mechanisms of international cooperation whose functioning does not require anyone's intermediation.

16 Parliamentary inquiries are regulated by the Constitution of Montenegro and by the Rules of Procedure of the Parliament which, inter alia, do not prescribe an obligation of state officials to be heard before the committee, nor any sanctions in case they refuse to appear before the committee.

17 Harmonisation of the Proposal of law: at the second session of the Inquiry Committee held on 4 April 2012, third session on 31 May 2012, fourth session on 5 June 2012. Law on Parliamentary Inquiry published in the Official Gazette of Montenegro, No. 38/2012 of 19 July 2012.

18 SDP MPs made possible the adoption of the Law on Parliamentary Inquiry, but they made their support contingent upon excluding the penal provisions from the law. However, at the plenary session of the Parliament, DPS voted in favour of the law unexpectedly, so the Law was adopted unanimously.

19 Amendments to the Law on Data Secrecy, 'Official Gazette of Montenegro, No. 38/2012', of 19 July 2012

20 Daily newspaper 'Dan', Saturday, 23 June 2012, page 8.

21 Koča Pavlović, member of PzP in the Inquiry Committee, Vijesti, Wednesday, 15 August 2012, page 3.

22 *'After the material is translated, the prosecution will determine whether some of it is valuable for further processing in the Telekom case'* - statement by Supreme State Prosecutor, Ranka Čarapić, daily newspaper 'Dan', 2 November 2012.



## *I Control hearing of the investigative bodies' representatives*

Three groups of control hearings were conducted in the Inquiry Committee: (I) three representatives of the competent investigative bodies were invited; (II) four former state officials - decision-makers in the privatisation process; (III) five citizens, of which: three former senior executives of Telekom Crne Gore and two directors of banks linked to the affair.<sup>2324</sup>

With regard to the hearing of the Supreme State Prosecutor, director of the Police Directorate and director of APMLTF, the consensus was easily reached among the members of the Inquiry Committee. The Committee requested from them to provide information on what has been undertaken in the hitherto procedures by these institutions in order to shed light on this case. MPs had insight into all the documents with classified data into which the members of the Security and Defence Committee had already had insight.<sup>25</sup> The first, four-hour long, hearing was held on 25 July 2012<sup>26</sup>, while the second one on 26 July<sup>27</sup> - both in closed sessions, after which the MPs of the parliamentary majority and minority gave entirely contradictory remarks about what they had heard at the sessions. Namely, the secrecy of the session's contents allowed both sides to claim that they received confirmation of their initial stances at the sessions – ruling majority: that the findings from the pre-criminal procedure lead to new persons, non-state actors, persons who are not from Montenegro, and that the media allegations are entirely construed for political reasons. And the opposition: that their claims and other media allegations about corruption are justified.

**DPS:** *'It may be stated that there is no evidence based on which it is possible to claim that there was any corruption related to individuals who were mentioned in the media lately...'*<sup>28</sup>

**PZP:** *'The data we received focus the story to those addresses which we had previously seen in the media...'*<sup>29</sup>

Since the Security and Defence Committee already conducted hearings of the same individuals, the purpose of the received (classified) information for the Inquiry Committee should have been to serve as a basis for the continuation of the inquiry. In relation to that, an important question which emerged after the hearing concerns, the legal and legitimate, but still limited, usability of the received classified data. More precisely, the questions that came to the fore were: how the members of the Inquiry Committee were going to use in practice the information they received, how they would adopt conclusions based on secret data, and in what way the received information would influence the making of the report on political accountability. A part of the problem was reflected in the fact that some opposition MPs claimed that certain information from the material, labeled as 'classified', was unnecessarily and unjustifiably secret. And every logical further use of secret data leads to their disclosure, i.e. unlawful publication.

