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Committees of Inquiry: Some remarks on accountability in practice

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Abstract

Committees of inquiry are a permanent part of parliamentary systems in most countries. They are designed as bodies referred to in extraordinary situations where a crisis or scandal raises questions about the accuracy and diligence of government action and calls into question the operation of regular mechanisms of executive oversight. The tasks of committees of inquiry are therefore an excellent environment for the enforcement of government accountability by the legislature. The paper examines how committees of inquiry in three parliamentary systems (Italy, Germany and Poland) are designed – what are the crucial factors and features of the legal framework for exercise of accountability? The second aim is to analyse how they have worked and what have been subject matter of COIs during last two decades. The experience of committees in the selected countries leads to the conclusion that – despite an important role in discovering and assigning blame for faults and maladministration – they are losing their ability to enforce governmental accountability, and parliaments seem to have abandoned the search for the real causes of undesirable phenomena in favour of managing blame and creating an impression of being involved in matters of interest to voters.

Key words

Accountability of public authorities; committee of inquiry; parliamentary oversight of the government

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Resumen

Las comisiones de investigación forman parte permanente de los sistemas parlamentarios de la mayoría de los países. Están concebidas como órganos a los que se acude en situaciones extraordinarias en las que una crisis o un escándalo plantean dudas sobre la exactitud y la diligencia de la acción gubernamental y ponen en tela de juicio el funcionamiento de los mecanismos habituales de control del ejecutivo. Por lo tanto, las tareas de las comisiones de investigación constituyen un entorno excelente para la aplicación de la responsabilidad gubernamental por parte del poder legislativo. El documento examina cómo están diseñadas las comisiones de investigación en tres sistemas parlamentarios (Italia, Alemania y Polonia): ¿cuáles son los factores y características cruciales del marco legal para el ejercicio de la responsabilidad? El segundo objetivo es analizar cómo han funcionado y cuál ha sido el objeto de las comisiones de investigación durante las dos últimas décadas. La experiencia de las comisiones en los países seleccionados lleva a la conclusión de que –a pesar de su importante papel en el descubrimiento y la atribución de culpas por faltas y mala administración– están perdiendo su capacidad de hacer cumplir la responsabilidad gubernamental, y los parlamentos parecen haber abandonado la búsqueda de las verdaderas causas de los fenómenos indeseables en favor de la gestión de las culpas y la creación de una impresión de estar involucrados en asuntos de interés para los votantes.

Palabras clave

Responsabilidad de las autoridades públicas; comisión de investigación; control parlamentario del gobierno

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1. Introduction

Around the world, trust in politicians and politics within parliaments of democratic systems has been declining for decades (Pharr *et al.* 2001, 291–311). There are many reasons given for this loss of trust, including a massive inflow of information about the behaviour of members of parliament, their bad performance, misconduct, and dysfunctionality. Simultaneously, members of parliament and the government are constantly trying to gain the attention and loyalty of voters, and the modern world of personalized media makes this task easier than ever before.

In this roughly sketched picture, unquestionably changing patterns of orientation to politics and the political culture paradigm are visible (Habermas 2006, Fuchs 2007). But: how does social practice change legal institutions – both in terms of their regulation and the way they operate? It is particularly interesting to observe how institutions with similar structure, function, and goals change the forms of their activities under the influence of changes in the political paradigm. Legal regulations for political institutions are often responsive – they adjust to the way the institutions are used, or also abused. Examination of practice and regulation in collateral relations can reveal patterns hidden within the expectations and behaviours of political actors, and their attitudes oriented towards focusing attention on high-profile occurrences and highlighting the positions of politicians themselves.

Such change as described can be examined through the lens of accountability, a crucial phenomenon for exercising power in the state (Nelken 2006, 373, 375), particularly the process of giving and taking reports from exercising power within committees of inquiry (COIs). Committees of inquiry are special parliamentary committees set up to investigate particular cases. This instrument is commonly used in democratic states, it is regulated in similar ways under constitutional law, and it performs comparable systemic and political functions. Observation of the COI practice in recent years shows interesting regularities in the selection of cases in which committees of inquiry are appointed, since it allows one to discover certain patterns of political and social behaviour, as well as to discover the immanent meaning and roles of legal institutions.

The shape and structure of committees of inquiry are discussed in the legal orders of three selected European states: Germany, Italy and Poland. These three countries were made due to the significant similarities in the rich heritage of these institutions, in all these countries, committees of inquiry are characterized by long history, though interrupted by the authoritarian period (Italy, Germany – the period from the 1930s to 1945, in Poland from the 1930s to the 1990s), and extensive practice. The systems of the selected three countries are based on the parliamentary model, and committees of inquiry are an important element of oversight the government. Investigative committees have very similar assumptions, structure and way of functioning – although with some interesting differences, they also operate in slightly different political conditions, but within the framework of parliamentary democracy. Therefore, it is worth investigating to what extent the differences in regulations, usually determined by the political tradition and a different political context (the rule of a stable majority: Germany, Poland and frequent changes of governments in Italy), have had an impact on their functions and importance in the process of accountability of the executive. It should be added that in all three countries, committees of inquiry are an instrument that is regularly used

(only in Poland are the committees appointed relatively less frequently) – this creates perfect material for comparing their activities, subjects of matter and finally, the expectations that are built around them.

The analysis of the regulations and practice of COIs (their agenda-setting) in these three countries was carried out from the point of view of the functions they play in the process of accountability of the executive. The paper uses the legal approach to examined institutions to present their legal regulations and procedures. The observations combined with the presentation of the subject of the committee's work, and thus the observation of the practice, allows for the formulation of certain conclusions as to the accountability carried out within the committees of inquiry, particularly regarding the agent-principal relationship and the changes caused by the mediatization of politics.

The following paper initially outlines the institution of committees of inquiry in the context of accountability in the constitutional system, the next part briefly outlines the origins of committees of inquiry in the three selected parliamentary systems, which is necessary to understand their modern regulation. The fourth section analyses the contemporary legal framework for COIs with many similar features and a few significant differences, influenced by tradition and under influence of some modern challenges. The fifth part presents the subject matter examined by committees set up in Italy, Germany and Poland, with an attempt to systematize them and find certain regularities in the manner in which this institution is utilized.

The final part summarizes the analysis and presents a number of conclusions on both the theoretical and practical functions performed by committees of inquiry, and their role in holding accountable those to whom public power is entrusted.

2. Committees of inquiry within the accountability framework

In recent years, the concept of accountability has been extensively explored in social sciences (Achen and Bartels 2002, Lenz 2012, Gailmard 2014); but in fact, all those who have written on accountability have unanimously stressed that it is vague, ambiguous, a bottomless pit, linked to different institutions and processes and with different functions (Political Accountability in Europe 2008, 9). The simplest explanation of the concept of accountability describes the requirement imposed on representatives to report to the represented party on the exercise of the entrusted powers and duties, to act in response to criticism or requirements set before them, and to accept responsibility for failure, incompetence or deceit. It is a relationship between an actor and a forum (principal), in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences (Bovens 2006, 9). Being accountable therefore means being liable to be required to give an explanation of actions taken, and, where appropriate, to suffer the consequences, take the blame or undertake to put the matter right (Oliver 2003, 48). At its core, accountability is associated with the process of being called to report (account) by some authority for one's actions. It involves social interaction and exchange (Mulgan 2000), and can be treated as a method of keeping the public informed and the powerful in check (Mulgan 2003, 1).

In constitutionalism, accountability is a core element of the relationship between deputies brought into account for their voting record by party leaders and/or their

constituents, as well as government ministers who are accountable for government decisions to parliament. This also applies to civil servants, and more broadly to the whole hierarchy of public administration, subordinated to public officials who are accountable before parliament and finally – before citizens. These functions and features of accountability make it an essential element of the relationship between the governors and the governed in democracy (Harlow 2002, 15). It can be understood as the reverse of the idea of representation – and therefore of the informed conferral of authority and its transparent exercise by representatives of the state. At the same time, accountability magnifies the paradoxes and problems of representation: the tension between majoritarianism and the rule of law, since giving an account usually relates to compliance with legal standards and the criteria of rectitude and transparency, and finally: barriers to the exercise of power, irritating from the point of view of political actors.

Accountability is closely related to responsibility, transparency, answerability and responsiveness, and these terms are often used interchangeably (Oliver 1991, 22, Mashaw 2006, 128). While forms of responsibility, liability and audit evaluation are instruments subject to specific sanctions, accountability *per se* strictly means "giving an account" and does not automatically entail any consequences for the agent (Morgan 2006, 243, Waldron 2014, 2–3). Accountability in this sense can be exercised just by giving answers as to what, why and how something was done by the accountee (Harlow 2014, 196–197); it is "a verbal bridge between action and expectations" (Messner 2009, 923).

