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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**OF THE COUNCIL OF EUROPE**

**(VENICE COMMISSION)**

# URGENT *AMICUS CURIAE* BRIEF

# FOR

# THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASE OF GRANDE ORIENTE D'ITALIA V. ITALY

# ON PROCEDURAL GUARANTEES IN THE EXERCISE OF POWERS BY PARLIAMENTARY INQUIRY COMMITTEES

**Issued on 19 September 2025 pursuant to Article 14a of the Venice Commission's Revised Rules of Procedure**

**on the basis of comments by**

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**Mr Michael FRENDO (Member, Malta)**
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## I. Introduction

1. By letter dated 4 June 2025 and pursuant to Rule 44, paragraph 3(a), of the Rules of Court, the European Court of Human Rights (ECtHR) requested an *amicus curiae* brief of the Venice Commission of the Council of Europe on the following questions raised by the pending case of *Grande Oriente d'Italia v. Italy* (Application no. 29550/17):

> *From a comparative and doctrinal point of view, how is the principle of parliamentary autonomy reflected in the design and operation of parliamentary procedures, in particular in the creation, constitution and exercise of the powers of parliamentary inquiry committee?*
>
> *In particular, what procedural guarantees - whether internal to Parliament or external - are generally provided for third parties whose rights may be affected by a parliamentary inquiry?*
>
> *Are there any compelling reasons, apart from those linked to history and tradition, for not providing for external scrutiny of the exercise of the powers of a parliamentary inquiry committee? In particular, to what extent could the possibility of judicial intervention in the review of a parliamentary committee's decisions call into question the principle of the separation of powers?*
>
> *Any relevant examples of democratic legal systems outside the member countries of the Council of Europe would be welcome.*

2. Mr Nicos C. Alivizatos, Mr Michael Frendo, Ms Katharina Pabel and Mr Vladimir Vardanyan acted as rapporteurs for this opinion.

3. The *amicus curiae* brief was drafted on the basis of comments by the rapporteurs.

4. Given the timeline indicated by the ECtHR, the *amicus curiae* brief was prepared under urgent procedure. It was issued on 19 September 2025 pursuant to Article 14a of the Venice Commission's Revised Rules of Procedure and in accordance with the Venice Commission's protocol on the preparation of urgent opinions (CDL-AD(2018)019) and will be presented to the Venice Commission for endorsement at its 144th Plenary Session (Venice, 9-10 October 2025).

## II. Scope of the *amicus curiae* brief

5. The Venice Commission underlines at the outset that its role is not to assess the facts of the case at hand or to focus on the interpretation to be given to the ECHR and ECtHR case law. The questions raised by the ECtHR inquire into issues of general comparative constitutional law. This is the basis on which the Venice Commission will respond, putting particular emphasis on examples from member and observer states of the Venice Commission that are not members of the Council of Europe.

6. In order to place the issue in its context, it is of interest to report the following facts, as provided in the Court's request and the judgment of the First Section of the ECtHR of 19 December 2024 (not final)[1]:

> *The applicant is a Masonic association registered under Italian law, Grande Oriente d'Italia. It was founded in 1805 and groups together several lodges.*

[1] ECtHR, Case of Grande Oriente d'Italia v. Italy, 19 December 2024, Application no. 29550/17. See also: Press Release, Parliamentary inquiry into Mafia infiltration of Masonic lodges: search and seizure in breach of the Convention, ECHR 307 (2024), 19.12.2024.

*In 2013 the Parliamentary Commission of Inquiry on the phenomenon of mafias and other criminal associations, including foreign ones (Commissione parlamentare d'inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali anche straniere) was set up. It was mandated, among other things, to conduct an inquiry into relations between the Mafia and Freemasonry because of revelations emerging from various criminal proceedings.*

*On several occasions in 2016 the parliamentary commission of inquiry asked Dr Bisi, the Grand Master of the applicant association, to provide a list of its lodges' members. He repeatedly refused, citing confidentiality. He observed that the request was "a fishing expedition" as it neither mentioned ongoing investigations, nor any specific crimes allegedly committed by members of the association. He again refused to disclose names when summoned as a witness in January 2017.*

*The parliamentary commission eventually, in March 2017, ordered a search of the applicant association's premises, aimed at obtaining a list of anyone who belonged or had belonged to a Masonic lodge of Calabria or Sicily starting from 1990, with their rank and role, as well as information about all the lodges of Calabria and Sicily which had been dissolved or suspended from 1990 onwards, including the names of all their members and their personal files, any investigations carried out and decisions taken. The applicant association's premises, including its archives, the library, and the personal residence of the Grand Master, and several computers were searched. It resulted in the seizure of numerous paper and digital documents, including lists of approximately 6,000 persons registered with the applicant association, as well as hard disks, flash drives and computers.*

*The applicant association unsuccessfully challenged the search and seizure. The parliamentary commission made no ruling on a request to reconsider the search order under its own procedures, while the prosecuting authorities dismissed an application for a judicial review by the Constitutional Court of a conflict of jurisdiction between the powers of the State, and discontinued the investigation into a criminal complaint lodged by the applicant association.*

*In a judgment delivered on 19 December 2024, a Chamber of the Court held, unanimously, that there had been violation of Article 8 of the Convention given the lack of evidence or a reasonable suspicion of the applicant's involvement in the matter under investigation, capable of justifying the search order, its wide and indeterminate scope, and the absence of sufficient counterbalancing guarantees, in particular of an independent and impartial review of the contested measure. Accordingly, it found that the impugned measure was held to not be "in accordance with the law" nor "necessary in a democratic society". The Court also held, by six votes to one, there was no need to examine the admissibility and merits of the applicant's complaints under Articles 11 and 13 as it had dealt with the main legal questions raised by the case.*

*On 28 April 2025 the case was referred to the Grand Chamber at the Government's request.*

7. The following sources on national legislation were used:
- the comparative survey on "Committees of Inquiry in National Parliaments" from the European Parliament (2020);[2]
- the survey on "Parliamentary Committees of Inquiry" from the European Parliament (2007), as updated and extended by "Parliamentary committees of inquiry in national systems: a comparative survey of EU Member States";[3]
- the written evidence provided by scholars and lower and upper houses of parliament to the survey by the UK Parliament's Committee of Privileges, Select Committees and Contempts;[4]

[2] Pavy, Eeva: Committees of Inquiry in National Parliaments. Comparative Survey, European Parliament 2020 *(hereinafter: EP Comparative Survey 2020).*
[3] Lehmann, Wilhelm: Parliamentary committees of inquiry in national systems: a comparative survey of EU Member States, European Parliament 2010.
[4] UK Parliament, Select Committees and Contempts, Written evidence, 2021.

- and the report by the US Congress (2020), Global Legal Research Directorate, comparing the "Parliamentary Right of Inquiry" in selected countries.[5]

8. In the context of this *amicus curiae* brief, the Venice Commission Secretariat has carried out a comparative overview on parliamentary inquiry committees (IC) in democratic legal systems of member and observer states of the Venice Commission that are not member countries of the Council of Europe.[6] Findings of the comparative overview will be examined below. Given the time and thematic constraints of this brief, it has not been possible to carry out a thorough comparative study, and only some selected pertinent examples will be cited. The Venice Commission wishes to underline in this context that evidence from different legal systems cannot be definitively compared in isolation from the whole legal framework and without taking into due account the specific broader social, political and historical background.