## *Leakage of secret data - excuse for the attempted blockade of parliamentary oversight*

Problems with classified data do not stop there. Two weeks after the hearing of investigative bodies' representatives, media<sup>30</sup> published excerpts from the material which the MPs of the Security and Defence Committee as well as of the Inquiry Committee had insight into, and which were classified. The reaction that ensued was an absurd statement by the Supreme State Prosecutor's Office, Police Directorate and APMLTF, whereby, without a single day of investigation, it was stated that

23 Statement by Zoran Vukčević, DPS member of the Committee, Pobjeda, 27 July 2012.

24 Statement by Koča Pavlović, PzP member of the Committee, Dan, 27 July 2012.

25 Parliamentary Security and Defence Committee held two hearings of Ranka Čarapić, Predrag Mitrović and Božidar Vuksanović on that same subject matter: on 14 February 2012 and on 31 July 2012.

26 Sixth session of the Inquiry Committee: the following were heard: Ranka Čarapić, Supreme State Prosecutor and Predrag Mitrović, director of the Administration for the prevention of money laundering and terrorism financing.

27 Seventh session of the Inquiry Committee, hearing of Božidar Vuksanović, director of Police Directorate.

28 Statement by Zoran Vukčević, DPS member of the Committee, Pobjeda, 27 July 2012.

29 Statement by Koča Pavlović, PzP member of the Committee, Dan, 27 July 2012.

30 Classified data was published in articles of daily newspapers 'Dan' and 'Vijesti'.

*'the consequences of this case will leave an imprint (...) on the trust of the competent state institutions in the legality of the work of the Inquiry and the Security and Defence committees (...) Taught by this experience, in the future, in every specific case, we shall assess what represents prevalent public interest and in accordance with that assessment we shall provide information to the Inquiry and the Security Committee.'* This statement is an announcement of an intention to consciously breach the Law on parliamentary oversight of the security and defence sector and the Law on Parliamentary Inquiry<sup>31</sup> and an announcement of obstruction of the control function of the Parliament.

Although MPs were unanimous in their condemnation of the aforementioned statement, unfounded accusations against MPs continued. Such accusations often came also from DPS MPs and were directed against the opposition members of these two working bodies.<sup>32</sup> Even three months after the publication of the classified data, it has not been confirmed who was responsible for delivering the data to the media, while this situation was used for creating negative atmosphere for the conduct of the parliamentary inquiry.

*'By disclosing this information, the Law on Data Secrecy was breached for which the sentence of 15 years of imprisonment is prescribed. The worst thing is that doubt was cast on the members of the Inquiry Committee and the Security Committee. I don't see the point of Inquiry Committee and secret hearings if everything goes public. In that case, the work on this matter should be either suspended or opened to the public.'*<sup>33</sup>

## ***Adopting a decision on hearing of individuals***

The Chairman of the Committee submitted a proposal of the *Decision on determining which individuals would be invited to give statements to the Inquiry Committee*<sup>34</sup>, partly on the basis of the material labeled as 'classified', which the Inquiry Committee had insight into. Already at that moment, at the earliest stage of the parliamentary inquiry, the Inquiry Committee faced three possible consequences of the compromise reached over the Law on Parliamentary Inquiry.

- First, there was a serious risk of blocking the adoption of the decision by the members of the ruling coalition<sup>35</sup>, and such a blockade of the invitation of individuals during the inquiry is an unsurmountable barrier which stops the inquiry;
- Second, the list included 5 natural persons<sup>36</sup> for whom there was no legal ground to invite, who, nevertheless, possessed useful knowledge about the subject matter;
- Third, there was a risk of failure of individuals to respond to the invitation, additionally due to the absence of penal provisions.

These problems will continue to represent a threat in the implementation of all subsequent parliamentary inquiries unless the legal framework for the application of this control mechanism is not enhanced. It must be underlined that, in this particular case, with its two votes, DPS enabled the In-

31 These laws prescribe an obligation for state bodies to allow insight into all requested documents which could *'be of importance for accomplishing the entrusted task'*, and are obliged to act within the shortest timeframe possible and to *'provide truthful identification, data and information'*.

32 *'Bearing in mind how the opposition MPs behaved in the previous period, but also noting their current statements made in public, it is clear that some of them disclosed classified data.'* – DPS representative in the Inquiry Committee, Zoran Vukčević, Independent Daily Vijesti, 18 August 2012.