Meanwhile, increased reporting of political power may be dangerous from the perspective of the importance of accountability in democracy. The contemporary media world, where almost anyone holding a public office can – and wants to – be their own publicist, means that contemporary exercise of power is characterized by an excess of stories about leadership functions. Such phenomena are accompanied by a reduced role for traditional media and their further polarization, which has led to a drastic deterioration of quality of the cognitive messages about the exercise of authority. At the same time, there is a growing epistemic mobilization that results from observing the actions of public authorities, increasingly fictionalized – both by their subjects and the media. This in turn creates the perfect conditions for the formation of pseudo-accountability – the transmission and reception of a highly distorted version of public authority activities. In addition, it may lead to "over-narrative" strategies in contemporary politics (Daley and Snowberg 2011) and degradation of the standards of receiving the report itself.

It is therefore worth taking a closer look at one of the channels of accountability in relations between parliament and government. Some of the instruments of constitutional accountability are of such character, relying on reasoning, giving answers regarding the exercise of power, presenting grounds, causes, processes and finally – outcomes of entrusted activity. There is a wide variety of well-established mechanisms of governmental accountability, as debating on motions of no confidence, censure votes, resolutions, or debates on the "state of the nation"; parliamentary committees: hearings during which ministers and other members of the executive explain their policies (Saalfeld 2000, 357, Sánchez de Dios 2008, 4–5). Such mechanisms usually arise in situations of conflict or major problem disclosure, trying to explain the reasons and solve

problems or alleviate conflicts (Braithwaite 2006). One of such tools, unique in the form of giving account and the forum which takes such reports of entrusted power, is parliamentary committees of inquiry. They are bodies designed to investigate public matter in extraordinary circumstances, then to collect report from those who were responsible for the problem or crisis (Sánchez de Dios 2008, 5).

This category deserves particular attention as an example of accountability, proceeded by thoroughly investigating a matter by requesting documents and listening to those in possession of relevant information (usually decision-makers, participating in this process of governance beforehand). Taking testimony and verifying it in the light of individual cases within a limited group of committee members is designed to be an effectively conducted method for enforcing accountability and governmental oversight, to gather information on past activities or on the status of a given policy field in order to formulate opinions, as well as to decide whether the government should be sanctioned and whether it will be able to perform satisfactorily in the future (Rozenberg 2020, 15–16).

Basically, the course of action of committees of inquiry is based on seeking answers to the following questions:

1. What happened? Who was involved, when, and how?
2. Were the actions taken by persons holding public office lawful or acceptable from the perspective of state policy?
3. How was it possible? Which legal restraints were too weak or insufficient, and which part of the state procedures/control mechanisms failed?

The primary functions that a committee of inquiry can perform include: exercising the accountability of the executive; understanding a public issue under consideration; correcting this issue in the future. As was underlined by Pierre Rosanvallon, MPs investigate past events to hold the government accountable, and to assign responsibility. However, the whole exercise is also oriented toward the future, to improve a given matter (Rosanvallon 2015, 254).

Hence, committees of inquiry formulate conclusions for the future, in order to avoid future crises or situations not conforming to the law (von Münchow 2013, 58) – not only is their action retrospective, but in this context, also prospective. This sometimes makes it possible to formulate the thesis that their function goes beyond pure scrutiny of the government.

Such a model of inquiry comprehensively reflects accountability, allowing a small panel of MPs to publicly – albeit while following a court-like procedural regime – conduct a transparent inquiry and obtain accounts from those who took the actions and made the decisions. The committee of inquiry is therefore designed, at least in its assumptions, as an ideal instrument for this kind of accountability.

Parliamentary committees of inquiry are a long-established institution – their functions and structure are precisely defined, and they are usually also frequently applied in practice. They have their own roots in each political system, closely related to the history of the parliament, as if they share its fate. And this story is sometimes interrupted, sometimes for decades, as has been the case in all these countries. The institution of the

COI was thus (re) shaped according to new expectations and old habits established in the past.

The practice of European states shows an increase in the number of committees of inquiry appointed; this has happened during the 2010s in, among others, Italy, France, Germany and Spain (Rozenberg 2020, 33), and (for a relatively short time) they started to flourish in Poland too. Contemporary practice also indicates a growing number of appointed committees – they are consistently present in the political landscape of all the countries under review, but this is also the case in other European countries, and at times their activities become crucial for the functioning of governmental oversight.[1]

Due to their shared characteristics and extensive practice, they are a rewarding object of comparative study. However, it is particularly intriguing to analyse certain differences in the regulation of committees of inquiry, and to track their operational practice from the perspective of the implementation of the accountability in contemporary democratic states.

3. The origins of committees of inquiry in selected countries

Committees of inquiry in Germany, Italy and Poland, as well most of the European parliamentary systems (Rozenberg 2020, 15), have a long history. Although in this respect their origins considerably differ, due to the unification of Germany and Italy (*Risorgimento*) in the second half of the 19th century and consequently the emergence of a common national parliamentary tradition at that time; when it comes to Poland, it is even harder to pinpoint the earliest cases, as Poland regained its independence in 1918, and only from that moment can one speak of a constitutional and parliamentary system.

In Italy, committees of inquiry were already functional in the nineteenth century, playing an important role in obtaining information on highly significant and controversial cases (Fazio 2019), as well as at the turn of the twentieth century (Cartocci Suárez 1999).[2] However, they lacked a proper constitutional basis – the Albertine Statute in force at the time did not regulate parliamentary committees of inquiry.

Until 1868, neither committees of inquiry nor parliamentary investigations followed a codified procedure for initiating and conducting investigations. Only in 1868 did a regulation appear in the Rules of Procedure of the Chamber of Deputies, though it was rather perfunctory. The Rules of Procedure did not specify the powers of the committee of inquiry, its scope of action, nor its composition (Ferrari Zumbini 2017). The procedures within COIs were equated with the presentation of parliamentary motions

[1] This actually happened in Austria in 2020. On 22 January 2020, a committee of inquiry (via a motion of minority – such a possibility existed since 2015) was created for the Ibiza Affairs, concerning allegations of fraudulent financing of the far right. Despite resistance from the ruling coalition (ÖVP, together with the Greens), attempting to block the committee's proceedings, they continued – also following a decision by the Austrian Constitutional Court, to which the opposition had appealed. The government resigned after the investigation of this committee of enquiry. See Eurotopics 2020, Rozenberg 2020, 35.

[2] One prominent example is the Saredo Committee, in place between 1900–1901, officially known as the Royal Commission of Inquiry into Naples, presided by senator Giuseppe Saredo, (president of the Italian Council of State). The Commission investigated corruption and maladministration (so-called "administrative Camorra" or "high Camorra") in Naples in previous decades (1880–90). The Saredo Commission's report discredited the Liberal politicians of Naples, who were voted from office in the local elections of November 1901.

(Art. 73); the members of the committee were elected by the Chamber or by a person designated by the President (Art. 74).

In the period between the First and Second World Wars, the Albertine Statute of 1848 was in force, although after the Fascist Revolution in October 1922 the system radically changed under the influence of decrees,[3] after the short period between 1918 and 1923,[4] committees of inquiry ceased to exist. The actual and legal change of regime resulted in the total loss of significance of parliament's authority, including its oversight function – hence committees could not find their place in the system of governance and exercising control – nor even in the scrutiny of the executive power.

Committees of inquiry also existed in Germany in the 19th century, but their history dates back further to the Landtags (including Prussia); the Constitution of the German Reich of 1871 did not provide for them. Instead, there were very energetic commissions appointed by the Chancellor, consisting of deputies but also government representatives and groups interested and involved in the processes and issues under investigation[5]. Thus, these committees were supposed to serve as a kind of buffer for the executive when clarifying facts, but nevertheless in the context of a state with a bureaucratic tradition and bureaucratic dominance – not parliamentary.

The Weimar Constitution changed a lot in this respect by introducing a purely parliamentary system, which included the accountability of the chancellor before parliament. Moreover, it regulated committees of inquiry in Article 34[6] Particularly noteworthy, the Weimar Constitution made the committee a tool to be used by the minority, since appointment was possible even without the support of the majority, at the request of one-fifth of the deputies.[7] The first committee was formed in August 1919 to investigate the causes of the war, others dealt with unemployment insurance (Brauns Committee), and the economic crisis of 1926 – the potentialities of recovery (Marx 1936, 1139–1142). However, the lengthy investigations they carried out and the actual takeover

[3] E.g. among others, the Decree of 14th January 1923, Acerbo Law of 18th November 1923, Decree of 15th July 1923, Decree of 24th December 1925, Decree of 31st January 1926 and others making new fascist constitutional reforms, like creating Grand Council, reforming Camera dei Deputati into Camera del Fasci.