## III. Preliminary remarks

### A. Role of Parliamentary Inquiry Committees

9. The Venice Commission has previously observed that the creation of inquiry committees or a similar body by national parliaments is a *common feature of almost all countries*. While there are *variations as to the nature and scope of parliamentary control and supervision in different countries,* the mandate of ICs is to investigate specific events or situations to ensure democratic political accountability and to improve the transparency and efficiency of the government and the administration.[7] The Commission has also noted that ICs may be created for other purposes, for example to provide parliament with information of relevance to its own legislative and budgetary procedures.[8]

10. The constitutional and legislative frameworks regulating the creation, the composition, the powers and the functions of ICs vary widely across jurisdictions. Some systems are highly regulated (including on the constitutional level), while others adopt a more flexible approach.

11. While the Venice Commission noted that members of an IC perform an *investigative* and even a *quasi-adjudicative function,*[9] it had also stated that the means conferred upon the committee must always be exercised in accordance with, and in furtherance of, the competence of the parliament in a system of separation of powers – either to ensure the government's parliamentary accountability or to collect information necessary for more effective legislation or to present political recommendations. Even if allegations may be subject to both criminal proceedings and a parliamentary inquiry, the respective aims should be different.

12. As to the powers of ICs, the Venice Commission itself has noted earlier the differences in powers conferred upon ICs in comparative practice: on the one hand, ICs may have no power over individuals, except to call them to testify,[10] on the other hand, it has also remarked that they may be provided *with some or all of the usual powers of the investigating judges, and that this is*

[5] US Congress: Parliamentary right of inquiry: Argentina, Australia, Brazil, Egypt, India, Israel, Japan, Mexico, Norway, South Africa, Switzerland, Turkey, Global Legal Research Directorate 2020 (*hereinafter: US Congress, Parliamentary Right of Inquiry 2020)*.
[6] Algeria, Brazil, Canada, Chile, Costa Rica, Israel, Kazakhstan, Republic of Korea, Kosovo, Kyrgyzstan, Mexico, Morocco, Peru, Tunisia, United States of America, Argentina, Holy See, Japan, Uruguay.
[7] Venice Commission, CDL-AD(2014)013, Amicus Curiae brief in the case of Rywin v. Poland, paras. 7-8.
[8] Ibid., para. 7; Venice Commission, CDL-AD(2019)015, Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, para. 131.
[9] Venice Commission, CDL-AD(2019)015, Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, para. 133.
[10] Venice Commission, CDL-AD(2014)013, Amicus Curiae brief in the case of Rywin v. Poland, para. 30.

*a matter largely defined by the State's history and experience in the field.*[11] A survey of the European Parliament covering 20 Member States confirmed that these committees generally have the right to request information from public bodies, government members, administrative authorities, and even private actors where relevant. In some states, the refusal to provide information may trigger sanctions, while in other states sanctions are rejected as incompatible with the committees' purely political, non-judicial role.[12]

### B. Legal remedies against acts of Inquiry Committees

13. The survey by the European Parliament further showed that in many parliaments *legal remedies* exist for the situations where the *IC as a whole* or *its individual members or staff* commit an act or omission violating either the rules of procedure or the rights of natural or legal persons concerned by an investigation.[13]

14. It is worth recalling that the Venice Commission does not exclude in principle *appeals against decisions taken by parliaments*. The Commission has noted earlier that, while expanding the powers of parliament, 19th and 20th-century constitutionalism placed emphasis on the separation of powers, with scrutiny of parliamentary elections moving to the judiciary in light of the primacy of the Rule of Law.[14]

15. In its *amicus curiae* brief for the ECtHR in the case of *Mugemangango v. Belgium,* the Venice Commission addressed the necessity of judicial appeals against parliamentary decisions in procedures challenging the result of an election or the distribution of seats. The Commission observed that both longstanding and newer democracies increasingly recognise petitioners' rights - especially those of candidates - and ensure the strict enforcement of electoral legislation through clear procedures. Complaint mechanisms are now more "modern", often involving bodies outside the legislature, whether courts or non-judicial bodies applying judicial methods.[15] While the decision to leave the power with the legislature was considered by the Commission as being firmly rooted in the constitutional history of some countries, it also noted that there are many variants which leave the relevant parliaments varying powers. In the electoral field, which also touches upon the relationships between the legislative and the executive, the Code of good practice in electoral matters foresees that for elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.[16]

16. The Rule of Law checklist, when dealing with the *right to a fair trial*, does not make a difference between decisions of Parliament and other acts. Instead, it examines whether an individual has an easily accessible and effective opportunity to challenge a private or public act that interferes with one's rights.[17] Furthermore, with regard to the overall purpose of the Rule of Law Checklist, the Venice Commission recalls that the Rule of Law must be applied at all levels of public power.[18] Concerning the *prevention of abuse (misuse) of powers*, the Commission examines whether legal safeguards against arbitrariness and abuse of power (*détournement de pouvoir*) by public

[11] Venice Commission, CDL-AD(2014)013, Amicus Curiae brief in the case of Rywin v. Poland, paras. 11, 15; see also Venice Commission, CDL-AD(2013)032, Opinion on the final draft constitution of the Republic of Tunisia, para. 89.
[12] EP Comparative Survey 2020, pp. 13-14.
[13] Ibid. p.14.
[14] Venice Commission, CDL-AD(2019)021, Amicus Curiae brief for the European Court of Human Rights in the case of Mugemangango v. Belgium on the procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats, paras. 13.
[15] Venice Commission, CDL-AD(2019)021, Amicus Curiae brief for the European Court of Human Rights in the case of Mugemangango v. Belgium on the procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats, paras. 18-20.
[16] Venice Commission, CDL-AD(2002)023rev2-cor, Code of good practice in electoral matters, p.11.
[17] Venice Commission, CDL-AD(2016)007, Rule of Law Checklist, II.E.2.
[18] Ibid. p. 7.

authorities are in place and, when discretionary power is given to officials, whether there is judicial review of the exercise of such power.[19]

### C. Personal data protection

17. The Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data, notably Article 6, prohibits the automatic processing of sensitive data - such as information on racial origin, political or religious beliefs, health, sexual life, or criminal convictions - unless domestic law ensures appropriate safeguards. It does not rule out its applicability to processing of personal data as regards parliamentary activities in general and states in Article 3 that the Parties undertake to apply the Convention to automated personal data files and automatic processing of personal data in the public and private sectors.[20] Furthermore, Recommendation R(87)15 of the Committee of Ministers of the Council of Europe on the use of personal data in the police sector, in particular Principle 2, restricts data collection for police purposes to what is strictly necessary for preventing real dangers or prosecuting specific offences, and expressly prohibits the collection of data based solely on race, religion, sexual behaviour, political opinions, or lawful association.

## IV. Analysis

18. For the purpose of the analysis, the questions asked by the ECtHR have been divided into three sections corresponding to the three questions asked to the Commission. As the Court has specified that any relevant examples of democratic legal systems outside the member countries of the Council of Europe would be particularly welcome, the responses focus on examples from member and observer States of the Venice Commission that are not member States of the Council of Europe, wherever possible, while also citing examples from member States, where appropriate.