33 Statement by Zoran Jelić, DPS member of the Committee, published in Dan, 8 September 2012

34 The proposal encompassed the following individuals (9): Milo Đukanović, president of DPS and former Prime Minister of Montenegro; Veselin Vukotić, former Vice-President of the Privatisation Council; Branko Vujović, former President of the Tender Commission; Darko Uskoković, former Minister of Economy in the government of Montenegro; Oleg Obradović, former director of Telekom Crne Gore; Miodrag Ivanović, former director of MONET; Milan Perović, former director of Telekom Crne Gore; Branimir Pajković, former director of Euromarket bank; and Duško Knežević, president of Atlas group.

35 Law on Parliamentary Inquiry stipulates that *'an equal number of MPs from the parliamentary majority and from the opposition is found in the composition of the Inquiry Committee'* (art. 6, para.2) and that *'the Inquiry Committee decides by the majority of votes of the total number of members'* (art. 6, para. 5).

36 Individuals who are not state officials or decision-makers on behalf of state bodies.

quiry Committee to adopt the decision which encompassed all persons on the list, thereby allowing the Inquiry Committee to continue with its work.

## ***II Taking statements from persons who were not legally-bound to respond***

Among the persons listed in the Decision, five of them had no legal obligation to respond to the invitation of the Inquiry Committee, of which one person failed to respond – Duško Knežević<sup>37</sup>.

Three former senior executives of Telekom appeared before the Inquiry Committee twice. The first session was interrupted because they were bound by their contracts to keep the business secrets, i.e. they were not authorised to disclose any business information about the company without the consent of their former employer. The Inquiry Committee requested from Telekom to allow its former employees to give statements, which Telekom authorised. However, inquiry committees, in their information gathering, must not be dependent on the good will of companies, especially in cases with such serious accusations about possible corruption, so the status of the Inquiry Committee in these situations must be of equal rank as that of the Supreme State Prosecutor's Office in the same situation. That way, the Inquiry Committee will not be assigned the role of an investigative body, but it will have efficient investigative mechanisms at its disposal which will allow it to adopt an objective stance on political accountability and on the quality of decisions made by the representatives of state bodies, based on gathered information.<sup>38</sup>

Although formally present at the second session during which their hearing was foreseen based on the authorisation from Telekom, two former senior executives submitted and read their written statements, and refused to answer the questions asked by the members of the Inquiry Committee.<sup>39</sup> Written statements which were delivered to the Committee were offensive to the members of the Committee and they questioned the legitimacy of the Inquiry Committee's work. The third, Miodrag Ivanović, although he came to the session, decided not to give any statements.<sup>40</sup>

### **Excerpts from statements:**

*'If you know everything in advance - then why this farce about giving statements? For political and pre-electoral games and satiation of someone's political appetite?'*<sup>41</sup>

*'Eight politicians are here to interrogate three former key executives of an international company, one of the strongest in the world. None of you has ever managed a serious company, and some of you have never even been employed in a similar company. Isn't that absurd?'*<sup>42</sup>

Refusal to answer the questions<sup>43</sup> rendered the practice of 'taking of statements' entirely senseless, since the members of the Inquiry Committee failed to receive information which was significant for casting light on the subject matter. Regulating this issue by making the law more precise - would make the conduct of hearings more functional.

37 Chairman of the Inquiry Committee, at the session foreseen for the taking of statements from Duško Knežević, explained that an invitation to testify had been sent to Knežević several times, although nobody in the representations of his companies wanted to take the calls. The reason for inability to deliver the invitation personally was that, according to the information which the Inquiry Committee received from the Ministry of Internal Affairs, Knežević has no registered permanent residence in Montenegro. Knežević also sent an e-mail to the Chairman of the Inquiry Committee notifying him that he was in New York and that there were no grounds for him to be a 'person of interest' for the Committee.

38 Comparative practice shows that inquiry committees often have the same competences as the judicial authority, but these competences are applied with a view to determining different forms of responsibility. Hence, in Germany, the parliamentary inquiry is conducted in accordance with the regulations defining criminal procedure.