[4] At this time, the following were appointed: the Committee of Inquiry into War Expenditure (Commissione parlamentare d'inchiesta sulle spese di guerra (1920–1923) and the Committee on Recovered Territories (Commissione d'inchiesta sulle terre liberate e redente 1920–1922)

[5] Thus, for instance, in 1872 Bismarck appointed a railway committee by resolution of the Bundesrat (5 representatives each of agriculture, industry and commerce and the government) – to investigate railway routes, but also to act as a buffer authority between the state and the Lands (Marx 1936, 1138).

[6] According to Article 34: "The Reichstag shall have the right to, and upon the proposal of one-fifth of its members must, set up committees of investigation. These committees shall in public sitting inquire into such evidence as they or the petitioners consider necessary. The public may be excluded from sittings of a committee of investigation by a two-thirds majority vote. The rules of procedure shall regulate the business of the committee and determine the number of its members. The courts and administrative authorities are required to submit evidence requested by these committees; upon their demand the records of the authorities shall be laid before them. The provisions of the criminal code shall apply, as far as may be, to the inquiries of committees and of the authorities assisting them; nevertheless, the secrecy of the postal, telegraph, and telephone services shall remain unaffected" (Constitution of the German Reich, German National Assembly, translated by Howard Lee McBain and Lindsay Rogers, https://en.wikisource.org/wiki/Weimar_constitution).

[7] The main proponent of such regulation to strengthen minority rights in such way was submitted by Max Weber (Keppel 2022).

of power outside parliament meant that, much like in Italian practice, they completely lost their meaning and function.

Independent Poland adopted a parliamentary-cabinet system, drawing on the model of the Third French Republic. By 1919, the rules of procedure of the Sejm (the lower house of parliament) provided for the establishment of expert committees to investigate, among other things, the state of affairs in prisoner-of-war and internment camps, as well as in civilian and military prisons, the crisis in industry, and nationalist incidents. The 1921 Constitution explicitly stipulated (in contrast to the Constitution of the Third French Republic, after which it was modelled) the appointment of extraordinary committees by the Sejm to investigate certain matters (Art. 34). There were nine such committees between 1923 and 1929; they scrutinized the work of the administrative and social apparatus, but also looked into economic matters (i.a. state monopolies, railways etc).

Following the shift towards a higher status of the executive, the role of committees of inquiry gradually lost significance from the end of the 1920s onwards – they were eventually eliminated from the constitutional order in 1935, and although they could still operate within the framework of parliamentary regulations, they were no longer appointed.

The practice of all three countries under discussion indicates that a weakening of, or resignation from, the parliamentary system results in a natural and inevitable departure from parliamentary oversight of the government, and consequently, the disappearance of committees of inquiry as an instrument of such supervision. Reflecting on why committees of inquiry did not gain the same prominence in the decision-making process as in the UK, Fritz Marx, in his excellent work on German committees of inquiry written at the end of pre-war German history, pointed to Germany's long bureaucratic tradition – as he put it: two hundred years of civil service domination, which in turn means that information, data and decision-making processes take place at the bottom, not at the top of government (Marx 1936, 1135). He also argued that from the very beginning they were called into being only under the impact of emergencies, typically as the product of executive discretion, and as a buffer – to deal with the effects of scandals and government crises, often operating at the intersection of finance, industry and political power – and therefore for the benefit of government rather than being an instrument of control over it. He also drew attention to the role of commissions of inquiry in shaping public attitudes and the growing prominence of the media – even calling them, extremely figuratively, ventilators of mass psychosis (Marx 1936, 1140). These remarks turn out to still be remarkably valid nowadays.

4. Contemporary regulations – many resemblances and few significant differences

Regulations concerning committees are similar in the constitutional orders analysed, although the differences are worth pointing out, especially due to the systemic conditions and the effects of these differences on the basic task, which is the accountability of the executive. However, one should begin by emphasizing that in all the constitutional orders discussed, after the fall of an authoritarian regime, the

institution of CoIs was immediately restored at the constitutional level (in Germany that was 1949, Italy – 1946, Poland – 1989).

Committees of inquiry, regulated on constitutional level in the most of European states [8] became somewhat of a touchstone for parliamentary systems – systemically recognized as an important tool for performing the oversight function (Pavy 2020, 10).

In each of the three constitutional regulations of investigative committees, a separate provision is devoted – in the constitution of Poland (Zalesny 2010, 162) and in Italy it is the only constitutionally designated type of committee. The most extensive regulation is that of the German Basic Law,[9] specifying the mode of operation and the obligation to appoint, at the request of 1/4 of the members of the Bundestag; it was amended in 1956 by a provision concerning the Defense Committee right to establish a committee of inquiry.[10] This change was caused by the perceived need to protect information that could be disclosed during the work of the regular committee – this problem is also quite precisely regulated in Germany in the Act on Committees of Inquiry. The Constitution of the Italian Republic regulates commissions of inquiry in article 82,[11] according to which both houses of parliament may set up committees of inquiry whose composition reflects the proportion of parliamentary groups. Commissions conduct investigations and examination "with the same powers and limitations as the judiciary".

The wording of these provisions enacted in the 1940s reveals considerable prestige accorded to committees of inquiry, partly by the conferring of special para-judicial powers at the time of transition to parliamentary system. A similar situation happened in Poland after the fall of the communist regime, i.e. in 1989. As a result of the initial arrangements between the communist party and the opposition, Article 23(5) of the Constitution (of 1952) was introduced, according to which the Sejm could appoint a committee to investigate a particular matter, with the powers and mode of action determined by the Sejm. Since 1997, according to Article 111.1 of the Constitution of the Republic of Poland, the Sejm may appoint a committee of inquiry "to examine a particular matter." Thus, the regulation is very general and laconic and it is left to the law to define all particular issues.

[8] Although Article 70 of the Dutch Constitution mentions only the Chamber's right of enquiry, without mentioning the committees, they are explicitly mentioned in the other articles. In Estonia the legal basis for setting up PCIs can be found outside the Constitution: it is regulated in Riigikogu Rules of Procedure.

[9] According to Article 44 Of German Basic Law (1949): The Bundestag shall have the right, and on the motion of one quarter of its Members the duty, to establish a committee of inquiry, which shall take the requisite evidence at public hearings. The public may be excluded (44.1). The rules of criminal procedure shall apply, mutatis mutandis, to the taking of evidence. The privacy of correspondence, posts and telecommunications shall not be affected (44.2). Courts and administrative authorities shall be required to provide legal and administrative assistance (44.3), and at the same time the autonomy of both bodies and proceedings shall be guaranteed (44.4): The decisions of committees of inquiry shall not be subject to judicial review. The courts shall be free to evaluate and rule upon the facts that were the subject of the investigation.

[10] According to Article 45a.2 the Defense Committee shall also have the powers of a committee of inquiry. Minority right is also guaranteed - on the motion of one quarter of its members the Defense Committee has the duty to make a specific matter the subject of its inquiry.

[11] Art. 82: Each House of Parliament may conduct enquiries on matters of public interest. For this purpose, it shall detail from among its members a Committee formed in such a way so as to represent the proportionality of existing Parliamentary Groups. A Committee of Enquiry may conduct investigations and examination with the same powers and limitations as the judiciary.

Already at this level at least two significant differences can be observed – committees in Poland and Germany function solely in the lower chamber, while in Italy both chambers of parliament (as in some other European countries who also set up joint committees – e.g. Spain, the Netherlands)[12] can set up committees, and joint committees can also be formed.

Particularly noteworthy is the exceptional (also against the background of many other European constitutional systems) constitutional regulation obliging the Bundestag to appoint a committee at the request of a quarter of its deputies (and in the Defense Committee – at the request of a quarter of its members).[13] This is one of the rights of minority, traced back to the Weimar Constitution, that are strongly protected in the German constitutional order – to such an extent that at the beginning of the 18th term, when the opposition minority had less than 25% of seats in the Bundestag, the regulations were temporarily changed, giving the right to appoint a commission to a group of 120 deputies (Art. 126a of Beschlussempfehlung und Bericht des Ausschusses für Wahlprüfung, 2014). The appointment of a commission at the request of a minority has enormous potential in terms of the accountability of the authorities, freeing this instrument from the political logic of the government majority. This is a vital minority right, used in particular by the opposition to ensure investigation of cases of alleged misgovernment, maladministration or misconduct on the part of individual politicians (Linn and Sobolewski 2015, 51).[14] Simultaneously, it does not play that much in practice, particularly in exercising parliamentary oversight over government.