### A. First question

19. The first question put by the ECtHR is the following:

> *From a comparative and doctrinal point of view, how is the principle of parliamentary autonomy reflected in the design and operation of parliamentary procedures, in particular in the creation, constitution and exercise of the powers of parliamentary inquiry committees?*

20. Comparative analysis shows a wide variety of constitutional and legislative frameworks governing the establishment, composition, and powers of ICs. Despite these divergences, the criteria for assessing the parliamentary autonomy in ICs relates to: self-regulation; establishment; scope of inquiry; composition; investigative powers; enforcement powers and sanctions; and decision-making powers.

#### *1. Self-regulation*

21. The Venice Commission has consistently stressed that parliaments must have the authority to regulate their own affairs.[21] This independent exercise includes the power to decide, without interference from other branches, on financial and administrative issues and, most importantly, on parliamentary rules of procedure, which govern how Parliaments operate.

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[19] Ibid. II.C.iii.

[20] Cf. the European Parliament's Briefing Note describing the approach of Regulation 45/2001 as applicable to parliamentary activities "unless stated otherwise" (European Parliament, Data protection rules applicable to the European Parliament and to MEPs. Current regime and recent developments, p. 9).

[21] Cf., e.g., Venice Commission, CDL-AD(2017)026, Opinion on the Amendments to the Rules of Procedure of the Verkhovna Rada of Ukraine, para. 22.

*2. Establishment*

22. In unicameral systems, the power to establish ICs usually lies with parliament. In bicameral systems, this may rest with both chambers (e.g. Brazil)[22] or with only one, sometimes with the right of a chamber to request to have an IC established by the other chamber (e.g. Slovenia).[23] Joint committees may be formed where both chambers are empowered to form ICs (e.g. Brazil). The Commission underlines that only parliament should be competent to initiate *parliamentary* inquiries; the involvement of the executive in the establishment of ICs risks obstructing the parliamentary supervisory function.

23. Thresholds and quorums for establishing ICs reflect national balances between majority rule and minority rights, taking into consideration the specific national political system. The Venice Commission has noted earlier that in most countries the opposition has the right to request the creation of an IC or a similar body.[24] Some constitutions empower qualified minorities either through a certain number of sponsors (Algeria – 20 out of 407 members of the National Assembly or 20 out of 174 members of the National Council)[25] or through a certain proportion of the members of the respective Chamber (e.g. Austria – one fourth, Brazil – one third, Chile - two fifths, Germany – one fourth).[26] The Venice Commission has observed that the threshold of one fourth in most political systems would be regarded as rather low[27] and that if the power to create an IC is not limited, it may paralyse the work of Parliament.[28] Some countries combine a lower threshold for the sponsorship of the initiation of the procedure and a higher one for the establishment of ICs (e.g. Greece).[29] The Commission has noted earlier that the exact reach and contents of such rules are normally carefully tailored to the national constitutional and political tradition and context.[30]

24. ICs usually lapse at the end of the legislative term, though some constitutions impose fixed time limits (e.g. Algeria, Morocco)[31] while others allow parliament to determine the duration (e.g. Brazil).[32] The Commission stresses that the termination of an IC by external actors should be considered incompatible with parliamentary autonomy and that having a fixed time frame for the dissolution of the committee ensures a minimum time of inquiry that cannot be reduced by a majority.

*3. Scope of inquiry*

25. Parliamentary autonomy requires parliaments to determine the subject and scope of inquiries. In most systems, the scope is intentionally broad, reflecting the principle that parliament should

[22] Brazil, Constitution, Article 58 (3).
[23] Slovenia, Constitution, Article 93.
[24] Venice Commission, CDL-AD(2019)015, Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, para. 131.
[25] Algeria, Organic Law No. 16-22 regulating the organisation and functioning of the National Assembly and the Nation Council as well as the relations between the Chambers of Parliament and the Government, Articles 78; Algeria, Ordinance No. 21-02 of 16 March 2021 determining the electoral constituencies and the number of seats to be filled in the parliamentary elections.
[26] Austria, Constitution, Article 53 (1); Brazil, Constitution, Article 58 (3); Chile, Constitution, Article 52 (1) (c); Germany, Basic Law, Article 44 (1).
[27] Venice Commission, CDL-AD(2010)025, Report on the role of the opposition in a democratic parliament, para. 124.
[28] Venice Commission, CDL-AD(2019)015, Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, para. 132.
[29] Greece, Constitution, Article 68 (2) (1/5 to request, 2/5 to decide).
[30] Venice Commission, CDL-AD(2010)025, Report on the role of the opposition in a democratic parliament, para. 124.
[31] Algeria, Organic Law No. 16-22, Article 81 (maximum of six months, with a possibility of extension); Morocco, Organic Law No. 085-13 on the procedures for the operation of parliamentary committees of inquiry, Article 16 (final report has to be submitted after 6 months, unless more time is needed for the Constitutional Court to render its decision in a dispute between the Government and the House of Representatives or the House of Councillors on the application of the Organic Law).
[32] Brazil, Constitution, Article 58 (3).

have the means not only to scrutinise the executive but in general matters of public concern.[33] Comparative constitutional law practice illustrates a variety of approaches, ranging from inquiries into a "particular matter" or "a given fact" (e.g. Brazil),[34] to broad "matters of public interest" (e.g. Algeria, Costa Rica and Peru).[35] Certain constitutions explicitly link inquiries to the control of government action (e.g. Chile)[36].

26. As a separate category, certain parliaments provide for standing committees vested with inquiry powers, such as the Defence Committee established under Article 45a of the German Basic Law, which may assume the powers of an inquiry committee on matters within its competence).[37]

27. Other countries exclude certain matters from the potential scope of a parliamentary inquiry, e.g. affairs within a private organisation (e.g. Japan),[38] whereas some countries explicitly name inquiries into management of public services, institutions and State-owned enterprises (e.g. Morocco and Mexico)[39].

28. Certain systems exclude matters already under criminal investigation (e.g. France and Morocco),[40] while others allow ICs alongside judicial processes, provided both inquiries remain institutionally separate.[41]

29. In many systems, parliament may *broaden the mandate during the inquiry*, though safeguards exist in some countries to protect the minority from majority alteration. In Germany, the initiating minority defines the subject of inquiry, which cannot be changed without its consent.[42] However, as noted above, it is not a common European tradition to foresee such rights for the parliamentary minority and such rules are rare.

*4. Composition*

30. In most systems, membership reflects the proportional distribution of parliamentary groups, ensuring minority representation (e.g. France and Japan).[43] Some go further: in Georgia, opposition factions must represent at least half of the members.[44] In bicameral systems, the seats accorded to one chamber on a joint committee of both chambers shall also be allocated among the parliamentary groups (e.g. Switzerland).[45]

31. Over-representation of minorities may conflict with majority rule, but many systems safeguard minority influence by granting them certain roles in an IC or special rights during the investigation (e.g. US and Japan).[46] The Commission considers it good practice that both the majority and the minority may present their views, including in final reports.