39 Three former senior executives of Telekom are Obradović, Perović and Ivanović.

40 For the second time before the Inquiry Committee, after a 90 minute break during which the former managers of Telekom consulted their lawyers, Ivanović left the session without giving a statement, recalling that he had not received the note of Telekom notifying him that he was authorised to disclose business secrets.

41 Statement by Miodrag Ivanović, from the 1st appearance before the committee, 20 September 2012.

42 Statement by Oleg Obradović from the 2nd appearance before the committee, 27 September 2012.

43 Obradović and Perović, for the second time before the Inquiry Committee, and Branimir Pajković, former director of Euro-market bank, read their written statements and left the session.

### ***III Taking statements from (former) state officials***

All four former state officials responded to the invitation and answered the questions. This is the segment of the parliamentary inquiry which, in a procedural sense, functioned well precisely because of the adoption of the Law on Parliamentary Inquiry. State officials did not question the legitimacy of the parliamentary inquiry and therefore did not hamper the work of the Inquiry Committee. The stances they presented were aligned as regards the subject matter and, expectedly, they were unanimous in claiming that there is no basis for speculating about corruption in the privatisation of Telekom. In that sense, these hearings did not contribute significantly to the shedding of light on the contentious issues, nor did they help the members of the Inquiry Committee to get any closer to the adoption of common conclusions.

### ***Budget of the Inquiry Committee***

Chairman of the Inquiry Committee, Andrija Mandić, suggested that members of the Inquiry Committee, one from the ruling majority and one from the opposition, attend the preliminary hearing scheduled for 27 August before the District court of New York in order to gain insight into the information which would be discussed by that court.<sup>44</sup> This initiative remained at the level of informal communication between the Chairman of the Inquiry Committee, members of the Committee, and the Speaker of the Parliament. MPs from DPS criticised this proposal harshly and assessed it as a ‘nonsense’.<sup>45</sup> Nevertheless, the initiative itself indicated that, apart from the lack of political will, the potential lack of financial resources may also be an obstacle for collecting the information necessary for an independent and impartial work of the Inquiry Committee. Possible additional resources needed for the work of the Inquiry Committee may be required for the hiring of expert advisors, technical assistance, or travel expenses.

### ***Transparency of work***

All sessions during which ‘classified’ information was not discussed were open to the public. A month and a half after the mandate of the Inquiry Committee expired, minutes and reports of the Inquiry Committee sessions, including statements of individuals who testified, have not been published on the webpage of the Parliament of Montenegro. Although control hearings were audio-taped, stenographic notes have not been made due to poor quality of the recordings. Minutes of the session in which Milo Đukanović, the former Prime Minister, gave his statement, are only technical: they provide information on the duration of the session, MPs who asked questions, but without the contents of those questions and their answers. There is a significant room for improvement of the record-keeping of the parliamentary inquiry and for a proactive approach to the accessibility of information about the work of the Inquiry Committee, especially having in mind the importance and rarity of the application of this control mechanism.

### ***Results and evaluation of the parliamentary inquiry***

A more intensive work of the Inquiry Committee coincided with the approaching of the date of early parliamentary elections<sup>46</sup> so the conduct of the parliamentary inquiry was hampered to a significant extent by the politicisation of the subject matter, and by the increasingly harsh pre-electoral rhetoric

<sup>44</sup> Independent Daily Vijesti, 14 August 2012, page 2.

<sup>45</sup> Statement by Zoran Vukčević, representative of DPS in the Inquiry Committee, Pobjeda, Wednesday, 15 August 2012, page 3.

<sup>46</sup> Early parliamentary elections at the national level were scheduled for 14 October 2012, while the mandate of the Inquiry Committee expired on 1 October 2012.



of the parliamentary majority and minority. This led to the stultification of the work of the Inquiry Committee. Upon the completion of the hearings, considering that there was no necessary majority for the adoption of the report, the Chairman of the Inquiry Committee, in line with the *Law on Parliamentary Inquiry*, proposed a technical report<sup>47</sup> without any conclusions containing assessment of political responsibility nor any measures stemming from the Parliament's competences. Therefore, by ending the parliamentary inquiry<sup>48</sup>, nobody's accountability was explicitly discussed, while there was neither time nor interest to address the problem from a systemic point of view.