Both Polish and German committees act on the basis of relevant acts: In Poland the 1999 Act on Sejm Investigative Committees[15] (partially also the Standing Orders of the Sejm) and in Germany the 2001 Act on Committees of Inquiry.[16] Italian committees, in turn, operate only on the basis of the parliamentary Standing Orders: Rules of Procedure of the Chamber of Deputies and Rules of Procedure of the Senate, furthermore, each time and episodically, by acts establishing the committee of inquiry in question and their internal rules. The Italian regulation is hence sparse, but what is striking is that it largely follows the tradition of the pre-war period – committee regulations are enacted *ad hoc*, and the handling of the motion is subject to the mode of proceeding the bill.

[12] It is worth mentioning that an attempt was made to limit the right of the upper house to set up committees of inquiry - the government's proposition was to redefine the role of the Senate in the constitutional system, including taking away its right to set up committees of inquiry or limiting it to matters of regional autonomy only ("materie di pubblico interesse concernenti le autonomie territoriali"). However, these attempts failed – and further, they were met with skepticism in the literature (Bardazzi 2016, 12-13).

[13] Interestingly, in a few other countries minority rights are also guaranteed - in Austria, if a request is made by 46 deputies, the National Council has to appoint a committee of inquiry. Another interesting example is Greece - a minority of 2/5 of the total number of members of the Chamber of Deputies is sufficient to establish a committee.

[14] However, at this point it should be remarked that this minority right is rarely exercised, especially in recent years due to the substantial size of the governing coalitions and the atomization of the opposition (Rozenberg 2020, 34).

[15] It is worth mentioning that the Act was enacted in the wake of a major political scandal (the prime minister was suspected of collaboration with Russian intelligence) - however, no committee was set up at the time.

[16] Gesetz zur Regelung des Rechts der Untersuchungsausschüsse des Deutschen Bundestages (Untersuchungsausschussgesetz - PUAG) vom 19. Juni 2001 (BGBl. I S. 1142). The passing of the Act solved much of the controversy surrounding how to deal with the lack of precise rules for such investigations (Mehde 2008, 111).

The appointment of committees of inquiry is regulated in a similar way in each country – in all regimes it is an independent decision of the chamber of parliament, in Germany and Italy it requires a simple majority, but as mentioned, according to a rule already laid down in the Grundgesetz, the Bundestag is obliged to appoint a committee on the motion of one quarter of its Members. In Italy both Standing Orders: The Chamber of Deputies[17] and the Senate provide that requests for parliamentary enquiries are dealt with like draft laws (Rule 140 and Rule 162 respectively).[18] In turn, according to Polish statutory regulation, a committee is appointed by the Sejm by an absolute majority of votes. The latter solution obviously increases the dependence of the commencement of the parliamentary inquiry on the will of the majority.

The regulation of the composition of investigative committees shows significant similarities. In all three systems, the structure of the committees must reflect the proportion of power in the parliament, so it is in parity. Italian Rules of Procedure in this matter echo the constitutional regulation, on the composition of committees of inquiry (Rule 141.1. of the Chamber of Deputies and Rule 162.3 of the Senate). In Germany, under § 4 of the Act, the Bundestag determines the number of members and substitute members of the committee of inquiry, provided that the composition of the committee reflects the composition of Parliament; each faction must be represented. The number of seats for the parliamentary groups is calculated using the mathematical proportion method (St. Lague/Schepers). The members are elected by the parliamentary factions – the chairperson and the deputy are appointed by the committee in accordance with the arrangements laid down by the Council of Elders. Similarly, the Polish act provides that the composition of the committee should proportionally reflect the composition of the parliamentary clubs and groups – though only those with representatives in the Council of Seniors. The Polish Act even regulates the number of committee members (Art. 2.2) with the maximum being 11 persons. This is a classic solution for the rules of parliamentarism, but again it draws attention to subordination to the logic of the parliamentary majority – ensuring parity in composition does not release the majority from supremacy in COI.[19]

All committees of inquiry in the examined states have extensive investigative power, regulated in quite a similar manner; they may carry out on-the-spot investigations; request documents from the government, national authorities, agencies, any natural or legal persons; seek expert opinions; interview officials as well as any other natural person (Pavy 2020).

[17] Il Regolamento della Camera, Parte III - Procedure di indirizzo, di controllo e di informazione, capo xxxii - delle inchieste parlamentari.

[18] The Senate regulations provide for a mandatory procedure and deadline for the commencement of such an enquiry in committee, provided that it is requested by 1/10 of the members of the Senate (162.2). However, the Senate's obligation does not concern the conduct of proceedings (investigations) in committee - but merely discussing the proposal to initiate such activity - it needs to be placed on the committee's agenda (Bardazzi 2020, 6).

[19] It is worth noting that in Poland in February 2022 a draft was presented for a commission of inquiry in the controversial case of wiretapping and tracking of citizens, including opposition politicians, by the authorities with the Pegasus system - the application was submitted by independent deputies, and the proposed composition differs slightly from the assumptions of the Act: 5 seats each for the government majority and the opposition and 11 seats for the chairman for an independent MP. At the time of submitting this text, the draft has not yet been considered by the Sejm.

The specificity of the work of investigative committees requires the particular procedural rules. On one hand, they are parliamentary bodies, by their nature internal and auxiliary to parliament in pleno – and on the other hand, investigative committees conduct investigations, gathering evidence and establishing facts, therefore they operate under a strictly defined procedure, fulfilling the obligations of establishing the truth and guaranteeing the rights of persons interviewed by committees. Therefore, references to court procedures appear in the regulations – the Italian Rules of Procedure of both chambers confer the same constraints on parliamentary committees as on judicial authorities (141.2 and 162.5). In Poland there is a rule that persons summoned by the committee are required to give evidence,[20] and the provisions of the Code of Criminal Procedure apply accordingly to the questioning of persons summoned by the committee. It is worth to mention that many of the norms contained in the Polish act concern the exclusion of members if there are doubts as to their impartiality (Articles 4, 4a, 5, 5a and 6) – these provisions were laid down in the amendment of 3 June 2005, following the experience of the first committee of inquiry.

The German Act defines the procedure of the commission's work in great detail, paying particular attention to transparency[21] and exhaustively specifies the modes of the committee's activities, the conduct of the inquiry and the obligations of federal authorities, corporations, institutions and foundations in this respect (§ 12,13,18 of the German 2001 Act on Committees of Inquiry). The Act also contains regulation on the resolution of disputes arising from the functioning of a committee of inquiry – they are resolved by the Federal Court of Justice (§ 36).

In practice, the question of the investigative nature raised many doubts as to the nature of the relationship with court proceedings, especially pending ones. In the Italian practice, the constitutional wording regarding acting 'as an organ of judicial authority' is controversial, especially in practice (as discussed in Section 5) – however, here it is worth mentioning that an important restraint was introduced into this regulation by the Constitutional Court. It has defined the limits of judicial authority used by the COI; its task was declared as "not to judge, but only to gather news and data necessary for the exercise of the functions of the Chambers" (Sentenza della Corte Costitutionale n. 231/1975). More than 30 years later, in 2008, the Italian Constitutional Court pointed out that cooperation between investigative bodies and the parliamentary committee is not only the responsibility of both bodies, but also a principle of a systemic rank (Sentenza della Corte Costituzionale n. 26/2008 - Ludione 2008, 1-2).

The Polish statutory regulation allows the committee to conduct investigation besides the fact of pending judicial proceedings or a final conclusion thereof by any other public authority (art. 8.1), but it provides for the possibility for suspension of a parliamentary

[20] This general rule applies to everyone summoned by the committee of inquiry, the Constitutional Tribunal only exempted those holding positions with a legal status independent of other constitutional bodies (e.g. the President of the National Bank of Poland) from the obligation to testify.

[21] § 12,13. The committee may also appoint its own investigator, conferring on her/him the scope of the investigation (Section 10).
It is also necessary here to distinguish investigative committees, which the Bundestag establishes to prepare legislative decisions on complex and important issues. They are composed of Members of the Bundestag and external experts, who enjoy the same rights as the parliamentarians and prepare the materials for legislative decision-making (Linn and Sobolewski 2015, 50-51).

inquiry by the Committee (8.3), if material collected in the course of the proceedings before another public authority might prove useful during comprehensive examination of the matter by the committee (8.4.).

The regulations in the three analysed systems do not say much about the conclusion and publication of the results of the work of committees of inquiry. The findings of committee of inquiry in all three countries do not entail a sanctioning or binding effect – in Germany, according to Article 44 (4) of the Basic Law, the courts are free to evaluate and rule upon the facts that were the subject of the investigation. The report is submitted to the Bundestag (§ 33) – if the committee does not agree on a joint report, separate opinions may be expressed. In Italy the report of a COI is not determined by law – the usual practice is that the report of a committee of inquiry is not discussed by the Italian Chamber. It has been emphasized in the literature that, on the one hand, this is a manifestation of the committee's autonomy, but on the other hand, it leads to reduced Chamber influence on the exercise of the oversight function (Bardazzi 2016, 5).

