



MANY COMMITTEES, LITTLE PARLIAMENTARY INVESTIGATION

THE NEED TO REVIEW THE LAW

AUGUST, 2024





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of Transparency International for Kosovo

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Layout and design: **envinion**

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the Democratic Institute of Kosovo and do not necessarily reflect the views of the European Union.



**Funded by
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INTRODUCTION

The practice of establishing and functioning of investigative committees in the Assembly of Kosovo has revealed multiple problems of the Law on Parliamentary Investigation. Although one of the most prominent mechanisms for parliamentary investigation and oversight of the Government, the parliamentary investigation has not produced the expected results of the investigative mandate.

Initially, the reflection of the parliamentary majority in the composition of the committee has caused the will of the parliamentary majority to be superimposed on the investigation. The work of the committee has always depended on the numbers of the parliamentary majority, which has directly affected the results of the investigation.

Another key issue that is not regulated by the current law is the issue of sub-trial, or parallel investigation - between the parliamentary investigation and the official criminal investigation initiated by the Prosecutor's Office or examined by the competent courts.

Also, the Law lacks a clarification of the mandate, because the existing practice has caused ambiguity regarding the duration of the mandate. However, the lack of necessary clarifications within the Law on Parliamentary Investigation has also made it possible to block the establishment of Committees, as in the case of the Investigative Committee for State Reserves. Similarly, the lack of accountability mechanisms to the MPs who are members of the investigative committees, has enabled the normalization of the illegal practices of obstructing the work of the committees.

As a whole, the practice of the investigation in Kosovo has shown numerous shortcomings, which to a large extent stem from the content of the Law, while practicalities such as the lack of explanatory documents on the nature of the committees, such as the various Manuals or Regulations, have influenced the consolidation of an unsatisfactory investigation practice. Ultimately, efforts to change the Law must include, but not be limited to, the following issues.



COMPOSITION OF THE COMMITTEES:

PASSING THE MAJORITY TO THE OPPOSITION, IN CASES WHEN THEY INITIATE THE REQUEST FOR A PARLIAMENTARY INVESTIGATION

The existing law, in determining the composition of investigative committees, specifies that the proportional representation of parliamentary groups in the Assembly should be taken into account in principle, while the difference in the representation of the position and the opposition should be at least plus one member.

“In principle, when the composition of the Committee is determined the proportion of the representation of Parliamentary Groups in the Assembly shall be taken into consideration. However, the Committee shall consist of MPs coming from the parties that are in a governmental coalition and in the opposition, in closest representative relations. The difference of total members of the Committee in relation coalition to opposition in the Assembly cannot have more than one (1) member.”¹

The regulation of the reflection of the parliamentary representativeness in the committees has resulted in a situation where, in the composition of the committees, in all cases the government rules with a decisive majority. In a situation like this, the committee's work, as a procedure and decision-making, has been dominated by the entities that represent the parliamentary majority. In a situation like this, since the parliamentary investigation is supposed to deal with the activity of the executive, its work is penalized by the conflict of interests of the MPs who represent the majority in investigative committees. Clearly, Kosovo, in order to improve the parliamentary investigation, should consider changing this way of determining the composition of the Committees.

In the dilemma of the composition of parliamentary investigative committees, countries within the European Union offer different practices. According to the Latvian model², the opposition is offered a majority in investigative committees - when the investigation comes as an official opposition initiative - which usually happens in most cases since the parliamentary investigation consists on trying to hold the Government accountable. The change in the composition of the investigative committee, more precisely the removal of the a priori determination that recognizes the reflection of the parliamentary majority in the composition of the committees, belongs to a categorical importance. Parliamentary practice offers a clear lesson – the reconsideration of the principle of representativeness is a prerequisite for the possibility of a full and meritorious parliamentary investigation. Recognizing the possibility for the opposition to hold a majority within a committee, in cases where the request for initiation of the committee comes from the opposition parties, marks the liberation of the parliamentary investigation from the dominance of the parliamentary majority.

¹ The law for Parliamentary Investigation, Article 8, Paragraph 4, p. 3; Accessible at: <https://qzk.rks-gov.net/ActDetail.aspx?ActID=2683>

² Eeva PAVY, "Committees of Inquiry in National Parliaments: Comparative", 2020; Accessible at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/649524/IPOL_STU\(2020\)649524_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/649524/IPOL_STU(2020)649524_EN.pdf)

REGULATION OF THE ABSENCE OF MPS

In order to improve the approach of the MPs towards the work of the investigative committees, the amendment of the Law should define more precisely the removal of the members of the Committee. Based on the existing definition, MPs must be removed from the committee in case of illegal absences, in three consecutive meetings.