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[33] Cf. Venice Commission, CDL-AD(2014)013, Amicus Curiae brief in the case of Rywin v. Poland, para. 10.
[34] Brazil, Constitution, Article 58 (3).
[35] Algeria, Constitution, Article 159, Costa Rica, Constitution, Article 121 (23), and Peru, Constitution, Article 97.
[36] Chile, Constitution, Article 52 (1) (c).
[37] Germany, Basic Law, Article 45a (2).
[38] US Congress, Parliamentary Right of Inquiry 2020, p. 41.
[39] Morocco, Constitution, Article 67 and Mexico, Constitution, Article 93 (3).
[40] France, Ordinance No. 58-1100 of 17 November 1958 on the functioning of parliamentary assemblies, Article 6, Morocco, Constitution, Article 67 (3).
[41] For further discussion of the different national approaches, see Venice Commission, CDL-AD(2014)013, Amicus Curiae brief in the case of Rywin v. Poland, para. 27.
[42] § 3 read in conjunction with § 2(2) Commissions of Inquiry Act.
[43] France, Ordinance No. 58-1100 (1958), Article 6; Japan, Diet Law, Article 46.
[44] Georgia, Constitution, Article 42 (2).
[45] Switzerland, Federal Act on the Federal Assembly, Article 164 (1).
[46] In the US, members from the parliamentary minority are specifically accorded some rights, e.g. a limited right to call witnesses of their choosing (Garvey/Oleszek/Wilhelm: Congressional Oversight and Investigations, US Congressional Research Service, 2024, p.2). In Japan, a minority opinion rejected by an IC but supported by one-tenth or more of the members present may be reported to the House by a member of the minority opinion, following the Chairperson's

*5. Investigative powers*

32. For ICs to be effective, they must be vested with *adequate investigative powers* to perform their functions.[47] While some systems confine them only to the competences inherent to parliament (e.g. Cyprus),[48] the majority of countries regulate broader powers for ICs: Some constitutions grant them powers equivalent to those of judicial authorities (e.g. Brazil),[49] others apply criminal procedure rules *mutatis mutandis* (e.g. Germany).[50] Typical powers include requesting documents, summoning officials, and requiring cooperation from the executive and judiciary.

33. In Brazil, while the Constitution grants ICs *powers equivalent to those of judicial authorities*, the statutory law foresees that the process and investigations of inquiries shall comply with the rules of criminal procedure.[51] ICs can summon persons and witnesses in accordance with the requirements established in criminal legislation. These persons can be accompanied by a lawyer. In Germany, the procedure for ICs, including the gathering of evidence, is laid down in a specific law which provides for the way in which the competences of the committee should be exercised.[52] Coercive measures must be authorised by the Federal Supreme Court.[53] The task of the committee is to collect information and to deliberate; it is not entitled to conduct criminal proceedings and to decide on criminal (or other) matters like a court.

34. Many systems impose a *duty of cooperation on the executive and public administration*, requiring officials to appear and provide documents, records, and information, as well as facilitating the appearance of public officials for testimony.

35. Constitutional frameworks and practice vary as to the *limitation of this duty of cooperation*: The scope may be subject to limitations grounded in national security or confidentiality or what has been termed the "core decision-making within the government".[54] Instead of limiting the duty to cooperate altogether, some systems allow ICs to address these concerns by e.g. excluding the public from sittings in which these questions are discussed to reconcile effective oversight with the protection of sensitive information or require the justifications for non-disclosure to be provided in a certain procedure. In Japan, the government may withhold information only with a formal justification to parliament; in this case the IC or the Parliament may demand a declaration by the Cabinet or the agency that the production of the reports and records would be gravely detrimental to the national interest.[55] The Commission considers that the obligation of the executive and public administration to cooperate with ICs serves to ensure the effectiveness of democratic oversight and can be regarded as an essential condition for accountability and the proper functioning of democratic institutions. Limitations to such an obligation to cooperate should be construed narrowly.

report. In this case, the member of the minority opinion must present to the presiding officer of the House a brief written report on the minority opinion under the joint names of its supporters. The written report shall be recorded in the minutes of the House, together with the Committee's report (Japan, Diet Law, Article 54).

[47] Venice Commission, CDL-AD(2019)015, Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, para. 135.

[48] Babeck, Wolfgang in: Babeck/Weber, *Writing Constitutions, Volume I: Institutions (2020)*, pp. 109-135.

[49] Brazil, Constitution, Article 58 (3).

[50] Germany, Basic Law, Article 44 (2).

[51] Brazil, Law No. 1579, Article 6.

[52] Commissions of Inquiry Act.

[53] Examples of requested means of enforcement: administrative penalty and enforcement of attendance, section 21(1), administrative penalty and coercive detention for unwarranted refusal to testify, section 27(1), administrative penalty and coercive detention for a refusal to surrender an item, §29(2) Commissions of Inquiry Act (Germany).

[54] See e.g. German Federal Constitutional Court, Judgment of 17.07.1984, para. 124.

[55] US Congress, Parliamentary Right of Inquiry 2020, p.44.

36. Judicial authorities may also be required to cooperate (e.g. Germany),[56] for example by providing documentation, while preserving the independence of criminal proceedings. The Commission again stresses that, while the political investigation must remain institutionally separate from any judicial proceedings, judicial cooperation - particularly through the provision of documentation and information - may be required, on the condition that the autonomy and integrity of each investigative process are duly safeguarded.[57]

37. The comparative practice shows that in many jurisdictions there is an obligation for private persons or entities to cooperate with ICs. Most systems impose on private persons a duty to cooperate with parliamentary inquiries, notably by testifying or providing documents (e.g. France and Portugal).[58] The scope of this duty is limited to truthful testimony and production of evidence, but professional secrecy (e.g. lawyers, doctors) and protection of journalistic sources (e.g. France) remain safeguarded.[59] Concerning limits, fundamental rights constrain the exercise of such powers: private persons cannot be compelled to self-incriminate and privacy must be respected;[60] sanctions for refusal vary. Coercive measures against private persons usually require judicial involvement to safeguard rights (see also below).

*6. Enforcement powers and sanctions*

38. The effectiveness of ICs depends on the enforceability of their not self-executing orders. The *enforcement of compliance* and available sanctions vary considerably. Some systems provide only for voluntary cooperation (e.g. Chile),[61] while others foresee sanctions for non-compliance, including contempt of parliament (e.g. Canada)[62] or referral to the criminal judge (e.g. Brazil)[63].

39. In particular for *searches and seizures*, the Venice Commission notes diverging approaches but also a broad trend: where ICs are constitutionally endowed with certain investigative powers, direct authority to order searches and seizures is rare. Most systems require either judicial authorisation (judicial authorisation model) or referring findings to the prosecutorial or judicial authorities that then decide whether judicial action is warranted or not (full judicial execution model). In Brazil, the Federal Supreme Court has held that the investigative powers of ICs are limited to evidence investigation and does not include the powers ordinarily assigned to judges, such as punishment for crimes, arrest or assets seizure orders. In addition, ICs are required to justify the investigative measures that can restrict one's basic rights.[64]. This comparative practice confirms that the separation of powers generally prevents legislatures from exercising investigative coercive functions directly without passing through the judicial or prosecutorial authorities.