Relative to the other countries, the Polish Act on COI pays the most attention to the reports of the committee. According to this law, the report is presented to the plenary in order to be discussed, but no voting is held on the report. The Polish rules on the preparation and presentation of the reports of committees of inquiry were quite substantially amended by the previously mentioned amendment to the 2005 Act, which introduced rules on dissenting opinions to the report, its preparation by the committee's chairperson and the right to present amendments, as well as the fact that the parliament does not vote on the committee's report. This was instituted following the bizarre end to the work of Poland's first committee of inquiry, where the report prepared by the committee was rejected by the Sejm in a vote; instead, out of several versions of the report prepared by its members as motions of minority, the chamber accepted only the one that was in radical contrast to the position voted on by the committee majority. It prompted a discussion about the legitimacy of such a "vote over the truth" established by the committee in its report; in consequence the amendment introduced a clear ban on voting on the committee's report.

Another noteworthy feature of the Polish statutory regulation is the committee's power to file a motion to hold the highest officials constitutionally accountable, if its findings justify the charge of committing an act in violation of the Constitution or a statute (Art. 18).[22] Such resolution is passed by a 2/3 majority of committee members. This constitutes a rare exception to the principle according to which parliamentary committees of inquiry are not of a legally binding or applicable nature. It is worth noting at this point that Polish committees of inquiry – despite the exceptionally accusatory tone of some of their reports – have never made such a request. Committees may still submit motions for criminal prosecution to the prosecutor's office and request other authorities take appropriate action – and such motions have indeed been submitted.

[22] However, according to the constitutional regulation such a motion may not concern either the President or ministers, which drastically limits this competence.

The work of COIs is in general open and often public. This is the case in Italy, and has also been the case in Poland since the first commission of inquiry, established in 2003.[23] The Polish law explicitly regulates the openness of the committee's work, including the right of the press to record images and sound from the meeting (under Article 16a). Against this background, the first broadcast of the German committee of inquiry meeting only took place in 2005. At that time, however, the parties agreed that only the interrogation of ministers and secretaries of state would be broadcast, and not other witnesses. But this, in turn, as Mehde points out, showed who really runs and decides the work of the commission – not its members, but political parties. It was similar to the decision to terminate the work of the committee in connection with the elections – although the FCC did not agree to such a solution at that time (Mehde 2008, 112; BVerfGe, Beschluss vom 15.06.2005, 2 BvQ 18/05). The problem of assessing the confidentiality and relevance of materials occurred in Germany, due to the federal government's refusal to provide access to information. The Constitutional Court decided that the discretion of government to decide which documents contain relevant information for the Bundestag breaches the investigative powers of COI (Federal Constitutional Court ruling of 17 June 2009, 2 BvE 3/07). The Court also confirmed the COIs' right to request information and its scope in its 2009 and 2016 rulings.[24]

COI regulations in the three countries analysed exhibit considerable similarities, forming a coherent model: they are well-recognized, traditionally parliamentary bodies. The committees have parity composition (in Italy even at the constitutional level), they are appointed by a majority decision of the Parliament, except in Germany, where they shall also be appointed obligatorily at the request of one quarter of the members. The committees share similar *modus operandi* and competences – they act as an investigative body, applying the rules of criminal procedure; they are vested with extensive investigative powers. A COI's report as a rule is not subject to a vote and does not directly oblige further activities of parliament. In all countries, acceptance of a report by parliament takes place through a reading of it, and possibly a follow-up debate, at which point the report is also released to the public.

Committees of inquiry are purely parliamentary bodies operating with transparency, and thus they provide the public with access to their investigations of matters of relevance and public importance. In all three countries under review, the dual nature of the committees has indicated the need to clarify the relationship between the activities of the committees and other proceedings, in particular those carried out by the courts.

Yet it seems to be aptly argued in the literature that the primary objective and focus of the committee's work, especially from the point of view of the transparency of its work and its accountability function, is not the report – a detailed document usually amounting to several hundred pages – but the investigation itself, frequently conducted

[23] The change occurred during the work of the Sejm Committee of Inquiry to investigate allegations of corruption during amendment of the Broadcasting Act. The case was the first one appointed on the basis of the 1999 Act.

[24] As the Federal Constitutional Court ruled in 2016: The right of a parliamentary committee of inquiry to collect evidence is subject to limitations; any such limitation, including those set out by ordinary statutory law, must be rooted in constitutional law (cf. Accordingly, obligations arising under international law cannot immediately limit the parliamentary right to collect evidence, given that these obligations do not have constitutional rank. Order of 13 October 2016 - 2 BvE 2/15.

in the spotlight – as is the case in Poland – or somewhat more discreetly, but still with public access to the evidence (Germany). Sittings, and particularly committee hearings, are usually open to the public, often streamed on the web or televised. It is on this element – the oral part of parliamentary investigations – that public attention is focused, and which seems to form the centrepiece and to make sense of the appointment of committees (Rozenberg 2020, 17). It also evokes specific expectations and fears about accountability in practice, particularly about the risk of "over-narrative" strategies mentioned in section 1.

5. The subject matter and objectives of COI activities – what is in the public interest?

Analysis of in which cases parliaments decided to establish committees of inquiry shows that there are significant regularities in this regard, which leads to remarks about their actual functions.

The function and structure of a parliamentary body, such as a committee of inquiry, assumes that the subject matter of the committee's proceedings must be a derivative of parliament's function – as has been rightly argued, parliament cannot entrust its subsidiary body with more power than it holds itself (Zaleśny 2010, 176). The constitutional regulations are rather vague in this respect, failing to clearly indicate to what extent proceedings may be conducted in committees of inquiry – the Polish constitution indicates that these are "particular matters" (Art. 111), the Italian Constitution states that these are "matters of public interest" (Art. 82). (Art. 82), while the German constitution does not determine the scope of the investigation at all; it is resolved by the German law of 2001, according to which the committee may investigate matters within the limits of the constitutional jurisdiction of the Bundestag (Art. 1.3), also envisaging the Federal Constitutional Court's oversight of the limits of this competence. A COI may be appointed to investigate any "particular matter" (Article 1.2 of the Act). This has been made more precise by an FCC ruling that related to the functioning of the Council of Ministers and governmental administration.

In Poland and Italy, the issue of the limits of committee investigations has also been a controversial and questionable matter, as the legal norms here left some room for broader interpretation of parliamentary competences, which could lead to the assumption that committee investigations go beyond the function of overseeing the executive (Isoni 2011, Bardazzi 2016, 5). Against this background, in the Italian context the concept of a separate function of parliament even occurred – the so-called investigative function, i.e. to carry out extensive inquiries beyond the oversight of the executive, related to learning about the reality and possibly taking legislative or political steps (Silvestri 1970, 544, Bardazzi 2016, 3). In the Polish situation, the matter of the boundaries of committee investigations was settled in the judgment of the Constitutional Tribunal of 21 September 2006 (U 4/06),[25] which stated that the scope of activities of a

[25] Although Polish legislation (unlike German) does not explicitly provide for such competence of the Constitutional Tribunal, appointed to review only normative acts - there are fundamental doubts as to whether a resolution appointing a committee of inquiry meets this condition of admissibility of review - in this judgment, the Tribunal resolved that such a resolution appointing a CoI does in fact have the character allowing it to be reviewed.

committee of inquiry may not surpass the scope of parliamentary oversight exercised by the Sejm. In particular, the judgment stated that it is inadmissible to investigate the activities of the National Bank of Poland, as it does not belong to the executive over which the Sejm exercises its oversight, nor is it part of the public administration subordinate to the government. The Tribunal stated that it is also unacceptable to appoint committees of inquiry to scrutinize the activities of private persons or entrepreneurs; the scope of parliamentary scrutiny, and in particular that exercised by committees of inquiry, does not concern such entities, but only ministers and their activities.

However, wide-ranging parliamentary action has still raised concerns, notably about preserving the autonomy of the judiciary's action in the face of such extensive parliamentary investigative powers and, above all, about the status of litigation guarantees that the commission is unable to provide. In Italy, parliamentary enquiries have been the subject of much controversy on a practical level, especially the relations between judicial proceedings and investigations carried out by committees. This problem was partly resolved in the 1975 Constitutional Court decision, pursuant to which the main function of committee enquiries is not "to judge, but to collect the information and data necessary for the performance of the functions of the chambers", since they "are intended to make all useful elements available to Parliament so that it may, with full knowledge of the facts, decide on its own course of action, both by promoting legislative measures and by calling upon the Government to adopt, within its competence, appropriate measures". In several cases, mainly concerning the Mafia, with concurrent parliamentary investigations, the courts have challenged the committee's right of access to the files of its proceedings, citing precisely the lack of necessary process guarantees and the lack of confidentiality of the committee's files. It has been referred to as "functional secrecy", which consequently increased the organizational autonomy of the committees of inquiry (Bardazzi 2016, 10). Finally, in 2008, the public prosecutor and other organs reaffirmed the need to respect the principle of loyal cooperation between State authorities, assessing both as having parallel and constitutionally relevant investigative powers (Buonomo 2008).

