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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**OPINION ON THE BILL ON  
THE REGULATION AND FUNCTIONING OF THE  
PARLIAMENTARY INVESTIGATION COMMISSIONS  
OF THE REPUBLIC OF ALBANIA**

**Prepared by**

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## General Comments

### 1. The Rights of the Minority in Parliament (one quarter of the MP's)

Article 77 (2) of the Albanian Constitution provides that „The Assembly has the right and, upon the request of one-fourth of its members is obliged, to designate investigatory commissions“. Article 44 (1) of the German Constitution provides in practically identical terms that „The House of Representatives [Bundestag] has the right, and upon the motion of one quarter of its members the duty, to set up a commission of investigation, which takes the requisite evidence at public hearings“. It can therefore be assumed that the two provisions serve the same purpose.

Under German constitutional law, the right of a qualified minority in Parliament to force the Parliament to set up an investigatory commission is considered to be one of the most important rights of the opposition. This right is only effective if it is not restricted to the initial decision that such a commission will be established. In addition, it must be safeguarded that the „object for examination“ is phrased according to the application of the qualified minority, it must be ensured that evidence is also taken according to the demands of the minority and it must finally be clear that the minority has the right to express its (separate) opinion with respect to the outcome of the investigation in the final report of the investigatory commission. If such rights are not guaranteed the right of the minority is reduced to a formality and one of the main purposes of the establishment of an investigatory commission is not attained: the control of the government by Parliament. The majority in Parliament (usually) supports the government and it often has no interest that government mismanagement is uncovered by the commission. Therefore the German Constitutional Court has interpreted the identical provision in the German Constitution as including the right of the minority to determine the object for examination, to demand that certain evidence be taken and, finally the right to express a separate opinion if it disagrees with the conclusions of the majority. Without such guarantees, the right of the minority to demand the establishment of a commission of investigation would make practically no sense for the most important case of the control of governmental action. It appears that the current bill does not take this central purpose of investigatory commissions into account. It is therefore **strongly advised** that the draft be reconsidered in the light of this consideration.

Minority rights cannot be safeguarded by Parliament alone (since the majority cannot be expected to always scrupulously respect the rights of the minority) but must be ultimately ensured by an independent institution. Such an institution is the Constitutional Court. According to Article 131 of the Albanian Constitution the Constitutional Court decides on ... „d. -- conflicts of competencies between powers“. Thus, if the minority (one quarter of the MP's) considers that their rights have been violated by the majority they should be able to apply to the Constitutional Court. Article 93 (1) of the German Constitution gives the German Constitutional Court the same power. The German Constitutional Court has on several occasions protected the rights of the minority upon an application of one quarter of the Members of Parliament. It can be expected that the Albanian Constitutional Court will do the same even if the „Law on the Parliamentary Investigation Commissions“ will not explicitly provide for the minority rights as they have been described above.

## **2. The Rights of Individuals**

Investigations by parliamentary investigatory commissions are usually held in public. They often concern issues which involve criminal matters, they inquire into the private sphere and they may uncover facts which individuals may legitimately want to keep secret (including business secrets). This raises important issues of fundamental rights of individuals. The Bill does not sufficiently address these issues. Perhaps these issues are addressed by the references to other statutes (which the undersigned does not know), for example in the reference in Article 13. Even if the issue of fundamental rights is covered by other laws which are referred to by the present Bill it seems necessary, for the sake of clarity and the importance of fundamental rights, that such issues be explicitly regulated. It seems necessary that the right against self-incrimination be included in the bill, the right not to be forced to testify against close relatives, the right not to reveal facts from the intimate sphere of private life or to reveal business secrets.

## **3. Legitimate Interests of the Government**

When the minority in Parliament has the possibility to force the commission to investigate into issues against the interests of the majority it is obvious that legitimate governmental interests must be protected as well. In Germany, the Constitutional Court has decided that an

investigatory commission may not investigate into what it called „the core area of executive responsibility“ which includes, in particular, evidence relating to the current day-to-day workings of the government and legitimate state secrets. Since it is often a difficult question to determine whether a particular issue is a legitimate state secret there must be a procedure before an independent institution which has the power to decide. This institution is, again, the Constitutional Court.

### Specific Comments

1. **Article 2:** It is proposed to write „a *sufficiently* certain issue of public interest“. The principle of the rule of law requires that the issue of legal procedures must be clearly defined.
2. **Article 3:** It is not necessary to include in the definition of „Commission“ the words „and the rules of procedure established by this law“. It is equally unnecessary to include in the definition of „Proof“ the terms „or documents“ (since evidence already includes documents) and „and is handled according to the procedures established by this law“ (since violations of procedure do not automatically lead to the loss of the quality of proof). It is finally suggested to put the definitions of „Witness“ and „Persons listened to in the form of free hearing“ one after the other because the terms relate to each other.
3. **Article 4:** It goes too far to require that more than half of the members of Parliament be present in order to establish an investigatory commission. This would ensure that the governing majority can always block the establishment of such a commission by boycotting the session of Parliament. It should also be made clear that Parliament, in the decision to establish an investigation commission, may not change the „object for examination“ which has been described by the request of a quarter of the members of Parliament to set up the commission except if the relevant quarter of the MP's agree to a change.
4. **Article 5:** It is preferable that all parliamentary groups must be represented in a commission of investigation. It must at least be ensured that representatives of the one quarter of members of Parliament who demanded the establishment to the commission are proportionally represented in the Commission.
5. **Article 7:** It should be provided that the Chairman must convene the Commission if a qualified minority of the members (one quarter) of the Commission so demands.

6. **Article 8:** As it stands, the provision gives the governing majority the possibility to stop the work of the Commission by boycotting its sessions. It should therefore be provided that a qualified minority may demand, once the majority quorum is not present, that another session be tabled on the agenda which will then not require the presence of more than half of the members of the Commission but only one-third or one-quarter.
7. Comments to Article 8 apply as well to **Article 9**. In addition, it should be made clear that the minority has the right to express its own conclusions to the conclusions of the majority.
8. **Article 10:** It might be considered to distinguish between the taking of evidence by the Commission (which should, as a general rule, be held in public) and the debates and decisionmaking within the commission which must not necessarily be public. The provision might also formulate specific grounds upon which the public may be excluded (revelation of personal sphere of a witness, of a private secret, of a business secret or a state secret whose divulging would be detrimental to the security of the state).
9. **Article 11:** This article should include a rule which limits the possibilities to transfer minutes or information which is protected by law or fundamental rights even if the majority does not consider the material confidential.
10. **Article 14** is perhaps the right place to formulate ground for individuals to refuse testimony (see General Comment 2.). Article 15 is also a possible place for this purpose. Article 18 perhaps deals with this issue, but it is not entirely clear in the translation.
11. **Article 16** should indicate that there is a procedure of judicial review against the decision of the Commission.
12. **Articles 19-22** should provide for the possibility of a minority report.