40. Some countries foresee *criminal penalties* for false testimony (e.g. Japan)[65] or obstructing an IC. The sanctions ranging from fines or criminalisation of failure to comply or to give false

[56] Germany, Basic Law, Art. 44 (3).
[57] Further reference is made to the Commission's Amicus Curiae brief in the case of Rywin v. Poland (CDL-AD(2014)013), paragraphs 25-31.
[58] See e.g. France, Ordinance No. 58-1100 (1958), Article 6 (2), Portugal, Law no. 5/93 of 1 March 1993, as amended by Law no. 126/97 of 10 December 1997, by Law no. 15/2007 of 3 April 2007, by Law no. 29/2019 of 23 April 2019 and Law no 30/2024 of 6 June 2024, Article 13 (3).
[59] France, Ordinance No. 58-1100 (1958), Article 6 (2).
[60] See e.g. France, Ordinance No. 58-1100 (1958), Article 6 (2), Japan, Testimony in the Diet Act, Articles 1-3, 1-5 and 4. See also answer to Question 2.
[61] In Chile, testimony and records from private individuals may be requested only if strictly necessary and on a voluntary basis (Chile, Constitutional Organic Law of the National Congress, Article 56).
[62] UK Parliament, Select Committees and Contempts, Written evidence from the House of Commons of Canada, p. 4.
[63] In the event a witness does not appear without a justified reason, the criminal judge of the locality in which the witness resides or is found will be requested to summon the witness under the terms of articles 218 (coerced presentation) and 219 (disobedience) of the Code of Criminal Procedure (Brazil, Law No. 1.579, Article 3).
[64] MS 23.452 - Official Gazette, 12.05.2000, Summary in English.
[65] Testimony in the Diet Act, Article 6.

testimony or obstruction of the investigation by an IC may reinforce the investigative powers of an IC.

41. In systems where parliamentary inquiry committees may take external measures (such as searches or seizures) without prior judicial authorisation, but where private persons remain under a statutory duty to cooperate backed by sanctions, a potential legal gap arises. The imposition of a sanction for refusal to cooperate does not extinguish the underlying duty; the obligation persists irrespective of penalties. Consequently, the fulfilment of this obligation can only be ensured through the involvement of external authorities, which may be tasked by the IC with executing its orders.

42. An additional issue concerns the legal regulation of the relationship between inquiry committees and the authorities tasked with authorising or implementing coercive measures against private persons. Where such measures are executed by judicial or executive authorities, those authorities remain bound by their own constitutional and statutory obligations to respect the Rule of Law and to safeguard fundamental rights. Comparative practice shows divergence: in some systems the relationship is clearly regulated (as in Austria for a failure to comply with summons),[66] in other jurisdictions, there are no detailed statutory provisions governing cooperation with such authorities. In the absence of clear rules, uncertainty may arise as to the legal basis, scope and limits of enforcement, with risks both to the authority of the committee and to the rights of individuals concerned. In the light of these considerations, the Venice Commission considers it useful that national law provides explicit regulation of this relationship, in order to guarantee legal certainty, proportionality and respect for fundamental rights.

*7. Deciding powers*

43. The IC may have rules of procedure specifying, in particular how the decisions regarding attendance and questioning of witnesses and discovery of other evidence are made.[67] When certain majorities are required to induce the taking of evidence, the lower the minority required, the more empowered the parliamentary minorities are. The requirement of a simple majority or more to request the taking of evidence would counteract the empowerment.[68]

44. The IC should be able to formulate its conclusions and recommendations in a report, to present the report for a discussion at a plenary session of Parliament, and to publish it for the general public. It will then be for Parliament to decide whether the process should lead to political sanctions (such as a vote of no-confidence) or legislative or budgetary reforms.[69] However, ICs should not assess or pronounce themselves on the question of criminal responsibility of the persons covered by the inquiry, this remains within the competence of the public prosecutors and the courts.[70]

45. Traditionally, some parliaments had the right to summon individuals in front of the House in particular for contempt of parliament or breach of privilege and to adjudicate by Parliamentary Resolution on the case itself. This function was not accepted as compliant with the European Convention of Human Rights in *Demicoli v. Malta,* in particular as the applicant was not a Member of the Parliament and as acts of this sort done outside the House are to be distinguished from other types of breach of privilege proceedings which may be said to be disciplinary in nature in

[66] Austria, Rules of procedure for committees of inquiry, § 36.
[67] Venice Commission, CDL-AD(2019)015, Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, para. 135.
[68] See Babeck, *op. cit.*
[69] Venice Commission, CDL-AD(2019)015, Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, para. 137.
[70] Venice Commission, CDL-AD(2014)013, Amicus Curiae brief in the case of Rywin v. Poland, para. 19.

that they relate to the internal regulation and orderly functioning of the House.[71] However, penalties given by Parliaments to third parties in other jurisdictions have been upheld in the past.[72]

46. If the decisions of the IC are to be made by a majority of votes, it is important to reserve certain procedural rights to the members of the IC representing the opposition and provide for the possibility to be co-rapporteurs or provide an alternative "minority report".[73]

47. The Venice Commission notes that even while exercising their autonomy in setting their own Committees and their own procedures, Parliaments are subject to limitations set by the country's constitution, and by its international obligations.

### B. Second question

48. The second question put by the ECtHR is the following:

> *In particular, what procedural guarantees - whether internal to Parliament or external – are generally provided for third parties whose rights may be affected by a parliamentary enquiry?*

49. Parliamentary committees do not operate in a legal vacuum. Respect of the Rule of Law does not allow exemptions in the name of principles such as parliamentary autonomy, unless such exemptions are clearly provided *ex ante* by the law (namely by the constitution itself) in exceptional circumstances. The establishment and functioning of ICs rest on constitutional, legislative or jurisprudential bases.The Commission recalls that parliaments and their organs are bound by constitutional guarantees and international human rights obligations; in a democratic society, no authority stands above the law.[74]

50. The Venice Commission has previously recommended that, in the context of co-operation and exchange of information between an IC and prosecutorial authorities, the procedural rights of suspects and of other persons appearing before a committee must be respected.[75] The level and substance of guarantees should correspond to the nature and extent of the IC's powers.

#### *1. Internal procedural guarantees*

51. The Commission notes that, in general, Parliament has the obligation in the context of the Rule of Law to provide third parties with procedural guarantees in relation to any rights affected by an IC.

52. According to comparative constitutional practice, internal procedural guarantees - i.e. safeguards within the IC's own functioning - can be grouped as follows:

- requirements concerning voting and adoption procedures for coercive measures;
- rights for witnesses and other persons appearing before ICs;
- involvement of an ombudsperson or other officials in overseeing proceedings;

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[71] ECtHR, Demicoli v. Malta, 27.08.1991, Application no. 13057/87, para. 33. The adjudication and sanction process were subsequently delegated by the Legislature to the Judiciary.
[72] See e.g. US Supreme Court, Jurney v. MacCracken, 294 U.S. 125 (1935). See on contempt of Parliament and the power to adjudge a contempt more generally: UK Parliament, Report on Parliamentary Privilege 1999, paras. 264-273.
[73] The practice of minority reports is common in countries such as Austria, Finland, Germany, Italy, Norway, Sweden and Switzerland (Venice Commission, CDL-AD(2019)015, Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist, para. 138).
[74] Venice Commission, CDL-AD(2016)007, Rule of Law Checklist, para. 45.
[75] Cf. Venice Commission, CDL-AD(2014)013, Amicus Curiae brief in the case of Rywin v. Poland, para. 31.

- obligations relating to the protection of fundamental rights;
- other safeguards by internal procedures.