An even more interesting question arose two years later in Polish practice – namely, the Constitutional Tribunal reviewed the resolution establishing a committee whose task was to investigate the pressure exerted on the secret services by members of the government – however, this pertained to the government which had already resigned, after the end of the parliamentary term. On 26 November 2008, the Tribunal ruled (U 1/08) that the constitution did not limit the oversight function of the Sejm to the government currently in office, and that it should be broadly construed – thus a committee investigation is possible in order to examine the actions of ministers who have long ceased to hold office. This is how the practice of Polish committees of inquiry evolved – with the exception of the first one, set up to investigate illegal influence in order to amend the media law, which implicated ministers and officials representing the then-current government, all others have concerned incidents from the more distant past.

The reality in the three political systems in question shows that committees of inquiry are a frequently used instrument of parliamentary oversight. The largest number of

committees set up so far has been in Germany (63 committees have been appointed to date), even taking place immediately following the end of the 2nd World War: 9 (first term 1949–1953) and 8 (second term 1953–1957). Only one term of office saw no committees appointed (1957–1963), and only once was there just one (during the 1969–1972 term). On average, the number of committees is 3–4, with about 1/4 of them being committees within the Defence Committee. The committee's scope of work is varied (see: Appendix) and the rich practice makes it difficult to classify them. However, many of them fall into the following categories:

1. Alleged or exposed abuses or negligence in the exercise of functions in the state administration (e.g. Investigation of abuses in the federal administration (e.g. *Platow* Committee of Inquiry - 1951–1952), Committee of Inquiry *Visa issuing practice since 1998* - 2004–2005),
2. Issues of malpractice in public procurement (e.g. the COI on contracts awarded in the Bonn area (1950–1951), the Defence Committee *Case of bribery in the Federal Procurement Office of the Armed Forces in Koblenz* (1957),
3. Controversies surrounding large capital conversions (e.g. allegations of corruption in connection with the question of determining the capital between Bonn and Frankfurt (the so-called Spiegel Committee),
4. The activities of the special services and state security (e.g. the committee on telephone tapping (1963–1964), the CoI on *State Security and Counterintelligence* (1968–1969), the CoI into the *Strauss / Scharnagl wiretapping affair* (1978–1980),
5. Incidental events generating great interest and agitation, like Defence Committee as a Committee of Inquiry *The Ramstein Air Accident* (1988–1989), CoI on *HIV risk due to exposure to blood and blood products* (1993–1994).

The commissions established within defence committees are particularly noteworthy – since the opportunity was available, each term has seen around a quarter of committees being this kind, although a significant portion of parliamentary investigations are of similar scope or at least share the context. One well-known example is the committee set up in March 2014 in the NSA case, to investigate how and at what scale foreign intelligence services had collected data on communications, including members of the Federal Government, federal staff, Members of the Bundestag or members of other constitutional bodies from, to and in Germany.

German practice indicated also that most of the committees formed in the 21st century have concentrated on matters of public interest from the front pages of the German press. What is more, many of them originated from individual events that shocked public opinion (such as a terrorist attack or even a paedophile scandal), without significant links to the functioning of the executive (Rozenberg 2020, 52). The function of the executive's control gives way here to the parliamentary will to explain matters that outrage the public opinion. In academic debate, disappointment has been expressed regarding their effectiveness (Wolf 2005, 876, Mehde 2008, 112) as well as their submission to the reality of political confrontation rather than as an objective tool to get a reaction (Mehde 2008, 112). Neither the legal nor the political consequences of parliamentary investigations were significant – a perfect example is the last Wirecard report of the commission, published in April 2021 – it made serious accusations against

Angela Markel and, above all, the then Minister of Finance, Olaf Scholz, who still took the chancellor'soffice soon afterwards (AB/RT 2021).

Similar conclusions can be drawn from the Italian practice. Committees of inquiry have been appointed in the Italian Parliament on many occasions and have been particularly numerous in recent years. In the 10th legislative term seven committees, during the 14th parliamentary term ten committees of inquiry were appointed. In the 16th term, seven committees were formed. The 17th term saw a record number: three parliamentary committees of inquiry were set up in the Senate, six unicameral committees in the House and there were three bicameral committees, making a total of eleven committees. Many of them functioned for multiple terms, which is striking due to the duty of committee to resolve the question and matter it is devoted. Among others, the Italian committees set up after the Second World War examined the Anti-Mafia matters six times since 1958[26] (III V XI XII XV XVII terms of office), waste cycle five times (XII XIII XIV XVI XVII (XII term of office as COI of Chamber, after – Senat COI, in next terms: both of chambers). The committees of inquiry to investigate both of these matters were also appointed in the 18th term – as can be concluded, on a cyclical basis.[27]

A review of investigative committees in Italy indicates that committees of inquiry are also set up to look into sensitive issues, administrative fraud and unclear financial transactions, as well as state security (organized crime, terrorist attacks). They often have only an indirect, or even only potential, relationship with the actions of the government, especially those in office at the time of the investigation. As has been pointed out in the literature, the Italian experience shows that committees of inquiry are used as a tool of the parliamentary majority. A parliamentary enquiry was regularly chosen in a purely political way, often in order to avoid cumbersome judicial investigations. Bardazzi cites, among others, examples of such investigations in the "Telekom Serbia" case (XIV term of office of parliament), as well as the "Mitrochin" case (COI appointed in 2002), affairs and scandals related to the activities of foreign intelligence and entering into particularly controversial matters of international interest against officially established foreign policy. The committees thus occasionally take on the function of channelling attention and finding out the truth about controversial activities – albeit at the behest of the ruling

[26] Parlamento Italiano n.d. However, this is not just an Italian peculiarity - there were, for example, record-breaking numbers of committees of inquiry in the Portuguese Parliament into the 1980 plane crash that killed Prime Minister Francisco de Sá Carneiro, along with the Minister of Defence. The air force considered it an accident, and the police (Attorney General) suspended the investigation in 1983. However, the circumstances of the accident were suspicious enough to set parliamentary enquiries in motion, which eventually resulted in a total of ten enquiries. Their conclusions depended on the parliamentary majority; finally in 2004 (the 8th parliamentary investigation) it was established that it was an assassination. In 2013, Esteves admitted he was the agent and perpetrator of the assassination (in the 10th investigation before the 10th committee) and explained how and why he carried out the assassination. Another assassin, Fernando Farinha Simões published an extensive confession in 2011- detailing how he carried out the assassination.

[27] These are: parliamentary committee of inquiry into illegal activities connected to the waste cycle and related environmental offenses and parliamentary committee of inquiry into the phenomenon of mafias and other criminal associations, including foreign ones. In XVIII term of office there were appointed also committees of inquiry into: 1. Events affecting the Il Forteto community - Appointed 26.03.2019, concerning the obligations of institutions with regard to the care of minors, including adoption, 2. Banking and financing system (established 16.04.2019) - according to the law establishing it, it is to submit annual reports and proposals for regulatory changes, 3. activities relating to family-type institutions that receive minors, appointed on 29.07.2020.

majority. For this reason, they have even become known in the literature as dishonest investigations ("inchieste canaglia" – Manzella 2003, after Bardazzi 2016, 5), replacing or overlapping ongoing judicial investigations.

This kind of practice can also be observed among Polish committees of inquiry. While compared to German and Italian practices, the number of Polish committees of inquiry is relatively small, the practice is fairly new; the COI Act was passed in 1999, with the first committee of inquiry only appearing in 2003. There is an interesting tendency towards, if not the disappearance, then at least a diminution of the significance of this parliamentary instrument. Since then, a maximum of three committees were appointed in each parliamentary term.

In the short practice of Polish committees, two trends regarding the matters of their interest seem to be prevalent. The first one involves a significant predominance of committees which are set up to investigate the circumstances of the involvement of the governmental administration in ownership transformations, including allegations of corruption and abuse occurring at the intersection of political and economic life – both in the process of conducting state affairs and in the preparation of legislative solutions (or their omission). Out of the total of 10 committees established so far, 8 investigated such affairs.[28]

Moreover, several committees investigated allegations of the abuse of power on the part of members of the government against the special services, and allegations concerning the operation of the police and prosecution authorities. These issues drew the most attention of the parliamentary investigations,[29] and all the committees were set up to investigate matters that stirred up public opinion, made headlines and had a strong impact on voters' opinions and beliefs.