“The Committee decides necessarily to dismiss a member of the Committee, if he misses three (3) times in a row in the sessions of the Committee without any legal justifiable reason.”⁷

Although the law defines the limit of the MP's responsibility as a member of the investigative body in a satisfactory form, it has left a gap that makes it impossible to establish the committee, in the situations of possible boycott. In September 2023, the Assembly of Kosovo established a Committee to investigate suspicions about the misuse of state reserves.⁸ MPs of the parliamentary majority, Movement Vetëvendosje, boycotted the work of this committee for several months,⁹ a situation that highlighted the shortcomings offered by the definition of the part about the removal of committee members. In the case of the existence of con-

flicting interests, through this norm the MPs can prevent the meeting of the committee establishment, without losing their position as members of the committee, since the existing law has not specified that the counting of absences starts from the establishment meeting.

According to the current wording, it is possible to boycott the work of the committee - either partially or completely - until the time period defined as the mandate of the committee is consumed. Therefore, the norm should be deepened, specifying that the fulfillment of the condition for absence in three consecutive meetings, starts from the first initial meeting, in which the establishment of the committee is intended. In this context, the absence in three tentative meetings for the establishment of the committee, would fulfill the condition for the loss of membership in the Committee.

⁷ Law on Parliamentary Investigation, Article 9, Par. 2

⁸ The Assembly of Kosovo, in the session of September 21, 2023, established the Investigative Committee to investigate suspicions of misuse of state reserves. The news is available at the link: <https://www.kuvendikosoves.org/shq/punesimi/per-publikun/lajmi/nga-punimet-e-seances-plenare-33315/>

⁹ You can find the news in detail at: <https://kallxo.com/lajm/deshton-per-te-pesten-here-konstituimi-i-komisionit-hetimor-per-rezervat-mungojne-deputet-e-lvv-se/>



LACK OF PUNITIVE MEASURES

In the existing practice, the parliamentary investigative committees have not met even the elementary conditions defined by the Law on Parliamentary Investigation. A significant number of investigative committees have not even managed to vote on the final report, which is a condition for the conclusion of the investigation. While, in some of the cases, the closing of the works has been accompanied by incomplete final reports, which do not represent serious investigation documents.

Lack of a punitive measure has turned non-compliance with the law into acceptable normalcy. The inclusion of disciplinary measures in the law is essential to ensure the strengthening of the parliamentary investigation. By deciding on punitive measures, the Assembly can increase the importance of the parliamentary investigation, avoiding the irresponsible approach of the political parties towards the parliamentary investigative committees, often even towards those established at their request. In the end, the inclusion of punitive provisions in the law is a proper action, so that, in addition to the opportunities offered by the committees, they also impose responsibility obligations.



SPECIFYING THE DURATION OF THE MANDATE

In the matter of the duration of the mandate, the Law on Parliamentary Investigation, defines exactly the period of time during which the investigative committee must complete its investigative work, with a final report submitted to the Assembly.

“The mandate for investigating a matter is six (6) months when the committee should present the final report.”¹⁰

Although the Law clearly defines the period of 6 months as a limitation for the development of the parliamentary investigation, the practice of functioning in the Assembly has not been developed in compliance with this regulation. In usual practice, the Assembly¹¹ considers the period of rest between sessions as unused investigation time, extending the days of rest to the predetermined period of the mandate. This practice has developed from an attempt to regulate the mandate given by a special law, through the determinations of the Regulation against the parliamentary procedural¹² deadlines - this practice represents a wrong interpretation of the issue. In a response received from the General Directorate for Legal and Procedural Affairs¹³ it

was explained that in the interpretation of this dilemma, the legal officials of the Assembly used the explanation provided in Article 124 of the Rules of Procedure of the Assembly, more precisely the second part where it is explained that the period between sessions is not counted in the evaluation of deadlines.

This approach of regulating the mandate of parliamentary investigative committees is illegal. First of all, the mandate given by a relevant law cannot be determined through the regulations of the Rules of Procedure of the Assembly that relate to procedural deadlines - mandate and deadline are not synonymous concepts. Secondly, the Rules of Procedure of the Assembly, on the topic of Parliamentary Investigative Committees, is sufficiently clear, concluding that *“The procedures of parliamentary investigations are defined in the Law on Parliamentary Investigations”*.¹⁴ Thus, any attempt to interpret the duration of the mandate of the Investigative Committee outside the definition of the Law on Parliamentary Investigation itself belongs to an illegal practice.