*(a) Requirements concerning voting and adoption procedures for coercive measures*

53. Some countries foresee certain voting requirements for specific coercive measures (e.g. Chile). In Argentina, a draft bill proposed that searches and seizures require a two-thirds vote in plenary session.[76] In Chile, summons and requests for information may be issued at the petition of one third of members.[77]

54. In Canada, because committees lack the power to punish non-compliance directly, they communicate cases of alleged contempt of Parliament to the House of Commons. In the past, the House has sometimes found persons failing to comply with an order to produce records guilty of contempt of Parliament.[78]

*(b) Rights of witnesses and other persons appearing before ICs*

55. Constitutional or statutory frameworks often establish explicit rights for witnesses and other persons appearing before ICs, including: the right to be informed about one's rights (e.g. Austria),[79] the right to legal counsel (e.g. Chile and Japan),[80] specific grounds to refuse to give evidence (e.g. Austria, Germany, Japan),[81] prohibitions on certain interrogation methods and exclusion of improperly obtained evidence (e.g. Germany).[82]

*(c) Involvement of an ombudsperson or other officials in overseeing proceedings*

56. In Austria, the committee must appoint an ombudsperson (*Vertrauensperson*) to accompany witnesses and ensure respect for personal rights.[83] In some jurisdictions, the chairperson may play a central role in safeguarding individual rights (e.g. in Chile where the IC president must ensure respect for the rights of those attending or mentioned, notably privacy, honour, professional secrecy and other constitutional rights).[84]

*(d) Obligations relating to the protection of fundamental rights*

57. Many constitutions and statutes impose *explicit internal limits and prerequisites* on coercive powers exercised according to an IC order, requiring respect for fundamental rights and compliance with applicable legal obligations. Examples include the protection of privacy in correspondence and telecommunications (e.g. Germany, Peru)[85] and the right to personality (e.g. Austria).[86] The Court of Justice of the European Union has emphasised that such committees are not exempt from the general legal framework governing data protection and must, in principle, comply with the requirements of the General Data Protection Regulation - reflecting the broader understanding that parliamentary oversight remains subject to the Rule of Law.[87]

[76] Argentina, Legal framework governing parliamentary investigative committees (Bill), Article 8.
[77] Chile, Constitution, Article 52 (1) (c).
[78] UK Parliament, Select Committees and Contempts, Written evidence from the House of Commons of Canada, p. 4.
[79] Austria, Rules of procedure for committees of inquiry, § 38.
[80] Chile, Constitutional Organic Law of the National Congress, Article 57; Regulations of the Chamber of Deputies of Chile, Article 317; Japan, Testimony in the Diet Act, Article 1-4.
[81] Austria, Rules of procedure for committees of inquiry §§ 43, 44; Germany, Commissions of Inquiry Act, § 22; Japan, Testimony in the Diet Act, Article 4.
[82] Germany, Commissions of Inquiry Act, § 24 (6) read in conjunction with § 136a Criminal Procedure Code.
[83] Austria, Rules of procedure for committees of inquiry § 46.
[84] Chile, Constitutional Organic Law of the National Congress, Article 57.
[85] Germany, Constitution, Article 44 (2) and Commissions of Inquiry Act, § 29(1); Peru, Constitution, Article 97.
[86] Austria, Rules of procedure for committees of inquiry, § 41(2).
[87] EU Court of Justice, Judgment (request for a preliminary ruling from the Verwaltungsgerichtshof – Austria) – Österreichische Datenschutzbehörde v WK, 16.01.2024, Case C-33/22.

58. In other countries, limitations have been developed by *case law*. In Slovakia, the Constitutional Court has held that parliamentary fact-finding bodies may not infringe constitutional rights and liberties.[88] In *Watkins v. United States*, the US Supreme Court overturned a conviction of a witness for "contempt of Congress.". The witness had refused to make certain disclosures before a congressional investigation committee, arguing that the committee was acting beyond its authority in demanding such information. The House directed the Speaker to certify the Committee's report to the United States Attorney for initiation of criminal prosecution. The US Supreme Court confirmed that the Bill of Rights applies to congressional investigations as to all governmental action.[89] It cautioned that not every investigation is justified by a public need overriding private rights; courts must ensure that Congress does not unjustifiably encroach upon individual liberties. The Peruvian Constitutional Tribunal has similarly stated that the issue is not to deny a power to the Parliament, but to ensure it is exercised in accordance with constitutional principles and with full respect for fundamental rights.[90] Comparative practice thus affirms that parliamentary inquiries do not operate in a legal vacuum.

59. Where the powers of an IC conflict with non-absolute human rights, *neither parliamentary oversight nor individual rights have predetermined priority*. Both must be balanced in such a way that each is realised as fully as possible within the constitutional order and in line with the principle of proportionality. The German Federal Constitutional Court has underlined that the importance of the Parliament's right of oversight cannot generally allow the right to access documents to be curtailed in favour of the protection of general personal rights and property rights, if Parliament and the government have taken precautions to ensure secrecy that guarantees the unimpeded cooperation of both constitutional bodies in this area, and if the principle of proportionality is upheld.[91]

*(e) Other safeguards by internal procedures*

60. In Argentina, a draft bill proposed that searches must be executed during daytime and in the presence of committee members.[92] The participation of MPs aims to protect the principle of separation of powers and provide inclusiveness of the entire process.

61. Some systems permit third parties to appeal directly to the IC to contest certain decisions or actions or appeal to another parliamentary committee to review the measures of the IC.[93] In Serbia, any natural or legal person can file a complaint about a violation of the code of conduct governing what parliamentarians say about ongoing criminal proceedings and such a complaint would be decided by an internal board of the Parliament which may give a warning or impose a fine.[94]

62. However, the Commission notes that a parliamentary review procedure might not be an appropriate forum for such an internal review of ICs' coercive measures. Such matters entail the examination of evidence and the legal characterisation of facts, which are more appropriately reserved to the judiciary, where proceedings are subject to a range of procedural safeguards in the decision-making process, including the requirements of independence and impartiality.[95]

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[88] Slovakia, Constitutional Court, CODICES, SVK-1195-3-007, 29.11.1995.
[89] US Supreme Court, Watkins v. United States (354 U.S. 178 (179,188), 1957).
[90] Peru, Constitutional Court, Judgment No. 321/2023, 25.07.2023, Exp. 00007-2021-PCC/TC, para.71 (unofficial translation).
[91] German Federal Constitutional Court, Judgment of 17.07.1984, para. 136.
[92] Argentina, Legal framework governing parliamentary investigative committees (Bill), Article 8.
[93] Cf. UK Parliament, Select Committees and Contempts, Written evidence of Professor Tom Hickman QC and Harry Balfour-Lynn to the House of Commons Committee on Privileges (SCC0031), paras. 56, 58.
[94] Cf. ECtHR, Case of Green v. The United Kingdom, 8.4.2025, Application no. 22077/19, para. 50.
[95] Cf. ECtHR, Case of Oleksandr Volkov v. Ukraine, 9.1.2013, Application no. 21722/11, para. 122.

*2. External procedural guarantees*

63 External procedural guarantees - i.e. protections outside the committee's internal rules, grounded in the wider legal and constitutional system - fall mainly into two categories:

- systems requiring prior judicial authorisation for coercive measures; and
- systems providing ex post judicial scrutiny of such measures.