The main reason for the lack of concrete results of this parliamentary inquiry lies, first and foremost, in the unrealistic setting of the subject matter of the Inquiry Committee's work: *'shed light on the role of all participants of the corruption scandal.'*<sup>49</sup> Rather than 'shedding light', after six months of the Inquiry Committee's work - everyone remained at his or her initial stance: opposition claiming that there was corruption; ruling majority that there was no corruption; prosecution stating that it was still working on the case. Objectively speaking, it could not have been different, bearing in mind the constitutionally set separation of powers among different authorities. An inquiry committee may neither prove nor disprove a case of corruption since that is an issue of criminal responsibility.

An alternative to the subject matter as it was set in this case would be, for example, to claim, and base such claims on facts, that the privatisation was successful or unsuccessful, that it was carried out at the detriment of the interests of Montenegrin citizens, i.e. that the decisions were not made in the interest of the majority of citizens, but rather in the interest of individuals, etc.

Although, factually there was no majority to vote for a report with political assessment, it is very likely that the deliberation and refusal of the proposal of such a report, would significantly echo in the public and would contribute to a better perception of the parliamentary inquiry - as a control mechanism which had a certain outcome.

However, one of the functions of the parliamentary inquiry, and in which this Inquiry Committee was successful, is: to publicly ask who is responsible for a six-year long pre-criminal proceeding carried out by the competent bodies without any results; to gain detailed information about the circumstances of the privatisation of Telekom Crne Gore; to bring into spotlight a question of general interest. In addition, it should be emphasised that this is the first parliamentary inquiry after a decade-long pause, that the newly-adopted legislative framework for the implementation of this control mechanism was applied for the first time, and that Montenegro has no tradition of strong oversight institutions. Having all that in mind, the parliamentary inquiry about 'Telekom affair' made a breakthrough for the subsequent parliamentary inquiries and to a certain extent it raised awareness about the control role of the Parliament and about the accountability of the executive before the legislature. Hence, this example should by no means be discouraging; on the contrary, it should be an incentive for further development of the control function of the Parliament and for a more frequent application of this control mechanism.

## ***Potential ways of development***

The area in which the Inquiry Committee was less successful is in determining whom to hold politically accountable, and in analysing the subject matter from a systemic point of view. Both aspects of the parliamentary inquiry are equally important and represent concrete results of the Inquiry Committee's work: determining whom to hold politically accountable and proposing a set of measures from the domain of legislative and advisory role of the Parliament. In relation to that, the following

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47 Technical report is available at: [http://www.skupstina.me/cms/site\\_data/DOC24/950/950\\_0.PDF](http://www.skupstina.me/cms/site_data/DOC24/950/950_0.PDF)

48 Technical report has not been discussed in the plenary yet, due to the formation of the new, post-electoral composition of the Parliament (updated 19 November 2012).

49 Rationale of the Proposal of decision on opening of the parliamentary inquiry and formation of the Inquiry Committee for gathering information and facts about corruption in the privatisation of Telekom Montenegro.

question should be raised: what political sanctions would be put in place in case of finding someone to be held politically accountable?

- a) Initiating a procedure for discharge from office. In case of the current minister, when an agreement on political accountability has been reached in the Inquiry Committee, the procedure for his/her dismissal is initiated in the Parliament, in accordance with the Constitution of Montenegro<sup>50</sup>. Also, if the case is about an individual appointed by the government, on the basis of the Inquiry Committee's report, the Parliament may request from the government to dismiss him/her.
- b) Public pressure. Reaction of the public, influenced by the facts that emerged from the parliamentary inquiry, is an important mechanism of external *modus operandi* of the parliamentary inquiry. Especially in situations when the parliamentary majority refuses to accept political accountability of its official. It is therefore necessary to develop a culture of political accountability in which the public will be able to exercise pressure on state officials and political parties, thereby holding them accountable for their decisions and pressuring them to take further steps to sanction the responsible individuals.