The other noticeable trend is a pronounced reluctance or even failure to appoint committees during a second term, i.e. when the ruling majority wins – this was the case in the 2011–2015 term and it has continued during the current term (from 2019). As a matter of fact, only the first committee, investigating the corruption process related to the amendment of the media law, brought tangible results in the form of holding the

[28] There were committees investigating the following matters: allegations of corruption during amendment of the Broadcasting Act (2003), allegations concerning irregularities in the supervision of the Ministry of the State Treasury over representatives of the State Treasury in the company PKN Orlen S.A. and the use of special services for illegal pressure on the judiciary in order to exert pressure on members of the Management Board of PKN Orlen S.A. (2004), Review of the correctness of the privatisation of PZU SA (2005), Committee of Inquiry into the decisions concerning capital and ownership transformations in the banking sector and the actions of banking supervisory authorities in the period 1989 - 2006 (2006), The legislative process of acts amending the Act of 29 July 1992 on gambling and pari-mutuel betting (2009), the correctness and legality of actions and the occurrence of negligence and omissions of public bodies and institutions in the provision of State Treasury revenue from goods, services and excise taxes in the period 2007 - 2015 (2018), the regularity and legality of public bodies and institutions' actions towards entities of the Amber Gold Group (2016).

[29] There were committees investigating: the circumstances of the tragic death of former MP Barbara Blida (2007), 2. cases of pressure exerted on special services and judicial officers by members of the Council of Ministers and heads of services in the period from 2005 to 2007 (2008), allegations concerning irregularities in the supervision of the Ministry of the State Treasury over representatives of the State Treasury in the company PKN Orlen S.A. and the use of special services for illegal pressure on the judiciary in order to exert pressure on members of the Management Board of PKN Orlen S.A. (2004), the regularity and legality of public bodies and institutions' actions towards entities of the Amber Gold Group (2016).

government accountable – admittedly, there were no motions for constitutional accountability, but the parliamentary majority suffered a huge reputational loss and lost the next parliamentary elections due to reduced political influence. All other committees in Poland were set up in an atmosphere of "restoring justice" after the rule of their predecessors and concerned past actions, that is, before the change of the parliamentary majority. For the most part, the other Polish COIs were supposed to serve as revenge on political opponents, exposing their mistakes, malpractice, corruption or, at best, inertia and incompetence. This has of course been influenced by the way in which the committees are appointed, namely that the process depends on the will of the majority and has been ruthlessly exploited by that majority in a way that has been consolidated over several decades.

Relations were also very close between committee activities, the subjects of their research, and court proceedings – however, they were not aimed at replacing the courts with parliamentary investigation, which was more convenient from the point of view of the ruling majority, but rather at demonstrating indolence and inertia by law enforcement agencies and the judiciary – the last committee, appointed in the Amber Gold case serves here as a perfect example.[30]

Polish committees of inquiry have displayed a highly visible forensic character, operating under a rather inquisitorial procedure, subordinated to the will of the majority of their members. No significant legal or political consequences followed from the work of these committees, with the exception of the committee investigating the circumstances of the kidnapping of K. Olewnik (the case related to the kidnapping of a businessman's son and the extremely inept police investigation that followed), which triggered legislative changes concerning the liability of officers, witness protection, the Police, operational supervision, and classified information – this committee was virtually the only one lacking a strictly political agenda, in fact it was the only committee not directly engaged over political issues.

The reports of Polish COIs contain many motions for prosecution (e.g. in the report of the committee investigating pressure exerted on the special services), but very few actual findings. There were also announced and suggested in advance proposals for proceedings before the courts or the Tribunal of State, although none of the committees formulated such a request. This feature of forensic accountability is clearly visible in Polish committees and since 2004 it has essentially consisted of the parliamentary majority demanding the exposure of the mistakes of their political opponents who held power in the past. One tends to agree with Rozenberg, who referred to Poland as an example of committees acting as "a majority-led procedure against the previous government" (Rozenberg 2020, 34). In Poland, committees of inquiry have had a distinctly retrospective, perhaps even retaliatory, character, often accompanied by the increasing polarization of the political scene since the early 2000s. Almost all these parliamentary performances, ostensibly around researching the truth and finding the guilty, were completely subordinated to political bias and confrontation.

[30] The Amber Gold affair was one of the biggest financial scandals in contemporary Poland. It was a pyramid scheme; public authorities, including the public prosecutor and courts, as well as governmental and independent regulatory bodies, seemingly failed to act against the company, ignoring serious signals from regulators and the criminal record of its owner.

6. Functions of committees of inquiry – towards blame managing or looking for fame

Committees of inquiry are still a vital instrument in the exercise of parliamentary power, designed to be the setting for accounting for the exercise of entrusted authority. The features of constitutional and statutory regulation prove the historical conditions of the solutions adopted, close ties with parliamentary traditions and the constitutional experience of a particular state – despite the discontinuity of committees of inquiry during the years of authoritarian rule. Committees are thus a permanent feature of the parliamentary game in all three countries – although used for slightly different purposes, influenced by politics and morals, and sharing the fate of parliament itself with a decline in their meaning during times of preponderance of the executive, or outside parliament power.

But committees designed as an instrument of parliament to control the government are subordinated to the rules of seeking the truth in conditions akin to judicial procedure. However, this dual function in a political environment, especially one as mediatized as it is today, means that something must be a victim – either the truth, or a political narrative subordinated to the will of the majority will prevail.

The tension between the parliamentary nature and the investigative task of the committee is already visible at the stage of the decision to establish the committee. It is true that "the German exception", which requires the commission to be appointed in accordance with the will of a quarter of the Bundestag, aims to eliminate the effect of the will of the majority. Nevertheless, the impact of the commission's report on the actual functioning of the government, even when accused of serious abuse or neglect, is slight and therefore accountability is performed ineffectively. Also, careful design of the composition of the committees of inquiry, subject to the logic of parliamentary parity, means in practice an advantage of parliamentary factions on the decisions and work of the committees. Members of committees are agents of their factions – it is visible not only in COI's voting, but also during an investigating procedure.

The shortcomings of the operation of commissions are clearly visible in the legal regulations presented, and especially in the amendments to them, forced by problems revealed in the course of their operation. Legislative efforts are aimed at reducing concerns about the impartiality of members (Polish regulations), as well as the protection of information disclosed during its work (Italian and German committees). A lot of tensions and controversies arise especially at the interface between the activities of the investigative commission and court proceedings – regulations and jurisprudence in all three analysed countries are trying to determine the boundary between parliamentary investigation and the actions of courts and law enforcement agencies. This problem has become fully apparent in Italian practice, where attempts are made to replace the judiciary actions controlled by the majority of investigations. It is also visible in Polish practice – many of the activities of investigative committees were in fact aimed at discrediting the ineptitude and tardiness of the actions of police, special forces and courts.

Another remark concerns the effects of the commission's activities. In all the analysed countries, the regulations pay relatively little attention to committee reports. The Polish

law includes provisions regulating in detail the procedure for its preparation and the prohibition on voting in the parliament – but this is a result of embarrassment related to the report of the first investigative committee, when the vote and decision in the parliament were not covered by the results of the committee's work. The preparation of the report, being *de facto* the outcome of the committee's work, as well as any follow-up measures taken in connection with its conclusions for the future, are not as attractive to the media as an inquiry in the presence of the cameras (von Münchow 2013, 71, Rozenberg 2020, 19). This is linked with the character of COIs. Committees tend to probe "front-page" matters, those causing concern, frustration and even anger in society – their task is therefore to "right wrongs, identify the guilty, restore justice". This task, however, is primarily carried out in a verbal and declarative manner. The COIs' work is primarily performed in sittings, gathering oral testimony from those summoned – this gives a unique opportunity to play out the political spectacle of "fighting injustice" and to demonstrate vigorous efforts in the investigation – though not necessarily when presenting the findings. It is therefore an activity that allows the members of the committee to present their attitudes and resolute actions in response to politically, socially or morally upsetting events or long-standing problems in social practice.

As a process, such enquiries can provide an explanation, even a *cathartic* effect – but they can also distract public opinion by feeding it secondary information or stirring up controversy, raising the importance of certain problems or events over long hours of questioning and via the attitudes taken by the members of the committee.