*(a) Prior judicial authorisation for coercive measures*

64. In some countries, certain measures (e.g. searches or seizures) require prior judicial authorisation, especially where third-party rights are affected (e.g. Germany).[96] This filter both safeguards respect for fundamental rights and enables ICs to obtain relevant evidence.

*(b) Ex post judicial scrutiny of coercive measures*

65. In several systems, measures adopted by ICs are subject to ex post judicial scrutiny. Practices diverge, however, as to which court is competent to conduct such judicial review. Some countries, like Austria, may decide to concentrate all proceedings with regard to ICs with the constitutional court. Other countries, like Germany, may decide to involve the constitutional court only for the control of public authorities and entrust ordinary jurisdiction with the legal scrutiny of procedural rights of individuals. Individuals may challenge committee acts before the Federal Court of Justice, while only inter-organ disputes are decided by the Constitutional Court. In Israel, the Supreme Court has reviewed Knesset committee decisions where equality or constitutional rights were implicated. In Brazil, the Supreme Federal Court has intervened to uphold the privilege against self-incrimination and to protect parliamentary minority rights in establishing inquiries.

66. External guarantees thus act as a necessary counterbalance to broad parliamentary investigatory powers: parliaments may exercise robust oversight, while individuals retain access to judicial remedy where their rights are threatened or infringed.

67. In sum, proportionate *internal* procedural guarantees help prevent abuse within IC proceedings, if aligned with the committee's powers. *External* procedural guarantees - through prior authorisation and ex post judicial review - ensure legality, proportionality and effective remedies, thereby reconciling parliamentary autonomy with the Rule of Law.

## C. Third question

68. The third question put by the ECtHR is the following:

> *Are there any compelling reasons, apart from those linked to history and tradition, for not providing for external scrutiny of the exercise of the powers of a parliamentary committee of enquiry? In particular, to what extent could the possibility of judicial intervention in the review of a parliamentary committee's decisions call into question the principle of the separation of powers?*

69. Beyond considerations linked to history or tradition, several recurring arguments support excluding judicial scrutiny of ICs' decisions:

- *Parliamentary autonomy*. Judicial review is said to jeopardise the legislature's autonomy as a separate branch of power. For example, Parliament has been considered to be better placed to assess the need to restrict conduct by a member causing disruption to the orderly conduct of parliamentary debates, which may be harmful to the fundamental

[96] Germany, Commissions of Inquiry Act, § 29 (3).

interest of ensuring the effective functioning of Parliament in a democracy. Similarly to parliamentary non-liability (meaning absolute immunity from any legal action for parliamentary votes and utterances in the exercise of the parliamentary mandate),[97] shielding inquiry committees from judicial oversight may be considered essential for ICs to perform their functions independently, free from judicial or executive interference.

- *Efficiency and effectiveness.* Court intervention could delay inquiries, divert members' attention, and frustrate timely oversight. Given ICs' temporary mandates, dissolution or the end of the parliamentary term may render judicial remedies ineffective for alleged violations.

- *Political nature of inquiries and of sanctions.* ICs are instruments of political accountability, not judicial proceedings. Many systems rely on Parliament to address misconduct through internal rules, contempt, or discipline rather than recourse to courts.

70. While these arguments are relevant, they do not offer "compelling" reasons for excluding external judicial oversight. Moreover, looking at them in more detail, these arguments may actually lead to good reasons for providing external judicial oversight.

*1. Parliamentary autonomy*

71. The principle of parliamentary autonomy is firmly embedded in the constitutional traditions of the member States of the Council of Europe and has been acknowledged by the European Court of Human Rights.[98] Within the limits of the constitutional framework, Parliament is entitled to regulate its internal affairs independently from the other state powers. This principle operates as a structural guarantee, safeguarding the proper functioning of representative democracy.

72. An essential aspect of parliamentary autonomy is Parliament's authority to ensure the orderly conduct of its proceedings. The effective functioning of a legislative assembly depends on its capacity to prevent disruptions and to maintain conditions for meaningful debate. For this reason, Parliament is considered best placed to assess whether the conduct of one of its members disrupts the orderly functioning of debate and to impose proportionate disciplinary sanctions where required.[99] The European Court of Human Rights has recognised that such internal measures serve not individual or partisan interests, but the collective interest of preserving Parliament's ability to perform its constitutional functions.[100]

73. Another essential element is the freedom of parliamentary speech or parliamentary non-liability. While the principle of parliamentary non-liability is universally recognised, comparative experience shows that its scope varies considerably across Europe. As the Venice Commission has noted earlier, some States extend immunity to all statements made "in the exercise of parliamentary duties," while others confine it strictly to speeches delivered "in Parliament."[101]

74. The same rationale supports, in principle, the ability of parliamentary inquiries to determine the necessity and appropriateness of obtaining information, including through measures of compulsion, without the possibility of judicial review. Oversight powers of the Parliament would otherwise risk remaining ineffective.

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[97] Cf. ECtHR, Green v. The United Kingdom, 8.4.2025, Application no. 22077/19, para. 44.
[98] See e.g. ECtHR, Karácsony and Others v. Hungary, 17.5.2016, Application nos. 42461/13 and 44357/13, para. 78.
[99] Venice Commission, CDL-AD(2014)011, Report on the Scope and Lifting of Parliamentary Immunities. European Commission for the Democracy and through Law, pp. 12-14.
[100] See e.g. ECtHR, Karácsony and Others v. Hungary [GC], 17.05.2016, Applications nos. 42461/13 and 44357/13, para. 143.
[101] Venice Commission, CDL-AD(2014)011, Report on the Scope and Lifting of Parliamentary Immunities. European Commission for the Democracy and through Law, pp. 12-13.

75. However, the situation changes once coercive measures extend beyond the internal sphere of Parliament and begin to affect the rights of third parties. At that point, the rationale of parliamentary autonomy loses much of its force: Parliament's prerogatives cannot shield acts that intrude upon constitutionally protected individual rights. In the same vein, the U.S. Supreme Court has recently reaffirmed that if the investigatory powers of Congress are justified solely as adjunct to the legislative process, they cannot be unlimited; rather, they are subject to constitutional constraints, including the fundamental rights of third parties and established privileges.[102]

76. In this respect, the Commission notes that, while sanctions on parliamentary members might fall within the logic of autonomy as they are internal to the institution and aim to protect its proper functioning, coercive measures such as searches or seizures directed at third parties have an external dimension. For those affected, it makes no difference whether the interference stems from a criminal investigation ordered by a judicial authority or from a measure executed with judicial authorisation on behalf of a parliamentary inquiry. In both scenarios, the individual should have the same guarantees of legality and the possibility of judicial review.

77. Such review strengthens constitutional democracy by ensuring that parliaments do not exercise powers of an executive nature (e.g. search and seizure) without a legal remedy for affected individuals. However, in order to safeguard Parliament autonomy and the effective exercise of the power of its inquiry committees, states may limit the judicial review to questions of legality and protection of fundamental rights..

78. While there have been some instances where cases of parliamentary non-liability judicial review was denied previously as a matter of principle,[103] there is a trend in comparative jurisprudence and practice underlining that *parliamentary autonomy is not absolute; no authorities nor sector of public action stand above the law*. Systems however differ on whether judicial review of specific IC measures is expressly provided by law or has developed through case-law.