A systemic answer to the subject matter of the Inquiry Committee's work is significant because it enables the parliamentary inquiry to become an added value of the investigation and to result in something qualitatively different. That way, a visible difference can be made as regards the approach in relation to prosecutorial investigation and other parliamentary working bodies. In that sense, the Inquiry Committee could have addressed a whole set of additional questions and problems which emerged from the Telekom Affair during the six months of its work.

#### EXAMPLES OF HYPOTHETICAL QUESTIONS FOR ANALYSIS:

- a) could certain amendments to the legal-institutional framework hamper/prevent the case of corruption which occurred through the post-privatisation agreements?
- b) a more concrete example: is it necessary to make it legally impossible for the closest relatives of those who made the decision on privatisation - i.e. signing of a multimillion agreement with the investor - to work, and treat it as conflict of interest?
- c) is there something in the existing legal-institutional framework which 'prevents' the Supreme State Prosecutor, Police, APMLTF, from collecting information about potential corruption and determining whom to hold accountable?

Similar questions which will be analysed and the planned activities of the Inquiry Committee, should be contained in the *proposals of decisions on opening a parliamentary inquiry*. That way, the initiatives on establishing an inquiry committee about a certain topic in the Parliament would gain importance through clear indications of what would be the concrete results of the inquiry committee's work.

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<sup>50</sup> Parliament of Montenegro is competent for appointing and dismissing the president and members of the government - article 82, paragraph 1, point 12 of the Constitution of Montenegro.

## ***Conclusions and recommendations:***

Parliamentary inquiry is one of the most important<sup>51</sup> control mechanisms that the Parliament has at its disposal when controlling the work of the government, state bodies and institutions. It is therefore necessary to continuously strengthen and enhance its internal mechanisms in order to allow it to objectively determine political accountability of state officials. That is, after all, in the interest of the government itself, because, in parallel with the strengthening of the Parliament's control function, the quality of the government's work and the principle of responsibility of its officials and servants will necessarily rise.

Because of that, the Parliament and the government must undertake a series of activities with a view to enhancing the parliamentary inquiry.

### 1) As regards strengthening of competences:

- It is necessary to add penal provisions for failure to respond to the invitation of the Inquiry Committee, failure to deliver information or false testifying, to the competences of the Inquiry Committee.
- By amending the Law on Parliamentary Inquiry, it is necessary to create a legal basis for summoning citizens to testify before the Inquiry Committee, and to allow for the delivery of information and documents from those citizens who are in possession of data which could shed light on the subject matter.

### 2) As regards enhancing procedures:

By amending the Law on Parliamentary Inquiry, it is necessary to:

- enable proportional participation of the opposition in decision-making as regards taking statements, in order to ensure a minimal pass rate of the opposition proposals for summoning individuals.
- prescribe as obligatory that the Chairman of the Inquiry Committee, in communication with the Committee members, prepare a report to be discussed by the Inquiry Committee. Should there be no majority for the adoption of the report, a technical report will be adopted.
- prescribe a technical procedure for conducting hearings, in a way that the Committee members would be allowed two rounds of question-asking, with a possibility of commenting on answers of the individuals summoned for a hearing.

### 3) As regards raising awareness about the legitimacy of parliamentary inquiry:

- Both the Parliament and the government, ruling majority and opposition, must promote the parliamentary inquiry, indicate the importance and significance of this control mechanism, and create environment in which the application of this control mechanism will be a constructive, democratic attempt to solve a social problem, on the basis of arguments and facts, and not a malicious attempt to decide on criminal responsibility outside the judicial proceeding.

### 4) As regards financial support to the work of Inquiry Committee:

- It is necessary that a special programme dedicated to the improvement of the control function, be incorporated into the budget of the Parliament of Montenegro, which would, inter alia, foresee expenses needed for the smooth work of inquiry committees.

### 5) As regards enhancing transparency:

- All documents about the work of the Inquiry Committee (minutes, reports, decisions, statements given by summoned individuals) should be published on the Parliament's website.
- Bearing in mind the importance of parliamentary inquiry, control hearings before the Inquiry Committee should be broadcast directly via Live Streaming on the Parliament's webpage.

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<sup>51</sup> The most important, but also the most demanding, applied when other parliamentary control mechanisms cannot adequately respond and help in determining political accountability of state officials.

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