¹⁰ Law on Parliamentary Investigation, Article 6, Par. 3, p. 3

¹¹ Rules of Procedure of the Assembly of Kosovo, Article 51, p. 22

¹² Rules of Procedure of the Assembly of Kosovo, Article 124, p. 53

¹³ Answer from Xheladin Hoxha, General Director in the General Directorate for Legal and Procedural Affairs, 04/03/2024

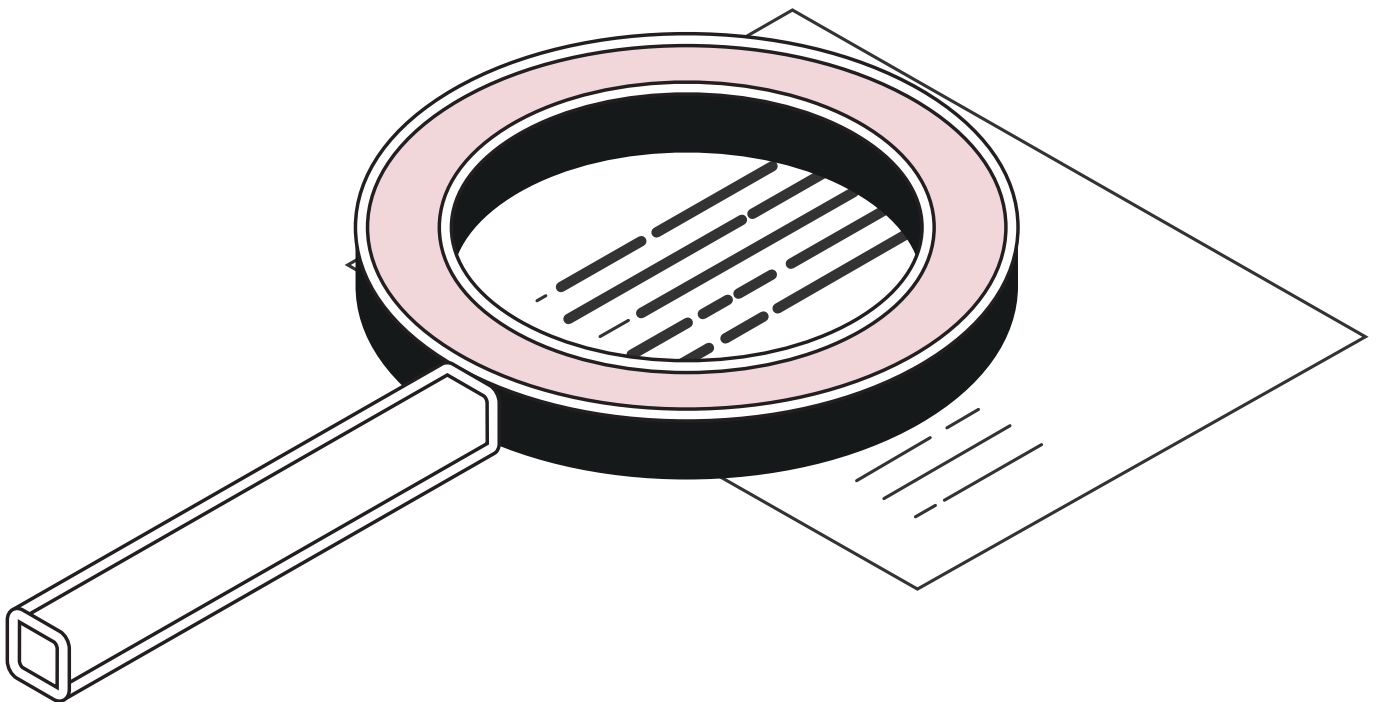
¹⁴ Rules of Procedure of the Assembly, Article 46, p. 21



PRACTICAL PROBLEMS

From the point of view of investigative activity, parliamentary investigative committees are not bodies with consolidated technocratic capacities, ready to organize investigation on complicated investigative cases. Parliamentary practice, in the matter of using the opportunity for parliamentary investigation, needs a document of instruction, in the format

of a handbook, where the practicalities are explained, such as the investigation as an objective process, limited around the question or issue for investigation, in accordance with the capacities of the institution of the committee; definitions on the nature of treatable cases, their content, etc.



PREPORUKE

- 1 The majority of the composition of the parliamentary investigative committee should belong to the grouping, respectively the opposition, in cases where the request for establishment comes from the opposition parties.
- 2 It should be clearly specified for which cases and for which topics, as well as on the basis of which dimension, a parliamentary investigation can be conducted - in cases where there is a parallel investigation by the Prosecutor's Office, in such a way as to avoid possible interferences.
- 3 In order to avoid blockages in the work of the investigative committee, the issue of the absences of MPs should be clarified, so that the counting of absences starts from the first meeting called.
- 4 Punitive measures should be determined for MPs or parliamentary groups which, for various purposes, do not act in accordance with the provisions of the Law. In the case of parliamentary groups (or the position/opposition camp as a whole), the measure of not allowing the initiation of another parliamentary investigation can be foreseen, in case of serious infringement of the parliamentary investigation mechanism.
- 5 Clarify the interpretation regarding the six-month duration of the committee's mandate, in relation to the break between sessions.
- 6 On the basis of the best international practices, a general document - handbook or manual of the parliamentary investigation - should be drawn up, which explains the parliamentary investigation, in a more concrete and detailed manner, in all its procedural aspects.