79. In sum, the prevailing view in comparative practice and jurisprudence is that parliamentary autonomy and judicial oversight can be balanced. Judicial review is consistent with the separation of powers and essential to ensuring legality, proportionality and rights protection. States may limit the judicial review to questions of legality and protection of fundamental rights. While judicial review, especially constitutional one, remains an important safeguard, it must be exercised with deference to the political nature and temporal limits of these bodies.

*2. Efficiency and effectiveness*

80. Opponents of judicial review in the context of parliamentary inquiries stress the risks of undermining the efficiency and the effectiveness of the parliamentary inquiry. Judicial involvement could risk creating practical obstacles without providing meaningful redress.

81. However, judicial review, if adequately tailored and appropriately measured, does not necessarily paralyse parliamentary inquiries. It could be limited to specific coercive measures without questioning the inquiry itself. Prior judicial authorisation of coercive measures can strengthen legality and ensure uniformity across committees. Furthermore, judicial authorisation

[102] US Supreme Court, Trump et al. v. Mazars, LLP, et al., 591 U.S. (2020), see also US Supreme Court, Watkins v. United States 354 U.S. 178 (1957).
[103] The US Supreme Court held that the Speech or Debate Clause protects legitimate legislative acts and the issuance of subpoenas such as the one in question in the relevant case is a legitimate use by Congress of its power to investigate. Furthermore, it held that in view of the absolute terms of the speech or debate protection, a mere allegation that First Amendment rights may be infringed by the subpoena does not warrant judicial interference (US Supreme Court Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975).

could reduce resistance by witnesses and could encourage cooperation. In order not to hamper the investigation process, ex post judicial review could only cover the contested act, leaving the inquiry to proceed.

82. In this way, judicial review can enhance legitimacy and public trust in both Parliament and the IC, rather than frustrate the efficiency of parliamentary investigations.

*3. Political nature of inquiries and sanctions*

83. The political nature of inquiries does not necessarily exclude the need for judicial safeguards. Committees may adopt coercive measures that directly affect the rights of individuals. Such measures require a certain degree of external control to ensure legality, proportionality, and respect for fundamental rights. Judicial review may be confined to ensuring respect for fundamental rights and legality, without altering the essentially political character of inquiries.

84. Even if some parliaments have traditionally known the power to summon individuals in front of the House, not all Parliaments have traditionally known the power to adjudicate by Parliamentary Resolution on the case itself.[104]

85. In sum, while the separation of powers is a defining feature of democracy, the Venice Commission is of the view that there are no compelling reasons to exclude judicial scrutiny altogether for coercive measures of ICs for third parties. Carefully framed *ex ante* and *ex post* review mechanisms are integral to democratic governance, ensuring that ICs remain both independent and accountable under the Rule of Law.

## V. Conclusion

86. The Venice Commission has been invited by the European Court of Human Rights to submit an *amicus curiae* brief in the pending case of *Grande Oriente d'Italia v. Italy* on the following questions:

1. *From a comparative and doctrinal point of view, how is the principle of parliamentary autonomy reflected in the design and operation of parliamentary procedures, in particular in the creation, constitution and exercise of the powers of parliamentary inquiry committees?*

2. *In particular, what procedural guarantees - whether internal to Parliament or external - are generally provided for third parties whose rights may be affected by a parliamentary inquiry?*

3. *Are there any compelling reasons, apart from those linked to history and tradition, for not providing for external scrutiny of the exercise of the powers of a parliamentary inquiry committee? In particular, to what extent could the possibility of judicial intervention in the review of a parliamentary committee's decisions call into question the principle of the separation of powers?*

[104] Cf. also Canada, Senate, A matter of privilege: A discussion paper on Canadian parliamentary privilege in the 21st century, Interim report of the Standing Committee on Rules, Procedures, and the Rights of Parliament, 2015, pp. 60-67). See also ECtHR, Demicoli v. Malta, 27.08.1991, Application no. 13057/87.

87. The Venice Commission, having regard to the Council of Europe standards and the Member States' law and practice as well as the law and practice of other countries reviewed, has reached the following conclusions:

- *Concerning the first question*, the Venice Commission observes that parliamentary autonomy is a fundamental principle reflected in the establishment, composition, powers and functioning of ICs. While the concrete arrangements vary across legal systems, common features of these arrangements include the degree of parliamentary self-regulation, the quorum required to propose and decide on the establishment of an IC, the definition of the scope of the inquiry, the composition of the IC, its investigative powers, its enforcement powers and sanctions as well as its deciding powers. The Parliament should be able to decide the rules and procedure regulating the function of an IC, when to launch an inquiry, set the scope and powers in the resolution or the law establishing the committee, and conduct hearings as it sees fit. Parliamentary minorities are often granted special rights in this regard, although no uniform practice exists. The legal system should also foresee whether or not orders of the IC can be enforced and, if so, whether and how lack of compliance with orders may be sanctioned. The Venice Commission considers it useful if national law provides for explicit regulation of this relationship, in order to guarantee legal certainty, proportionality and respect for fundamental rights. The aim and purpose of the IC inquiry should further be reflected in the general deciding powers of an IC.

- *Concerning the second question*, the Venice Commission considers that, while there is no common set of specific procedural guarantees for third parties whose rights may be affected by parliamentary inquiries, comparative practice reveals certain converging safeguards:

  Internally, these include requirements concerning voting and adoption procedures for coercive measures; rights for witnesses and other persons appearing before ICs (in particular the right to be informed about one's rights, the right to legal advice, specific grounds to refuse to give evidence - such as the right not to incriminate oneself - and prohibitions on certain interrogation methods and exclusion of improperly obtained evidence); involvement of an ombudsperson or other officials in overseeing proceedings; obligations relating to the protection of fundamental rights; other safeguards by internal procedures.

  Externally, many systems foresee prosecutorial or judicial involvement before the execution of coercive measures ordered by an IC, or provide for the possibility of judicial review concerning the legality of such measures and their compatibility with fundamental rights. In some systems, the choice is made to give the competence exclusively to the ordinary courts, in others it is the exclusive competence of the Constitutional Court, while some other jurisdictions foresee a division of competences regarding the subject matter of the dispute.

  While proportionate internal procedural guarantees help prevent abuse within IC proceedings, if aligned with the committee's powers, they are not sufficient as sole review mechanism. External judicial procedural guarantees - through prior authorisation and a priori and a posteriori (or at least a posteriori) judicial review - can ensure legality, proportionality and effective remedies, thereby reconciling parliamentary autonomy with the Rule of Law.

- *Concerning the third question,* the Venice Commission finds that, while arguments are made in favour of excluding judicial scrutiny of ICs' decisions in order to protect parliamentary independence and the principle of separation of powers, comparative

experience demonstrates that parliamentary autonomy cannot justify unchecked powers regarding coercive measures against third parties.

Judicial review, properly limited to questions of legality and protection of fundamental rights, is consistent with the Rule of Law, which does not allow for out of bound areas. Ex ante judicial filters and ex post remedies represent effective ways of reconciling democratic legitimacy and parliamentary autonomy with the Rule of Law.

Accordingly, in the Commission's view, there are no compelling reasons to exclude judicial scrutiny of coercive measures of ICs against third parties altogether. Carefully framed review procedures are indispensable to ensuring that committees remain both independent in their oversight role and accountable under constitutional and human rights standards.

88. The Venice Commission remains at the disposal of the European Court of Human Rights for further assistance in this matter.