Observation of practice during recent decades in the three countries shows several regularities. The evidence of the functioning of committees in the last dozen years in Germany, Italy and Poland also indicates that committees of inquiry are rarely functionally connected with holding ministers or the government accountable for their policies or administration *in corpore* (Rozenberg 2020, 32). The German, Italian and Polish committees mainly investigate issues related to the operation of state security organs, procedures of drafting legislative proposals, public procurement, and more broadly: relations between business and authorities in specific matters, which creates an opportunity to examine things that are usually hidden. The majority of COIs are devoted to seeking links between big business and politics, which shows the socio-economic challenges of modern politics – and sometimes even the powerlessness of the regular methods of political supervision in this regard. The committee thus serves as a means for MPs to pursue certain information that they would not otherwise get. It is thus parliament's autonomous source of information, but in the case of committees it obtains information by way of inquiry under judicial procedure. Consequently, these are much better and more effective conditions for obtaining information, not only from a direct agent, i.e. a minister or prime minister, but even more essentially, from officials of the entire complex apparatus of state administration, whose actions usually fade away into the secrecy of cabinets, small individual decisions, the "capillaries of power", according to Foucault's notion.

They are also often appointed to deal with issues regarded as particularly controversial (such as paedophilia, child custody, or organised crime) and concerning the activities of special services and law enforcement agencies. There is also a noticeable tendency to steer the interest of the committees towards the functioning of the judiciary, at times

leading to concurrent proceedings in committees and in the courts – or parliamentary committees preceding possible court proceedings (Italy) or verifying them *ex post* (Poland). A COI can therefore provide an excellent environment for accountability, not only of the government as the agent entrusted with power by parliament, but also of ensuring their agents, the administration, give an account – not through an agent, but instead directly from the administration, state finances, and law enforcement services, including the special services. At the same time, the committees' interest in such activities is a response to frustration caused by a lack of transparency in their activities, professionalism, as well as a multitude of issues, in which decisions significant from the point of view of governance (and its oversight) are buried.

The committees play the role of obtaining and providing information and giving reports on how the authorities operate in depth – even if only on the occasion of scandals that have come to light.

As for their actual significance and the role they play as part of the checks and balances system, two features deserve particular attention, important from the point of view of exercising of accountability.

Firstly, the activities of COIs do not typically produce conclusions for the future – rather, they are designed to be of an explanatory nature, even to expose, and in consequence, to blame politicians and officers. Italian practice is full of committees appointed recurrently, in each parliamentary term – which means that the issues investigated still need to be improved, as well as clarified. Polish committees seek to hold officials accountable – but they instead tend to stigmatise the predecessors who were in power. Even in the German experience, COI reports usually do not bring real political or legal outcomes.

Secondly, the COI's parliamentarian, but quasi–judicial proceedings are not conducive to an effective perception of the relationship between the agent (i.e. members of the government or officials organizationally subordinated to them, possibly members of the judiciary) and the principal, understood here as MPs involved in the committee's works. Such political investigations change their meaning of classical instruments of government oversight into tools of involving the media in political life – but also lead to a change in the nature of the accountability and agent-principal relation in the contemporary legal cultures under review. This relationship is twofold; the parliament (its members) hold the government (its administration and subordinate services) accountable – but parliamentarians sitting on the committee are also held accountable for their actions – by the heads of parties (parliamentary factions), and above all by the voters. Thus, not only the questioned, but also the inquirers and investigators in the committee are the agents who are held directly accountable before their main principal (the leaders and voters) by demonstrating their activity and political attitude. COIs seem to work as the interface between Parliament and the public, offering by their proceedings publicity and advertising – the effect is not so important and outcomes are often mediocre. This tendency is enduring – as evidenced by the committees that have been consistently appointed in Poland in order to "deal with past wrongdoing", as well as the subject matter of Italian and German committee proceedings, relating either to public matters from the front pages of the newspapers, or to matters of ongoing concern.

But – finally – why do COIs not help to increase the trust in political oversight and fairness of political bodies, despite their transparent truth-finding legal approach? COIs are designed to provide oversight of the government and perform investigations, but they are also strongly linked to parliamentary structure and logic, subordinated to the will of the parliamentary majority and political parties. There is no such thing as objective truth-finding – every issue is a party-political matter (von Beyme 1993, 278); and the outcomes of investigations cannot be universally satisfying in such an environment. Contrary to the will of political parties, truth "is seldom pure and never simple", according to the words of Oscar Wilde. This party bias condemns commissions of inquiry to instrumental use, or at least marginalization, when their investigations may prove to be inconvenient for the parliamentary majority. The only clear task remains the promotion of commission members as indomitable seekers of truth in the eyes of their voters. At the same time, they are definitely responsive in nature – as evidenced by their appointment after an event or scandal arouses great interest and public outrage. This in turn produces increasing affect-mobilized participation under conditions of decreasing and impoverished access to information (Sartori 1997, 150). They give an "illusion of involvement" (Bourdieu 1991, 180), with a predominant function of blaming rather than learning (Sulitzeanu-Kenan 2010, 633), working instead within the inherited legal framework, designed to make political bodies accountable for their exercise of entrusted power.

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Appendix - list of committees of inquiry

Germany - the committees of inquiry set up during the last three terms of the Bundestag[31]

17th parliamentary term (2009-2013)

1. Gorleben Committee of Inquiry (2009-2013)
2. Committee of Inquiry into the National Socialist Underground Terrorist Group (2012-2013)
3. the Defence Committee as the Committee of Inquiry into the Air Raid near Kunduz on 3-4. September 2009. "(2009-2011)
4. the Defence Committee as the Committee of Inquiry into the EURO HAWK development project (2013)

18th parliamentary term (2013-2017)

1. Committee of Inquiry "NSA" (2014-2017)
2. Committee of Inquiry into the 'Events surrounding Operation Spade / Selm' (2014-2015)
3. Committee of Inquiry on 'Terror group NSU II'. (2015-2017)
4. Committee of Inquiry on 'Cum / EX transactions'. (2016-2017)
5. Committee of Inquiry 'The exhaust gas scandal' (2016-2017)

19th parliamentary term (from 2017)

1. Committee of Inquiry into the attack on Breitscheidplatz in Berlin on 19 December 2016. (From 2018)
2. the Defence Committee as the Committee of Inquiry into the so-called Consultant Case (From 2019) External consultants in the Ministry of Defence
3. Committee of Inquiry into the highway toll forbidden by the Court of Justice (from 2019),
4. Committee of Inquiry into the Wirecard affair (from 2020) - 1.

Italy - subject of matter of committees of inquiry (term of parliament office)[32]

Unemployment I

Misery in Italy I

Status of workers in Italy II

Construction of the Fiumicino III airport

[31] Source: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648709/IPOL_STU2020)648709_EN.pdf

[32] Source: https://www.camera.it/leg18/76

Poland - committees of inquiry - the subject matter, appointment time[33]

IV parliamentary term (2001-2005)

The Sejm Committee of Inquiry to investigate allegations of corruption during amendment of the Broadcasting Act - 2003

Examination of allegations concerning irregularities in the supervision of the Ministry of the State Treasury over representatives of the State Treasury in the company PKN Orlen S.A. and the use of special services for illegal pressure on the judiciary in order to exert pressure on members of the Management Board of PKN Orlen S.A. - 2004

Review of the correctness of the privatisation of Powszechny Zakład Ubezpieczeń Spółka Akcyjna - 2005

V parliamentary term (2005-2007)

Committee of Inquiry into the decisions concerning capital and ownership transformations in the banking sector and the actions of banking supervisory authorities in the period from 4 June 1989 to 19 March 2006 (2006)

VI parliamentary term (2007-2011)

1. The circumstances of the tragic death of former MP Barbara Blida (2007)

2. Examination of cases of pressure exerted on special services and judicial officers by members of the Council of Ministers and heads of services in the period from 31 October 2005 to 16 November 2007 (2008)

3. The circumstances of the kidnapping and assassination of Krzysztof Olewnik (2009)

4. The legislative process of acts amending the Act of 29 July 1992 on gambling and pari-mutuel betting (2009)

VII parliamentary term (2011-2015) – no committee

VIII parliamentary term (2015-2019)

1. The correctness and legality of actions and the occurrence of negligence and omissions of public bodies and institutions in the provision of State Treasury revenue from goods, services and excise taxes in the period from December 2007 to November 2015 (2018)

2. The regularity and legality of public bodies and institutions' actions towards entities of the Amber Gold Group (2016)

IX parliamentary term (2019-) none

[33] Source: https://www.sejm.gov.pl/sejm8.nsf/agent.xsp?symbol=KOMISJE_SLEDCZE&Nrkadencji=8
https://www.sejm.gov.pl/komisje/komsled6.htm
https://www.sejm.gov.pl/archiwum/komisje/kadencja5/komsled5.htm
https://www.sejm.gov.pl/archiwum/komisje/kadencja4/komsled4.htm